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OVERSIGHT HEARING – THE HUMAN RIGHT TO WATER: IS CALIFORNIA ACHIEVING ITS DRINKING WATER GOALS?

To: Members of the Assembly Committee on Environmental Safety & Toxic Materials
From: Chair, Assemblymember Eduardo Garcia
Subject: Oversight Hearing: The Human Right to Water: Is California Achieving its Drinking Water Goals?
Date: March 13, 2024

Introduction:

In 2012, California became the first state to enact legislation recognizing the Human Right to Water. Since then the state has enacted several laws, including increasing funding to improve access to clean, safe, affordable drinking water to all Californians. The implementation of many of these laws, including the funding programs, rests with the State Water Resources Control Board (State Water Board). Over the past several years, the state has seen approximately 900,000 Californians provided clean drinking water; however, there are still approximately 900,000 or so Californians that lack access to safe, clean, affordable water. Many factors impact the state's path to providing clean drinking water to all Californians, including climate change, drought, contamination, economic impacts, and ongoing state and federal regulation.

The Assembly Environmental Safety and Toxic Materials Committee is holding an oversight hearing on the state's efforts to implement the Human Right to Water. The Committee will hear from the State Water Board and various stakeholders on the implementation of various laws and programs, including challenges, as well as potential solutions that could improve the state's ability to meet the goals of the Human Right to Water.

Major Drinking Water Programs/Policies:

Human right to water: In 2012, by enacting Assembly Bill (AB) 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 established a state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply issues, contaminants, costs of treatment and distribution systems, climate change, the number and nature of small public water systems, especially

in disadvantaged communities, and many other factors continue to challenge progress in implementing the Human Right to Water.

Regulation of drinking water: The federal Safe Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own SDWA to implement the federal law and establish state standards. The United States Environmental Protection Agency (U.S. EPA) enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

Transfer of drinking water program: Senate Bill (SB) 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the Drinking Water Program from the California Department of Public Health (CDPH) to the State Water Board effective July 1, 2014. This reform created the new Division of Drinking Water within the State Water Board and made other statutory changes, to create efficiencies and facilitate adoption and administration of the Drinking Water Program.

The State Water Board directly enforces the federal SDWA for all large water systems (those with 200 or more service connections). For small water systems (those with less than 200 connections), local health departments can be delegated to have regulatory authority as the local primacy agency.

State Water Board: Created by the State Legislature in 1967, the five-member Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, implements and enforces the SDWA, and guides the nine Regional Water Quality Control Boards located in the major watersheds of the state. Each of the five full-time salaried board members fills a different specialized position (representing the public, engineering expertise, water quality expertise, and water supply expertise). The members are appointed to four-year terms by the Governor and confirmed by the Senate.

The State Water Board regulates public water systems that provide water for human consumption and have 15 or more service connections (i.e., the points of access between a water system's service pipe and a user's piping), or regularly serve at least 25 individuals daily at least 60 days out of the year. The state does not regulate water systems with less than 15 connections; county health officers oversee those systems. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the State Water Board or LPAs share water quality regulatory authority with CPUC.

The State Water Board regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller

systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

The Safe and Affordable Funding for Equity and Resilience (SAFER) program: SB 200 (Monning, Chapter 120, Statutes of 2019) created SAFER and the Safe and Affordable Drinking Water Fund (Fund). The SAFER program supports permanent and sustainable drinking water solutions that ensure all Californians have access to safe, affordable, and reliable drinking water. The Fund was established to address funding gaps and provide solutions to water systems, especially those serving disadvantaged communities, to address both their short- and long-term drinking water needs. SB 200 requires the annual transfer of 5 percent of the Greenhouse Gas Reduction Fund (GGRF) (up to \$130 million) into the Fund until June 30, 2030. Money transferred into the Fund is continuously appropriated and must be expended consistent with the Expenditure Plan (Plan), which is adopted annually by the State Water Board. Potential options for funding include consolidation with larger water systems, operations and maintenance costs, building local technical and managerial capacity, providing interim replacement water, and appointing administrators to run the small systems. Additionally, SAFER funds provide short-term operation and maintenance support as a bridge until long-term sustainable solutions are in place, and long-term operation and maintenance support when necessary.

Expenditure Plan (Plan): The Fund Expenditure Plan (Plan) is adopted annually by the State Water Board, and directs how money from the Fund can be spent. The Plan is based on a drinking water needs assessment, documents past and planned expenditures, prioritizes projects for funding, and identifies the following:

- Public water systems, community water systems, state small water systems, and regions where domestic wells consistently fail or are at risk of failing to provide adequate safe drinking water, the causes of failure, and appropriate remedies;
- Amounts and sources of funding needed to provide safe drinking water or eliminate the risk of failure to provide safe drinking water; and,
- Gaps in supplying safe and affordable drinking water and the amounts and potential sources of funding to eliminate those gaps.

Needs Assessment: The annual Drinking Water Needs Assessment (Needs Assessment) required to be carried out by the SAFER Program provides foundational information and recommendations to guide the Plan.

The results of the annual Needs Assessment are used by the State Water Board and the SAFER Advisory Group to inform the prioritization of available state funding and technical assistance within the Plan.

The Needs Assessment is not a static analysis. The State Water Board annually updates the Needs Assessment, providing a valuable snapshot of the overall resources needed to bring failing systems into compliance with drinking water standards, and to prevent situations in which systems must be designated at-risk. The Needs Assessment gives

clarity to the work that must collectively be done by state, federal, local, and stakeholder partners.

Since the SAFER program began in 2019, 185 more water systems are providing safe and affordable drinking water, benefiting over 1.2 million Californians. As of April 2023, the State Water Board has distributed nearly \$700 million in grants for drinking water projects, which is 95% more grant funding provided to water systems in disadvantaged communities than in the three years prior to the start of the program. In addition, 94 consolidations, serving 56,451 people, have been completed through the program since July 2019. The Needs Assessment is comprised of four core components: the Failing Water System List (Failing list), the Risk Assessment, the Cost Assessment, and the Affordability Assessment.

2022 Retrospective (From the 2023 Needs Assessment): Since 2017, the State Water Board has been tracking community water systems and K-12 schools that meet the State Water Board's Failing criteria. The Failing criteria were expanded by the State Water Board in 2021 and may continue to evolve in the future. The evolving nature of the State Water Board's Failing criteria can make it challenging to analyze water systems on the Failing list over time. For example in 2022, there were water systems that were added to the list and water systems that were removed from the list, while a group of water systems remained on the failing list. Altogether, just over 1.2 million Californians were served by a failing water system at some point during 2022. The Failing list from January 1, 2023, had 388 water systems, serving a population of approximately 938,000 people.

The following list summarizes actions taken by the State Water Board to support California water systems and improve access to safe and affordable drinking water in 2022:

- 27 water systems, serving 7,663 residents were consolidated.
- The State Water Board sent out over 3,000 letters to water systems recommending consolidation and hosted 12 Water Partnership Training events across the state.
- The SAFER Program provided short-term solutions, such as emergency well repairs, and bottled and hauled water provision to nearly 24,000 individuals.
- Long-term solutions, such as construction and consolidation, were completed for 42 water systems, including nearly 8.5 million individuals.
- The State Water Board funded approximately \$21,641,362 million for technical assistance to support 357 water systems.
- The State Water Board and Local Primacy Agencies completed sanitary surveys for 900 community drinking water systems and 892 non-community drinking water systems, identifying more than 30 significant deficiencies.
- The State Water Board developed new publicly available Dashboards and datasets to improve access to the data and analysis contained in the Needs Assessment.

Affordability-Related Enhancements: In response to stakeholder feedback after the release of the 2021 and 2022 Needs Assessments, the State Water Board, in partnership with the Office of Environmental Health Hazard Assessment (OEHHA), hosted three

public Affordability Workshops in 2022 to reevaluate previously utilized affordability indicators, research new affordability indicators, and explore how to incorporate a new affordability indicator that measures disposable income limitations into the 2023 Needs Assessment and beyond. These workshops also analyzed different approaches for identifying disadvantaged communities (DACs) and establishing an “affordability threshold.” Based on feedback from the public workshops, the State Water Board revised its affordability indicators.

Enhancements to the Risk Assessment for State Small Water Systems and Domestic Wells:

The 2022 Risk Assessment included two categories: Water Quality and Water Shortage. In 2022, the State Water Board partnered with OEHHA to develop a third category of risk for state small water systems and domestic wells that took into account socioeconomic risk. The purpose of the new Socioeconomic risk category is to: (1) assess a counties’ overall administrative, technical, and managerial capacity to assist communities served by state small water systems and domestic wells, and (2) assess the ability of communities served by these systems to access and pay for water at a neighborhood level, especially when faced with a well experiencing water quality or water shortage issues. A workshop was hosted in February 2023 to provide an opportunity for stakeholders to recommend how this new Socioeconomic risk category is combined with the Water Quality and Water Shortage risk categories, to identify at-risk state small water systems and domestic well communities.

Challenges with providing funding to Native American Tribes: According to the "Policy for Developing the Fund Expenditure Plan for the Safe and Affordable Drinking Water Fund, October 19, 2021," the State Water Board included the following tribal considerations:

"Engagement with California Native American Tribes will be prioritized in outreach, program design and funding elements of the SAFER Program. California Native American Tribes are eligible recipients of monies from the Fund. The water system needs of California Native American Tribes will be evaluated for funding based on the same criteria as other eligible recipients. All State Water Board funding agreements contain compliance obligations, such as monitoring, reporting, inspection, and accounting. These compliance obligations ensure that the State Water Board complies with statutory requirements and responsibly administers state funds. Federally recognized Native American Tribes are also eligible to receive SAFER funding and staff will work with them to try to ensure that they can also benefit from the SAFER Program. In order to fund a project with a federally recognized Native American Tribe, the State Water Board may require a limited waiver of sovereign immunity strictly to ensure compliance with the terms of the financial assistance agreement. In addition, the State Water Board will work cooperatively with California Native American Tribes to access water quality data and water system operational information, if available."

However, according to stakeholders, the requirement of a limited waiver of sovereign immunity was preventing tribes from being able to access these funds. In 2022, AB 2877 (E. Garcia, Chapter 481, Statutes of 2022) was introduced in order to solve this problem.

AB 2877 requires the State Water Board, when administering the Fund, to narrowly draft any waiver of tribal sovereign immunity, for a tribe that is an eligible recipient under the Fund, to serve both the individual needs of the tribe and make the funding agreement enforceable.

Consolidation of water systems: According to the U.S. EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

Authority to require consolidation and the appointment of an administrator: Effective June 24, 2015, SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate.

The following year, SB 552 (Wolk, Chapter 773, Statutes of 2016) expanded the State Water Board's authority to order a designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

State law requires the State Water Board to perform a series of actions before ordering consolidation or extension of service. These include encouraging voluntary consolidation or extension of service; considering other enforcement remedies; considering the affordability of anticipated monthly rates for drinking water service to residential customers of the potentially subsumed water system; providing technical assistance and working with the potentially receiving and subsumed water systems to develop a financing package that benefits them both.

Audit of State Water Board: In July of 2022, the State Auditor released their audit (Audit 2021-118) focused on the State Water Board's efforts to provide Californians with safe drinking water. Key findings for the audit include the following:

- Nearly a million Californians face possible long-term, negative health outcomes—including an increased risk of liver and kidney problems, as well as cancer—because they receive unsafe drinking water from a failing water system.

- Although the State Water Board has funding available to help failing water systems, it has not made processing applications a priority. Over the past five years, the average amount of time it took for water systems to complete their applications and receive funding has nearly doubled from 17 months to 33 months.
- Although the State Water Board provides water systems with technical assistance to plan their improvements and apply for funds, it has not adequately monitored the performance of the technical assistance providers with which it contracts.
- The State Water Board conducts various outreach activities to raise awareness about its services, to help water systems identify potential drinking water solutions, and to keep projects on track by proactively identifying potential risks, issues, or delays. However, the board has not consistently conducted outreach to failing water systems, particularly to those that serve disadvantaged communities.

Based on the audit's findings, the State Auditor made the following key recommendations:

- The Legislature should amend state law to require the State Water Board to include its timeliness goals and its performance in comparison to those goals in its annual reports to the Legislature.
- To minimize the prolonged periods during which Californians suffer without safe drinking water, the State Water Board should make changes to its application process, particularly for failing water systems affecting a large number of people or serving a disadvantaged community, establish internal expectations and processes for application and project tracking and timeliness, and evaluate staffing assignment processes.
- The State Water Board should also:
 - Update its online search tool for funding applications to include additional information about processes and timing.
 - Evaluate its progress in meeting its performance goals.
 - Establish performance metrics and time frames for its review of technical assistance providers' deliverables.
 - Work with the Legislature and federal agencies to request the resources necessary to ensure that water systems can meet safe drinking water standards.

Water Board's response to the Audit: Although the State Water Board disagreed with certain report conclusions, it generally agreed with the auditors recommendations and stated it would work to implement them.

Funding sources for safe drinking water projects: The State Water Board provides funding and other assistance to water systems for drinking water projects that address or prevent public health risks. The State Auditor's report notes that from July 2016 through December 2021, the State Water Board's Division of Financial Assistance awarded about \$1.7 billion in loan and grant funding for water infrastructure projects—such as constructing water sources, distribution systems, and treatment facilities—and for technical assistance to water systems. The State Water Board relies on funding from several sources to make these awards to water systems and support its safe drinking water programs. For fiscal year 2021–22, federal and state funding available for drinking water

programs totaled \$1.4 billion. Of that amount, \$650 million, or 46 percent, came from a State General Fund appropriation for water system infrastructure. Another \$330 million, or 23 percent, came from the Drinking Water State Revolving Fund, and \$240 million, or 17 percent, was from state bonds and other special funds. The remainder of its funding is from the Fund, established by SB 200 (Monning, Chapter 120, Statutes of 2019), and additional appropriations from the State General Fund.

The State Water Board's loan and grant application process: As described by the State Auditor's report, water systems are often eligible for funding from several sources and for different aspects of projects. They may apply for funding to assist in the planning and design or construction of new infrastructure projects, or for the operation and maintenance of existing infrastructure. Water systems may apply for financial assistance for both the design and the construction phases of their projects.

Applications for funding require water systems to provide the State Water Board with general project information, as well as information about the project's technical and environmental aspects. The application must also include information about the water system's ability to repay the loan for the project.

The State Water Board also provides support and technical assistance to water systems that need assistance with the application process. Once a water system submits an application, a Division of Financial Assistance project manager reviews it for completeness and contacts the applicants to obtain any missing information. Following its reviews of the project submittals, the State Water Board determines the amount and source of funding to award the water system. It then drafts a financing agreement for the projects.

The State Water Board's online funding application search tool: The Division of Financial Assistance at the State Water Board, which assists communities in financing the cost of water infrastructure projects, hosts an online, public-facing funding application search tool. The tool allows users to search the status of drinking water and clean water applications that have been submitted for funding consideration and are under review. Applicants who have received a funding agreement are not included in the search tool.

Through the search tool, a person can search the status of a funding application by applicant, project title, project number, county, district, or region. The search tool denotes whether an application package is incomplete; if a complete application has been received but not reviewed; and, whether complete application packages have been reviewed by staff.

Related Legislation:

- 1) AB 2877 (E. Garcia, Chapter 481, Statutes of 2022). Requires the State Water Board when administering funds under the Safe and Affordable Drinking Water Fund (Fund) to narrowly draft any waiver of tribal sovereign immunity, for a tribe that is an

eligible recipient under the Fund, to serve both the individual needs of the tribe and make the funding agreement enforceable.

- 2) SB 403 (Gonzalez, Chapter 242, Statutes of 2021). Authorizes the State Water Board to order the consolidation of at-risk domestic wells and at-risk water systems.
- 3) AB 217 (E. Garcia, 2019). Would have created the Safe Drinking Water for All Act (Act), which would have established the Safe and Affordable Drinking Water Fund (Fund) to provide a source of funding for safe drinking water for all Californians, and long-term sustainability of drinking water systems. Would have imposed several fees on agricultural activities and a charge on retail water systems that together would provide the source of revenue to the Fund. This bill was subsequently amended into another subject.
- 4) AB 508 (Chu, Chapter 352, Statutes of 2019). Makes changes to statute related to the State Water Board's authority to order the consolidation of drinking water systems, including setting a deadline of July 1, 2020 as the date by which the State Water Board must develop a policy that provides a process for members of a disadvantaged community to petition for consolidation, and deleting statute that required the State Water Board, before ordering consolidation or extension of service, to obtain written consent to the project from a domestic well owner.
- 5) SB 200 (Monning, Chapter 120, Statutes of 2019). Established the Safe and Affordable Drinking Water Fund (Fund) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms. Transfers annually to the Fund—beginning in fiscal year 2020-21 and until June 30, 2030—five percent of the proceeds of the Greenhouse Gas Reduction Fund, up to \$130 million. Requires the State Water Board to adopt a fund expenditure plan.
- 6) SB 669 (Caballero, 2019). Would have established the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Would have created the Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in the Senate Appropriations Committee.
- 7) AB 2501 (Chu, Chapter 871, Statutes of 2018). Authorizes the State Water Board to order consolidation with a receiving water system when a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water; prohibits, for an ordered consolidation, the receiving water system from charging specified fees or imposing specified conditions on customers of the subsumed water system that it would not otherwise charge or impose; and, makes other changes to ordered consolidation law.
- 8) SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, to assist communities and

individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. This bill was held in the Assembly Rules Committee.

- 9) SB 552 (Wolk, Chapter 773, Statutes of 2016). Authorizes the State Water Board to contract with an administrator to provide administrative and managerial services to a designated public water system, as defined, to assist with the provision of an adequate and affordable supply of safe drinking water.
- 10) SB 1263 (Wieckowski, Chapter 843, Statutes of 2016). Requires a person submitting an application for a permit for a proposed new public water system to first submit a preliminary technical report to the State Water Board at least six months before initiating construction of any water-related development. Authorizes the State Water Board to deny a permit for a new public water system if it is feasible to connect to an existing system or if the new public water system is unsustainable.
- 11) SB 88 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015). Authorizes the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with, or receive service from, public water systems with safe, reliable, and adequate drinking water.
- 12) Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014). Transferred the Drinking Water Program from CDPH to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board.
- 13) AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and requires that relevant state agencies, including the Department of Water Resources, the State Water Board, and CDPH consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.