

**SAFE AND AFFORDABLE DRINKING WATER ACT**  
**February 1, 2018**

The people of the State of California do enact as follows:

SECTION 1. Article 10.5 (commencing with Section 595) is added to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 10.5. Safe Drinking Water Fee/or Confined Animal Facilities Excluding Dairies

595. For purposes of this article, the following definitions apply:

(a) "Confined animal facilities excluding dairies" includes, but is not limited to, bovine operations, poultry operations, swine operations, and other livestock operations. "Confined animal facilities excluding dairies" does not mean milk cow dairies.

(b) "Fee" means the safe drinking water fee/or confined animal facilities excluding dairies.

(c) "Fund" means the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

596. (a) The secretary shall convene a working group composed of representatives of confined animal facilities excluding dairies to determine the actual risk, if any, to groundwater from discharges of nitrate from confined animal facilities excluding dairies.

(b) Beginning January 1, 2021, the secretary shall establish a safe drinking water fee for confined animal facilities excluding dairies payable annually to the secretary by each confined animal facility excluding a dairy in an amount commensurate with the actual risk to groundwater from discharges of nitrate as determined by the working group. The fee shall not exceed one thousand dollars (\$1,000) per facility per year. The secretary shall adopt regulations to implement and administer this section by January 1, 2021.

(c) This section shall remain in effect only until January 1, 2036, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2036, deletes or extends that date.

597. (a) No later than January 1, 2035, the secretary shall convene a working group with representatives of confined animal facilities excluding dairies to determine the actual risk, if any, to groundwater from confined animal facilities excluding dairies.

(b) Beginning July 1, 2036, the secretary shall establish a safe drinking water fee for confined animal facilities excluding dairies payable annually to the secretary by each confined animal facility excluding a dairy in an amount commensurate with the actual risk to groundwater from discharges of nitrate determined by the working group.

(c) The secretary may adjust the fee established pursuant to subdivision (b) through emergency regulation as necessary to meet but not exceed the anticipated funding need for nitrate in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code. An emergency regulation adopted pursuant to this subdivision shall be adopted by the secretary in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Any emergency regulations adopted by the secretary pursuant to this subdivision shall remain in effect until revised by the secretary.

(d) The fee collected pursuant to subdivision (b) of this section, in combination with the dairy safe drinking water fee collected pursuant to Section 62215, shall total the sum of three million dollars (\$3,000,000), or 30 percent of the funding need for nitrate in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code, whichever is less.

(e) Notwithstanding subdivisions (c) and (d), the fee collected pursuant to subdivision (b) shall not exceed one thousand dollars (\$1,000) per facility per year.

(f) This section shall become operative on January 1, 2034.

598. The secretary shall deposit all moneys received under this article into the fund.

599. The Legislature may not increase the fees established under section 596 and 597 except by an affirmative vote of two-thirds of the membership in each house of the Legislature.

SEC. 2. Article 6.5 (commencing with Section 14615) is added to Chapter 5 of Division 7 of the Food and Agricultural Code, to read:

Article 6.5. Fertilizer Safe Drinking Water Fee

14615. (a) It is the intent of the Legislature to require licensees of bulk fertilizing materials, and to authorize licensees of packaged fertilizing materials, to pass the fertilizer safe drinking water fee on to the end user of the fertilizer.

(b) For purposes of this article, the following definitions apply:

(1) "Bulk fertilizing material" has the same meaning as applies to "bulk material" in Section 14517.

(2) "Fertilizing material" has the same meaning as defined in Section 14533.

(3) "Fund" means the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

(4) "Packaged" has the same meaning as defined in Section 14551.

14616. (a) In addition to the assessments provided in Section 14611, a licensee whose name appears on the label of bulk or packaged fertilizing materials shall pay to the secretary a fertilizer safe drinking water fee of six mills (\$0.006) per dollar of sales for all sales of fertilizing materials to be deposited into the fund.

(b) This section shall remain in effect only until January 1, 2034, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2034, deletes or extends that date.

14616. (a) In addition to the assessments provided in Section 14611, a licensee whose name appears on the label of bulk or packaged fertilizing materials shall pay to the secretary a fertilizer safe drinking water fee of two mills (\$0.002) per dollar of sales for all sales of fertilizing materials to be deposited into the fund.

(b)(1) After January 1, 2036, the secretary may adjust the fertilizer safe drinking water fee through emergency regulation as necessary to meet but not exceed 70 percent of the anticipated funding need for nitrate in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code, or the sum of seven million dollars (\$7,000,000), whichever is less. By October 1 of each year, the secretary shall notify all licensees of the amount of the fertilizer safe drinking water fee to be assessed in the following calendar year.

(2) An emergency regulation adopted pursuant to this subdivision shall be adopted

by the secretary in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Any emergency regulations adopted by the secretary pursuant to this subdivision shall remain in effect until revised by the secretary.

(c) This section shall become operative on January 1, 2034.

14617. (a)(1) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials shall charge an unlicensed purchaser the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser. This fee shall be included on the bill of sale as a separate line item.

(2) (A) A licensee whose name appears on the label of packaged fertilizing materials may include the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser or may include the charge with the assessment collected pursuant to Section 14611 as a separate line item on the bill of sale and identified as the California Regulatory and Safe Drinking Water Assessment.

(B) Notwithstanding paragraph (1), a licensee whose name appears on the label who sells or distributes bulk fertilizing material may include the fertilizer safe drinking water fee with the assessment collected pursuant to Section 14611 as a separate line item on the bill of sale and identified as the California Regulatory and Safe Drinking Water Assessment.

(b) The secretary may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article.

(c) (1) Except as provided in paragraph (2), the secretary may retain up to 4 percent of the moneys collected pursuant to this article for reasonable costs associated with the implementation and enforcement of this article.

(2) Beginning July 1, 2021, the secretary may retain up to 2 percent of the moneys collected pursuant to this article for reasonable costs associated with the implementation and enforcement of this article.

14618. The Legislature may not increase the fees established under section 14616 except by an affirmative vote of two-thirds of the membership in each house of the Legislature.

SEC. 3. Article 14.5 (commencing with Section 62215) is added to Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code, to read:

Article 14.5. Dairy Safe Drinking Water Fee

62215. (a) It is the intent of the Legislature that the dairy safe drinking water fee be paid for all milk purchased in the state, regardless of grade.

(b) For purposes of this article, the following definitions apply:

- (1) "Fee" means the dairy safe drinking water fee.
- (2) "Manufacturing milk" has the same meaning as defined in Section 32509.
- (3) "Market milk" has the same meaning as defined in Section 32510.
- (4) "Milk" includes market milk and manufacturing milk.

62216. (a) Beginning January 1, 2021, each handler, including a producer-handler, subject to the provisions of a stabilization and marketing plan shall deduct the sum of \$0.01355 per hundredweight of milk from payments made to producers for milk, including the handler's own production, as a dairy safe drinking water fee.

(b) The secretary shall adopt regulations necessary for the proper administration and enforcement of this section by January 1, 2021.

(c) This section shall remain in effect only until January 1, 2036, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2036, deletes or extends that date.

62216. (a) Each handler, including a producer-handler, subject to the provisions of a stabilization and marketing plan shall deduct the sum of \$0.00678 per hundredweight of milk from payments made to producers for milk, including the handler's own production, as a dairy safe drinking water fee.

(b) The secretary may adjust the fee through emergency regulation as necessary to meet but not exceed 30 percent of the anticipated funding need for nitrate in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code, or the sum of three million dollars (\$3,000,000), whichever is less. An emergency regulation adopted pursuant to this subdivision shall be adopted by the secretary in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Any emergency regulations adopted by the secretary pursuant to this subdivision shall remain in effect until revised by the secretary.

(c) When setting the amount of the fee pursuant to subdivision (b), the secretary shall consider the amount of funding being collected by the safe drinking water fee for confined animal facilities excluding dairies pursuant to Section 597 and shall reduce the dairy safe drinking water fee by the amount collected by the safe drinking water fee for confined animal facilities excluding dairies. In no event shall the dairy safe drinking water fee and the safe drinking water fee for confined animal facilities excluding dairies exceed 30 percent of the anticipated funding need for nitrate in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code or the sum of three million dollars (\$3,000,000), whichever is less.

(d) The secretary shall adopt regulations necessary for the proper administration and enforcement of this section.

(e) This section shall become operative on January 1, 2036.

62217. (a) A handler shall pay the dairy safe drinking water fee to the secretary on or before the 45th day following the last day of the month in which the milk was received.

(b) The secretary shall remit the moneys paid to him or her pursuant to this article to the State Water Resources Control Board for deposit into the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

(c)(1) Except as provided in paragraph (2), the secretary may retain up to 4 percent of the total amount that is paid to the secretary pursuant to this article for reasonable costs of the secretary associated with the implementation and enforcement of this article

(2) Beginning July 1, 2021, the secretary may retain up to 2 percent of the moneys collected pursuant to this article for reasonable costs of the secretary associated with the implementation and enforcement of this article.

(d) The secretary may require handlers, including cooperative associations acting as handlers, to make reports at any intervals and in any detail that he or she finds necessary for the accurate collection of the fee.

(e) For the purposes of enforcing this article, the secretary, through his or her duly authorized representatives and agents, shall have access to the records of every producer and handler. The secretary shall have at all times free and unimpeded access to any building, yard, warehouse, store, manufacturing facility, or transportation facility in which any milk or milk product is produced, bought, sold, stored, bottled,

handled, or manufactured.

(f) Any books, papers, records, documents, or reports made to, acquired by, prepared by, or maintained by the secretary pursuant to this article that would disclose any information about finances, financial status, financial worth, composition, market share, or business operations of any producer or handler, excluding information that solely reflects transfers of production base and pool quota among producers, is confidential and shall not be disclosed to any person other than the person from whom the information was received, except pursuant to the final order of a court with jurisdiction, or as necessary for the proper determination of any proceeding before the secretary.

62218. The Legislature may not increase the fees established under section 62216 except by an affirmative vote of two-thirds of the membership in each house of the Legislature.

SEC. 4. Chapter 4.6 (commencing with Section 116765) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

#### CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER

Article 1. Legislative Findings and Declarations 116765. The Legislature finds and declares all of the following:

(a) Section 106.3 of the Water Code declares that it is the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) For all public water systems, the operation and maintenance costs to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis may be significant.

(c) All community water systems are currently required to set, establish, and charge a schedule of rates and fees that are sufficient to recover the operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis.

(d) Hundreds of community water systems in the state cannot charge rates and fees that are affordable and sufficient to recover the full operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis due to a combination of low income levels of customers, high treatment costs for contaminated water sources, and a lack of economies of scale that result in high unit costs for water

service. Many schools that serve as their own regulated public water systems and have contaminated water sources cannot afford the full operation and maintenance costs required to provide water that meets federal and state drinking water standards.

(e) Nearly all state or federal drinking water project funding sources prohibit the use of that funding for operation and maintenance costs, and as a result, those systems that cannot afford required operation and maintenance costs are unable to access funding for capital projects to meet federal and state drinking water standards.

(f) As a result, hundreds of thousands of Californians, particularly those living in small disadvantaged communities, may be exposed to unsafe drinking water in their homes and schools, which impacts human health, household costs, and community economic development.

(g) A significant number of California residents rely on state small water systems and domestic wells to provide their drinking water.

(h) The state small water systems and individual domestic wells face a serious threat of contamination because they often draw their water from shallow groundwater sources and have fewer or no chemical monitoring requirements.

(i) To ensure that the right of every Californian to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes is protected, it is in the interest of the State of California to identify where Californians are at high risk of lacking reliable access to safe drinking water or are known to lack reliable access to safe drinking water, whether they rely on a public water system, state small water system, or domestic well for their potable water supply.

(j) Long-term sustainability of drinking water infrastructure and service provision is necessary to secure safe drinking water for all Californians and therefore it is in the interest of the state to discourage the proliferation of new, unsustainable public water systems and state small water systems, to prevent waste, and to encourage consolidation and service extension when feasible.

(k) It is in the interest of all Californians to establish a fund with a stable source of revenue to provide financial support, particularly for operation and maintenance, necessary to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.

## Article 2. Definitions

116766. For the purposes of this chapter:

- (a) "Administrator" has the same meaning as defined in Section 116686.
- (b) "Board" means the State Water Resources Control Board.
- (c) "Community water system" has the same meaning as defined in Section 116275.
- (d) "Customer" means a purchaser of water from a community water system who uses the water for municipal purposes, including residential, commercial, governmental, and industrial uses.
- (e) "Disadvantaged community" has the same meaning as defined in Section 116275.
- (f) "Domestic well" means a groundwater well used to supply water for the domestic needs of an individual residence or water systems that are not public water systems and that have no more than four service connections.
- (g) "Eligible applicant" means a public water system, including, but not limited to, a mutual water company; a public utility; a public agency, including, but not limited to, a local educational agency that owns or operates a public water system; a nonprofit organization; a federally recognized Indian tribe; a state Indian tribe listed on the Native American Heritage Commission's California Tribal Consultation List; an administrator; or a groundwater sustainability agency.
- (h) "Fund" means the Safe and Affordable Drinking Water Fund established pursuant to Section 116767.
- (i) "Fund implementation plan" means the fund implementation plan adopted pursuant to Section 116769.
- (j) "Groundwater sustainability agency" has the same meaning as defined in Section 10721 of the Water Code.
- (k) "Low-income household" means a household with an income that is less than 80 percent of the statewide median household income.
- (l) "Nontransient noncommunity water system" has the same meaning as defined in Section 116275.
- (m) "Public water system" has the same meaning as defined in Section 116275.
- (n) "Replacement water" includes, but is not limited to, bottled water, vended water, point-of-use, or point-of-entry treatment units.
- (o) "Safe drinking water" has the same meaning as defined in Section 116681.

(p) "Service connection" has the same meaning as defined in Section 116275.

(q) "Small community water system" has the same meaning as defined in Section 116275.

(r) "State small water system" has the same meaning as defined in Section 116275.

(s) "Vended water" has the same meaning as defined in Section 111070.

### Article 3. Safe and Affordable Drinking Water Fund

116767. The Safe and Affordable Drinking Water Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the board without regard to fiscal years, in accordance with this chapter. Moneys in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the General Fund. Moneys in the fund shall not be available for appropriation or borrowed for use for any purpose not established in this chapter unless that use of the moneys receives an affirmative vote of two-thirds of the membership in each house of the Legislature.

116768. (a) The board shall administer the fund for the purposes of this chapter to provide a source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure. The board shall prioritize the use of this funding to assist disadvantaged communities and low-income households served by a state small water system or domestic well. In order to maximize the use of other funding sources for capital construction projects when available, the board shall prioritize use of this funding for costs other than those related to capital construction costs, except for capital construction costs associated with consolidation and service extension to reduce the ongoing unit cost of service and to increase sustainability of drinking water infrastructure and service delivery. Beginning January 1, 2019, an expenditure from the fund shall be consistent with the annual fund implementation plan.

(b) In accordance with subdivision (a), the board shall expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants with any of the following:

(1) The provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution.

(2) The development, implementation, and sustainability of long-term solutions, including, but not limited to, technical assistance, planning, construction, and

operation and maintenance costs associated with replacing, repairing, blending, or treating contaminated or failing drinking water sources, creating and maintaining natural means of treating and improving sustainable water quality, consolidating water systems, or extending drinking water services to other public water systems, domestic wells, or state small water systems. Technical assistance and planning costs may include, but are not limited to, analyses to identify, and efforts to further, opportunities to reduce the unit cost of providing drinking water through organizational and operational efficiency improvements, system consolidation and service extension, implementation of new technology, and other options and approaches to reduce costs.

(3) Identifying and providing outreach to Californians who are eligible to receive assistance from the fund.

(4) Testing the drinking water quality of domestic wells serving low-income households, prioritizing those in high-risk areas identified pursuant to Article 4 (commencing with Section 116770).

(5) The provision of administrative and managerial services under Section 116686.

(c) The board may expend moneys from the fund for reasonable costs associated with administration of the fund. Beginning July 1, 2021, the board may expend no more than 5 percent of the annual revenues from the fund for reasonable costs associated with administration of the fund.

(d) The board may undertake any of the following actions to implement the fund:

(1) Provide for the deposit of both of the following moneys into the fund:

(A) Federal contributions.

(B) Voluntary contributions, gifts, grants, or bequests.

(2) Enter into agreements for contributions to the fund from the federal government, local or state agencies, and private corporations or nonprofit organizations.

(3) Provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.

(4) Direct portions of the fund to a subset of eligible applicants as required or appropriate based on funding source and consistent with the annual fund implementation plan.

(5) Direct moneys deposited into the fund described in subparagraph (B) of paragraph (1) towards a specific project, program, or study.

(6) Take additional action as may be appropriate for adequate administration and operation of the fund.

(e) In administering the fund, the board shall make reasonable efforts to ensure both of the following:

(1) That funds are used to secure the long-term sustainability of drinking water service and infrastructure, and natural means and green infrastructure solutions that contribute to sustainable drinking water, including, but not limited to, requiring adequate technical, managerial, and financial capacity of eligible applicants as part of funding agreement outcomes. Funding shall be prioritized to implement consolidations and service extensions when feasible, and administrative and managerial contracts or grants entered into pursuant to Section 116686 where applicable. Funds shall not be used to delay, prevent, or avoid the consolidation or extension of service to public water systems where it is feasible and the least-cost alternative. The board may set appropriate requirements as a condition of funding, including, but not limited to, a system technical, managerial, or financial capacity audit, improvements to reduce costs and increase efficiencies, an evaluation of alternative treatment technologies, and a consolidation or service extension feasibility study. As a condition of funding, the board may require a domestic well with nitrate contamination where ongoing septic system failure may be causing or contributing to contamination of a drinking water source to conduct an investigation and project to address the septic system failure if adequate funding sources are identified and accessible.

(2) That funds are not used to subsidize large-scale nonpotable use, to the extent feasible.

(f) In administering the fund, the board shall ensure that all moneys deposited into the fund from the fertilizer safe drinking water fee established by Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code, the dairy safe drinking water fee established by Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code and the safe drinking water fee for confined animal livestock facilities excluding dairies established by Article 10.5 (commencing with Section 595) of Chapter 3 of Part I of Division I of the Food and Agricultural Code shall be used to address nitrate-related contamination issues.

(g) At least once every 10 years, the board shall conduct a public review and assessment of the Safe and Affordable Drinking Water Fund to determine all of the following:

(1) The effectiveness of the fund in securing access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.

(2) If the fees deposited into the fund have been appropriately expended.

(3) If the safe and affordable drinking water fee imposed by Article 5 (commencing with Section 116771) may be reduced based on past and projected future changes to the fund.

(4) What other actions are necessary to carry out the purposes of this chapter.

(h) Neither the board nor any employee of the board may be held liable for any act that is necessary to carry out the purposes of this chapter. Nor shall the board nor any authorized person be deemed to have incurred or be required to incur any obligation to provide additional funding or undertake additional action solely as a result of having undertaken an action pursuant to this chapter.

116769. By July 1 of each year, the board shall do all of the following:

(a) Prepare and make available a report of expenditures from the fund.

(b) Adopt, after a public hearing, an assessment of funding need, based on available data, that includes all of the following:

(1) Identification of systems and populations potentially in need of assistance, including all of the following:

(A) A list of systems that consistently fail to provide an adequate supply of safe drinking water. The list shall include, but is not limited to, all of the following:

(i) Any public water system that consistently fails to provide an adequate supply of safe drinking water.

(ii) Any community water system that serves a disadvantaged community that must charge fees that exceed the affordability threshold established in the Safe Drinking Water State Revolving Fund Intended Use Plan in order to supply, treat, and distribute potable water that complies with federal and state drinking water standards.

(iii) Any state small water system that consistently fails to provide an adequate supply of safe drinking water.

(B) A list of programs that assist, or that will assist, households supplied by a domestic well that consistently fails to provide an adequate supply of safe drinking water. This list shall include the number and approximate location of households served by each program without identifying exact addresses or other personal information.

(C) A list of public water systems and state small water systems that may be at risk of failing to provide an adequate supply of safe drinking water.

(D) An estimate of the number of households that are served by domestic wells or state small water systems in high risk areas identified pursuant to Article 4 (commencing with Section 116770). The estimate shall identify approximate locations of households, without identifying exact addresses or other personal information, in order to identify potential target areas for outreach and assistance programs.

(2) An analysis of anticipated funding, per contaminant, needed for known projects, services, or programs by eligible applicants, consistent with the fund implementation plan, including any funding needed for existing long-term funding commitments from the fund. The board shall identify and consider other existing funding sources able to support any projects, services, or programs identified, including, but not limited to, local funding capacity, state or federal funding sources for capital projects, funding from responsible parties, and specialized funding sources contributing to the fund.

(3) An estimate of the funding needed for the next fiscal year based on the amount available in the fund, anticipated funding needs, other existing funding sources, and other relevant data and information.

(c)(1) Adopt, after a public hearing, a fund implementation plan and policy handbook with priorities and guidelines for expenditures of the fund.

(2) The board shall work with a multi-stakeholder advisory group that shall be open to participation by representatives of entities paying into the fund, public water systems, technical assistance providers, local agencies, nongovernmental organizations, residents served by community water systems in disadvantaged communities, state small water systems, and domestic wells, and the public, to establish priorities and guidelines for the fund implementation plan and policy handbook.

(3) The adoption of a fund implementation plan and policy handbook and the implementation of the fund pursuant to the policy handbook are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

#### Article 4. Information on High Risk Areas

116770. (a)(1) By January 1, 2020, the board, in consultation with local health officers and other relevant stakeholders, shall use available data to make available a map of aquifers that are at high risk of containing contaminants and that exceed primary federal and state drinking water standards that are used or likely to be used as a source of drinking water for a state small water system or a domestic well. The board shall update the map at least annually based on any newly available data.

(2) The board shall make the map of high risk areas, as well as the data used to make the map, publicly accessible on its Internet Web site in a manner that does not identify exact addresses or other personal information and that complies with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board shall notify local health officers and county planning agencies of high risk areas within their jurisdictions.

(b)(1) By January 1, 2020, a local health officer or other relevant local agency shall provide to the board all results of, and data associated with, water quality testing performed by certified laboratories for a state small water system or domestic well that was collected after January 1, 2014, and that is in the possession of the local health officer or other relevant local agency.

(2) By January 1, 2021, and by January 1 of each year thereafter, all results of, and data associated with, water quality testing performed by a certified laboratory for a state small water system or domestic well that is submitted to ~~the~~ a local health officer or other relevant local agency shall also be submitted directly to the board in electronic format.

(c) A map of high-risk areas developed pursuant to this article is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

#### Article 5. Safe and Affordable Drinking Water Fee

116771. (a)(1) Beginning July 1, 2019, and until July 1, 2021, except as provided in subdivisions (d) and (e), there is hereby imposed a safe and affordable drinking water fee for the purposes authorized in this chapter on each customer of a community water system as follows:

(A) For a customer with a water meter that is less than or equal to one inch in size, the fee shall be ninety-five cents (\$0.95) per month.

(B) For a customer with a water meter that is greater than one inch and less than or equal to two inches in size, the fee shall be four dollars (\$4) per month.

(C) For a customer with a water meter that is greater than two inches and less than or equal to four inches in size, the fee shall be six dollars (\$6) per month.

(D) For a customer with a water meter that is greater than four inches in size, the fee shall be ten dollars (\$10) per month.

(E) For a customer without a water meter, the fee shall be ninety-five cents (\$0.95) per month.

(F) For a customer that has multiple meters serving a single address, the total fees shall not exceed ten dollars (\$10) per month.

(2)(A) A customer that self-certifies under penalty of perjury to the community water system collecting the fee that he or she meets either of the following criteria shall be exempt from the payment of the fee:

(i) The customer's household income is equal to or less than 200 percent of the federal poverty level.

(ii) The customer operates a deed-restricted multifamily housing development that is required to provide housing exclusively to tenants with household incomes equal to or less than 200 percent of the federal poverty level.

(B) A community water system shall not be held criminally or civilly liable for failing to collect fees from customers who claim a self-certified exemption or for collecting fees from customers who could claim a self-certified exemption but do not provide adequate or timely notice to the community water system that he or she meets a criterion to be exempt.

(3)(A) A customer that is already enrolled in a program offered by a community water system that is designed specifically to reduce the cost of water service incurred by customers who meet established income guidelines is exempt from the payment of the fee.

(B) A connection or meter that is used exclusively for fire flow or uses nonpotable water, including, but not limited to, recycled water, is exempt from the fee.

(b)(1)(A) Beginning July 1, 2021, except as provided in subdivisions (d) and (e) and Section 116772, there is hereby imposed a safe and affordable drinking

water fee on each customer according to a fee schedule established by the board for the purposes of the Safe and Affordable Drinking Water Fund.

(B) Notwithstanding any other provision of this section, the fee schedule shall not exceed the amounts established in paragraph (1) of subdivision (a).

(C) The board shall review and revise the fee schedule each fiscal year as necessary to not exceed the anticipated funding need in the most recent assessment of funding need.

(D)(i) The fee schedule shall exempt any connection or meter that is used exclusively for fire flow or utilizes nonpotable water, including, but not limited to, recycled water.

(ii) By July 1, 2021, the board, in consultation with the Public Utilities Commission, shall adopt regulations to exempt households with incomes equal to or less than 200 percent of the federal poverty level from the fee established in the fee schedule pursuant to this subdivision. The Public Utilities Commission shall provide consultation, as well as relevant data, from the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1 of the Public Utilities Code and from the water utility low-income rate payer assistance programs developed pursuant to Section 739.8 of the Public Utilities Code to the board to aid in development and implementation of the regulations for exemption pursuant to this clause.

(2)(A) Beginning July 1, 2023, the fee schedule shall be set at an amount that does not result in the total uncommitted amount in the fund exceeding two times the anticipated funding need in the most recent assessment of funding need.

(B) Notwithstanding any other provision of this section, the fee schedule shall not exceed the amounts established in paragraph (1) of subdivision (a).

(C) For purposes of this paragraph, "total uncommitted amount in the fund" does not include moneys in the fund from the fertilizer safe drinking water fee established by Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code until January 1, 2033, and, until January 1, 2035, does not include moneys in the fund from the dairy safe drinking water fee established by Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code or the safe drinking water fee for confined animal livestock facilities excluding dairies established by Article 10.5 (commencing with Section 595) of Chapter 3 of Part I of Division I of the Food and Agricultural Code.

(c) A community water system shall collect the fee imposed by subdivisions (a) and (b) from each of its customers and may retain an amount, as approved by the board, as reimbursement for the reasonable costs incurred by the public water system associated with the collection of the fee. Until July 1, 2021, the amount retained by a community water system as reimbursement shall not exceed 4 percent of the amount collected and beginning July 1, 2021, the amount retained as reimbursement shall not exceed 2 percent of the amount collected. For small community water systems, reasonable community water system administrative cost reimbursement shall not exceed five hundred dollars (\$500) or 4 percent of the total revenue collected, whichever is greater. The community water system shall remit the remainder to the board on an annual schedule.

(d) A community water system with fewer than 200 service connections and its customers shall be exempt from the requirements of this section. The board may approve an exemption for a community water system with 200 or more service connections and its customers from the requirements of this section if the board finds that the amount required to be remitted to the board pursuant to this section would be de minimis.

(e) Notwithstanding any other provision of this article, a fee shall not be imposed pursuant to this article on a person or entity that is itself a community water system if that community water system is purchasing water from another community water system to supply its own customers that are themselves being assessed the fee.

(f) All moneys remitted to the board under this article shall be deposited in the Safe and Affordable Drinking Water Fund.

116772. (a) A community water system may apply to the board to authorize the community water system to use an alternative method to calculate the amount owed by each customer for the charge imposed by Section 116771 by submitting an application, in a form prescribed by the board, that demonstrates both of the following:

(1) That the method required by statute, regulation, or fee schedule adopted by the board would be impractical for the community water system to collect.

(2) That the method proposed by the community water system would provide a level of total revenue equivalent to the revenue the community water system would transmit to the board pursuant to the applicable fee schedule and that the method is consistent with the fee restrictions in this article, including, but not limited to, amount maximums and exemptions.

(b) The board shall review any application submitted pursuant to subdivision (a) to determine if the proposed alternative is consistent with this article. If the board denies

the application, that denial shall be in writing and shall not be reviewable. If the board approves the application, the community water system may use the alternative method for an amount of time prescribed by the board, not to exceed five years.

(c) There is not a limit on the number of applications the board may approve pursuant to this section to establish or renew an alternative method of fee calculation.

116773. (a) The board, in consultation with the California Department of Tax and Fee Administration, shall administer and collect the fees imposed by this article in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(b) For purposes of administration of the fee imposed by this article, the following references in the Fee Collection Procedures Law shall have the following meanings:

(1) "Board" or "State Board of Equalization" means the State Water Resources Control Board.

(2) "Fee" means the safe and affordable drinking water fee imposed pursuant to this article.

(3) "Feepayer" means a customer liable to pay the fee.

(c) The board, in consultation with the California Department of Tax and Fee Administration, may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article, including, but not limited to, collections, reporting, refunds, and appeals.

(d) The initial regulations adopted by the board to implement this article shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not rely on the statutory declaration of emergency in subdivision (e).

(e) Except as provided in subdivision (d), the regulations adopted pursuant to this section, any amendment to those regulations, or subsequent adjustments to the annual fees or adoption of fee schedule, shall be adopted by the board as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Any emergency regulations adopted by the board, or adjustments to the annual fees made by the board pursuant to this section, shall remain in effect until revised by the board.

116774. The Legislature may not increase the fees established under section 116771 except by an affirmative vote of two-thirds of the membership in each house of the Legislature.

SEC. 5. Section 13050 of the Water Code is amended to read:

13050. As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state means any surface water or groundwater, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

- (1) Beneficial uses to be protected.
- (2) Water quality objectives.
- (3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(l) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (A) The waters for beneficial uses.
  - (B) Facilities which serve these beneficial uses.
- (2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p)(1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q)(1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

(s)(1) "Agricultural operation" means either of the following:

(A) A discharger that satisfies both of the following conditions:

(i) The discharger is an owner, operator, or both, of land that is irrigated to produce crops or pasture for commercial purposes or a nursery.

(ii) The discharger is enrolled or named in an irrigated lands regulatory program order adopted by the state board or a regional board pursuant to Section 13263 or 13269.

(B) A discharger that satisfies both of the following conditions:

(i) The discharger is an owner, operator, or both of a facility that is used for the raising or harvesting of livestock.

(ii) The discharger is enrolled or named in an order adopted by the state board or a regional board pursuant to Section 13263 or 13269 that regulates the discharges of waste from a facility identified in clause (i) to protect ground and surface water.

(2) "Agricultural operation" does not include any of the following:

(A) An off-farm facility that processes crops or livestock.

(B) An off-farm facility that manufactures, synthesizes, stores, or processes fertilizer.

(C) Any portions of land or activities occurring on those portions of land that are not covered by an order adopted by the state board or a regional board identified in clause (ii) of subparagraph (A) or clause (ii) of subparagraph (B) of paragraph (1).

SEC. 6.

Article 4.5 (commencing with Section 13278) is added to Chapter 4 of Division 7 of the Water Code, to read:

Article 4.5. Discharges of Nitrate to Groundwater from Agricultural Operations

13278. (a) For the purposes of this article, the Legislature finds all of the following:

(1) Implementation of currently known best management practices for some crops under some circumstances can reduce but not always completely prevent nitrogen in organic and synthetic fertilizers that transform to nitrate from reaching groundwater at concentrations above the water quality objectives established pursuant to this division.

(2) It is acknowledged that discharges of nitrate from agricultural operations could reach groundwater and could cause or contribute to exceedances of drinking water standards for nitrate, and could cause conditions of pollution or nuisance in those waters as defined and applied in accordance with this division, or both.

(3) Nitrate pollution of groundwater impacts drinking water sources for hundreds of thousands of Californians and it is necessary to protect current and future drinking water users from the impacts of nitrate pollution.

(4) Despite progress in controlling discharges of nitrogen that lead to nitrate formation, some groundwater sources of drinking water will continue to be adversely impacted by nitrate and it is important to have in place a program for mitigating these impacts.

(5) The regional boards will continue to regulate discharges to reduce nitrogen loading and protect beneficial uses of water and groundwater basins; the state board, regional boards, and courts will ensure compliance with those orders; and dischargers will pay for mitigation of nitrate pollution by funding projects that provide both immediate and long-term drinking water solutions for affected communities and affected domestic wells.

(b) The Legislature declares its intent in establishing this article to limit certain enforcement actions that a regional board or the state board could otherwise initiate during a 15-year period against an agricultural operation that meets specified requirements, while maintaining the overall framework of this division to protect beneficial uses, implement water quality objectives in waters of the state, and regulate activities and factors that affect water quality to attain the highest water quality that is reasonable.

13278.1. (a) An agricultural operation shall not be subject to enforcement undertaken or initiated by the state board or a regional board, under Chapter 5 (commencing with Section 13300), for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrate in groundwater if an agricultural operation that discharges or threatens to discharge, or has discharged or previously threatened to discharge, nitrate to groundwater meets all of the following requirements:

(1) The agricultural operation is in compliance with all applicable provisions prescribed by a regional board or the state board in an order adopted pursuant to

Section 13263 or 13269, including, but not limited to, the following:

- (A) Requirements to implement best practicable treatment or control.
- (B) Requirements to implement best efforts.
- (C) Monitoring and reporting requirements.
- (D) Applicable timelines.

(2) The agricultural operation is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that is part of an applicable water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(3) The requirement contained in paragraph (1) excludes any provision contained in an order adopted under Section 13263 or 13269 that prohibits in general terms a discharge from causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(b)(1) An agricultural operation is not in compliance with the requirement in paragraph (1) of subdivision (a) if the agricultural operation has been subject to an enforcement order under Chapter 5 (commencing with Section 13300) within the preceding 12 months for violation of an order adopted under Section 13263 or 13269 authorizing discharges from agricultural operations.

(2) Paragraph (1) does not apply to an enforcement order issued after January 1, 2016, and before January 1, 2019, inclusive, alleging that a discharge from an agricultural operation caused or contributed, or threatened to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater, conditions of pollution or nuisance for nitrate in groundwater, or both.

(c) Except as otherwise provided in subdivision (d), both of the following apply to a discharge of nitrogen to groundwater by an agricultural operation that occurs when the discharger is in compliance with the requirements of paragraph (1) of subdivision (a):

(1) The discharge of nitrogen to groundwater shall not be admissible in a future enforcement action against the agricultural operation by the state board or a regional board, pursuant to Chapter 5 (commencing with Section 13300), to support a claim that the agricultural operation is causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or

a condition of pollution or nuisance for nitrate in groundwater.

(2) The discharge of nitrogen to groundwater shall not be considered by the state board or a regional board to apportion responsibility and shall not be used by any person to diminish responsibility in any enforcement action initiated pursuant to Chapter 5 (commencing with Section 13300) with respect to discharges of nitrogen, regardless of source, that did not occur in compliance with the mitigation requirements of paragraph (1) of subdivision (a).

(d) Nothing in this section alters the state board's or a regional board's authority to do both of the following:

(1) To require or conduct investigations, to require reports on or to establish other requirements for best practicable treatment or control or best efforts, or to require monitoring and reporting requirements to protect water quality.

(2) To take or initiate enforcement action pursuant to Chapter 5.5 (commencing with Section 13370), without regard to whether the agricultural operation met the requirements of paragraph (1) of subdivision (a) at any time.

(c) This section shall not be deemed to change or alter a water quality objective that is part of a water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240). (f) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

13278.2. (a) An agricultural operation shall not be subject to enforcement undertaken or initiated by the state board or a regional board, under Section 13304, for creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if an agricultural operation that discharges or threatens to discharge, or has discharged or previously threatened to discharge, nitrate to groundwater meets all of the following requirements:

(1) The agricultural operation is in compliance with all applicable provisions prescribed by a regional board or the state board in an order adopted pursuant to Section 13263 or 13269, including, but not limited to, the following:

(A) Requirements to implement best practicable treatment or control.

(B) Requirements to implement best efforts.

(C) Monitoring and reporting requirements.

(D) Applicable timelines.

(2) The agricultural operation is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that is part of an applicable water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(3) The requirement contained in paragraph (1) excludes any provision contained in an order adopted under Section 13263 or 13269 that prohibits in general terms a discharge from causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(b) An agricultural operation is not in compliance with the mitigation requirement in paragraph (1) of subdivision (a) if the agricultural operation has been subject to an enforcement order under Chapter 5 (commencing with Section 13330) within the preceding 12 months for violation of an order adopted under Section 13263 or 13269 authorizing discharges from agricultural operations.

(c) Except as otherwise provided in subdivision (d), both of the following apply to a discharge of nitrogen to groundwater by an agricultural operation that occurs when the discharger is in compliance with the requirements of paragraph (1) of subdivision (a):

(1) The discharge of nitrogen to groundwater shall not be admissible in a future enforcement action against the agricultural operation by the state board or a regional board, pursuant to Section 13304 to support a claim that the agricultural operation is causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(2) The discharge of nitrogen to groundwater shall not be considered by the state board or a regional board to apportion responsibility and shall not be used by any person to diminish responsibility in any enforcement action initiated pursuant to Section 13304 with respect to discharges of nitrogen to groundwater, regardless of source, that did not occur in compliance with the requirements of paragraph (1) of subdivision (a).

(d) Nothing in this section alters the state board's or a regional board's authority to do both of the following:

(1) To require or conduct investigations, to require reports on or to establish other requirements for best practicable treatment or control or best efforts, or to require monitoring and reporting requirements to protect water quality.

(2) To take or initiate enforcement action pursuant to Chapter 5.5 (commencing with Section 13370), without regard to whether the agricultural operation met the requirements of paragraph (1) of subdivision (a) at any time.

(e) This section shall not be deemed to change or alter a water quality objective that is part of a water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(f)(1) This section shall become operative on January 1, 2029.

(2) This section shall remain in effect only until January 1, 2034, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2034, deletes or extends that date.

13278.3. By January 1, 2028, the state board shall conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrate in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control.

13278.4. Nothing in this article limits the liability of a discharger under any other law, including, but not limited to, Part 3 (commencing with Section 3479) of Division 4 of the Civil Code.

13278.5. As long as the safe drinking water fee for confined animal facilities excluding dairies pursuant to Article 10.5 (commencing with Section 595) of Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, the fertilizer safe drinking water fee pursuant to Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code, and the dairy safe drinking water fee pursuant to Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code are in effect, the Legislature may not amend the provisions in this article except by an affirmative vote of two-thirds of the membership in each house of the Legislature.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**ASSEMBLY BILL**

**No. 1989**

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**Introduced by Assembly Member Mathis**

February 1, 2018

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An act to amend Section 116555 of the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1989, as introduced, Mathis. California Safe Drinking Water Act.

Existing law, the California Safe Drinking Water Act, imposes on the State Water Resources Control Board various responsibilities and duties relating to providing a dependable, safe supply of drinking water. The act prohibits a person from operating a public water system without a permit and requires any person who owns a public water system to ensure that the system, among other things, provides a reliable and adequate supply of pure, wholesome, healthful, and potable water.

This bill would make nonsubstantive changes to the latter provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 116555 of the Health and Safety Code
- 2 is amended to read:
- 3 116555. (a) Any person who owns a public water system shall
- 4 ensure that the *public water* system does all of the following:
- 5 (1) Complies with primary and secondary drinking water
- 6 standards.

1 (2) Will not be subject to backflow under normal operating  
2 conditions.

3 (3) Provides a reliable and adequate supply of pure, wholesome,  
4 healthful, and potable water.

5 (4) Employs or utilizes only water treatment operators that have  
6 been certified by the state board at the appropriate grade.

7 (5) Complies with the operator certification program established  
8 pursuant to Article 3 (commencing with Section 106875) of  
9 Chapter 4 of Part 1.

10 (b) Any person who owns a community water system or a  
11 nontransient noncommunity water system shall do ~~all~~ *both* of the  
12 following:

13 (1) Employ or utilize only water distribution system operators  
14 who have been certified by the state board at the appropriate grade  
15 for positions in responsible charge of the distribution system.

16 (2) Place the direct supervision of the water system, including  
17 water treatment plants, water distribution systems, or ~~both~~ *both*,  
18 under the responsible charge of an operator or operators holding  
19 a valid certification equal to or greater than the classification of  
20 the treatment plant and the distribution system.

**ASSEMBLY BILL**

**No. 1991**

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**Introduced by Assembly Member Mathis**

February 1, 2018

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An act to amend Section 116760 of the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1991, as introduced, Mathis. Safe Drinking Water State Revolving Fund Law of 1997.

Existing law, the Safe Drinking Water State Revolving Fund Law of 1997, establishes the Safe Drinking Water State Revolving Fund to provide grants or revolving fund loans for the design and construction of projects for public water systems that will enable those systems to meet safe drinking water standards.

This bill would make nonsubstantive changes in those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 116760 of the Health and Safety Code  
2 is amended to read:  
3 116760. This chapter shall be ~~known~~ *known*, and may be ~~cited~~  
4 *cited*, as the Safe Drinking Water State Revolving Fund Law of  
5 1997.

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**Introduced by Senator Cannella**

February 1, 2018

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An act to amend Section 79747 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 979, as introduced, Cannella. Water Quality, Supply, and Infrastructure Improvement Act of 2014.

Existing law, the Water Quality, Supply, and Infrastructure Improvement Act of 2014, approved by the voters as Proposition 1 at the November 4, 2014, statewide general election, authorizes the issuance of general obligation bonds in the amount of \$7,545,000,000 to finance a water quality, supply, and infrastructure improvement program. The bond act provides that the sum of \$810,000,000 is to be available, upon appropriation by the Legislature, for expenditures on, and competitive grants and loans to, projects that are included in and implemented in an adopted integrated regional water management plan and respond to climate change and contribute to regional water security. The bond act requires \$200,000,000 of that amount to be available for grants for multibenefit stormwater management projects.

This bill would make a nonsubstantive change in those grant provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 79747 of the Water Code is amended to  
2 read:

1 79747. (a) Of the funds authorized by Section 79740, two  
2 hundred million dollars (\$200,000,000) shall be available for grants  
3 for multibenefit stormwater management projects.

4 (b) Eligible projects may include, but shall not be limited to,  
5 green infrastructure, rainwater and stormwater capture projects,  
6 and stormwater treatment facilities.

7 (c) ~~Development~~—*The development* of plans for stormwater  
8 projects shall address the entire watershed and incorporate the  
9 perspectives of communities adjacent to the affected waterways,  
10 especially disadvantaged communities.

March 7, 2018

The Honorable Bob Wieckowski , Chair  
Senate Budget Subcommittee No. 2  
State Capitol, Room 4085  
Sacramento, CA 95814

The Honorable Richard Bloom, Chair  
Assembly Budget Subcommittee No. 3  
State Capitol, Room 2003  
Sacramento, CA 95814

Re: **Budget Trailer Bill: Safe and Affordable Drinking Water Fund/  
TAX ON DRINKING WATER**

Position: **OPPOSE UNLESS AMENDED**

Dear Chair Wieckowski and Chair Bloom:

The below-listed organizations are **OPPOSED UNLESS AMENDED** to the drinking water tax budget trailer bill.

Alameda County Water District  
Amador Water Agency  
Anderson-Cottonwood Irrigation District  
Antelope Valley – East Kern Water Agency  
Association of California Water Agencies  
Bella Vista Water District  
Brooktrails Township Community Services District  
Browns Valley Irrigation District  
Calaveras County Water District  
CalDesal  
California Municipal Utilities Association  
California Special Districts Association  
Calleguas Municipal Water District  
Camrosa Water District  
Carmichael Water District  
Casitas Municipal Water District  
Citrus Heights Water District  
City of Beverly Hills  
City of Fairfield  
City of Garden Grove  
City of Glendale Water and Power  
City of Newport Beach  
City of Oceanside  
City of Redding  
City of Roseville  
City of San Diego  
City of Santa Rosa  
City of Shasta Lake  
Coachella Valley Water District  
Contra Costa Water District

Crescenta Valley Water District  
Crestline-Lake Arrowhead Water Agency  
Cucamonga Valley Water District  
Del Paso Manor Water District  
Desert Water Agency  
Dublin San Ramon Services District  
East Orange County Water District  
East Valley Water District  
Eastern Municipal Water District  
El Dorado Irrigation District  
El Toro Water District  
Elsinore Valley Municipal Water District  
Fair Oaks Water District  
Fallbrook Public Utility District  
Foothill Municipal Water District  
Georgetown Divide Public Utility District  
Glenn-Colusa Irrigation District  
Helix Water District  
Hidden Valley Lake Community Services District  
Humboldt Bay Municipal Water District  
Humboldt Community Services District  
Indian Wells Valley Water District  
Indio Water Authority  
Irvine Ranch Water District  
Kern County Water Agency  
Kinneloa Irrigation District  
Laguna Beach County Water District  
Lake Hemet Municipal Water District

Las Virgenes Municipal Water District  
Lindsay-Strathmore Irrigation District  
Long Beach Water Department  
Malaga County Water District  
Mammoth Community Water District  
Mariana Ranchos County Water District  
McKinleyville Community Services District  
Mendocino County Russian River Flood Control & Water Conservation Improvement District  
Merced Irrigation District  
Mesa Water District  
Mid-Peninsula Water District  
Millview County Water District  
Mission Springs Water District  
Mojave Water Agency  
Monte Vista Water District  
Municipal Water District of Orange County  
Nevada Irrigation District  
North Marin Water District  
Northern California Water Association  
Olivenhain Municipal Water District  
Orange County Water District  
Orchard Dale Water District  
Otay Water District  
Padre Dam Municipal Water District  
Palm Ranch Irrigation District  
Palmdale Water District  
Paradise Irrigation District

**ORGANIZATION LIST CONTINUED ON NEXT PAGE**

Pico Water District  
Placer County Water Agency  
Quartz Hill Water District  
Rainbow Municipal Water District  
Rancho California Water District  
Regional Water Authority  
Redwood Valley County Water District  
Richvale Irrigation District  
Rincon del Diablo Municipal Water District  
Rio Alto Water District  
Rio Linda Elverta Community Water District  
Rowland Water District  
Sacramento Suburban Water District  
San Diego County Water Authority  
San Gabriel Valley Municipal Water District  
San Juan Water District

Santa Fe Irrigation District  
Santa Margarita Water District  
Santa Ynez River Water Conservation District Improvement District No. 1  
Scotts Valley Water District  
Shasta Community Services District  
South Coast Water District  
South Tahoe Public Utility District  
Southern California Water Committee  
Stockton East Water District  
Tahoe City Public Utility District  
Templeton Community Services District  
Three Valleys Municipal Water District  
Tulare Irrigation District  
Tuolumne Utilities District  
United Water Conservation District  
Upper Russian River Water Agency

Upper San Gabriel Valley Municipal Water District  
Vallecitos Water District  
Valley Center Municipal Water District  
Valley of the Moon Water District  
Ventura County Economic Development Association  
Vista Irrigation District  
Walnut Valley Water District  
Westlands Water District  
Western Canal Water District  
Western Municipal Water District  
Wheeler Ridge-Maricopa Water Storage District  
Yolo County Flood Control Water Conservation District  
Yorba Linda Water District  
Yuba County Water Agency  
Zone 7 Water Agency

This budget trailer bill is essentially a modified version of SB 623 (Monning, D-Carmel), which is a 2-year bill. The budget trailer bill would establish a fund to be administered by the State Water Resources Control Board (SWRCB) to assist those who do not have access to safe drinking water. The organizations listed on this letter agree with the intent of the bill. The lack of access to safe drinking water in certain disadvantaged communities is a public health issue and a social issue that the State needs to address. The bill proposes two types of funding: 1) fees related to confined animal facilities excluding dairies (CAFED), fertilizer sales and dairies to address nitrate contamination; and 2) a state-mandated tax on drinking water that the bill would require local water agencies to assess on their local ratepayers and send to Sacramento. **No policy committee has heard the proposed tax. The above-listed organizations oppose the proposal for a tax on drinking water.**

**PROBLEMS WITH A TAX ON DRINKING WATER:** Following are examples of problems with a tax on drinking water:

- 1) **Requiring local water agencies and cities across the state to impose a tax on drinking water for the State of California is highly problematic and is not the appropriate response to the problem;**
- 2) **It is not sound policy to tax something that is essential to life;**
- 3) **State law sets forth a policy of a human right to water for human consumption that is safe, clean, affordable and accessible. Adding a tax on water works against keeping water affordable for all Californians; and**
- 4) **It is inefficient for local water agencies across the state to collect the tax and send it to Sacramento.**

**Instead of turning local water agencies into taxation agencies for the state, the above-listed organizations suggest the following funding solution:**

**SUGGESTED ALTERNATIVE FUNDING SOLUTION – A FUNDING PACKAGE:**

- 1) **Safe Drinking Water State Revolving Fund (SRF)** – this ongoing federal funding can be used to fund capital costs;
- 2) **General Obligation (G.O.) Bonds** – SB 5 (de León, 2017), which will be on the June 2018 ballot as Proposition 68, proposes \$250 million for safe drinking and clean water, and another bond initiative which is expected to be on the November ballot proposes \$500 million for safe drinking water. These bonds propose to prioritize the drinking water funding to disadvantaged communities (DACs);
- 3) **Ag Funding** – the nitrate-related fees proposed in the bill could be used for replacement water, including point-of-use and point-of-entry treatment, for nitrate contamination; and
- 4) **General Fund** – General Fund funding can fund the non-nitrate operation and maintenance (O&M) costs needs at public water systems in certain DACs.

Everyone in California should have access to safe drinking water. The fact that a small percentage of Californians do not makes this issue a public health and social issue for which the General Fund is an appropriate source of funding as part of the above-suggested funding package.

**AMENDMENTS:** In addition to including the General Fund as part of a funding package instead of a tax on drinking water, the organizations listed above are suggesting the amendments shown on the attachment to address various concerns regarding this funding measure. The above-listed organizations urge your “No” vote on the budget trailer bill unless the proposed tax on drinking water is removed and replaced with an acceptable funding source.

If you have questions, please contact Cindy Tuck, Deputy Executive Director for Government Relations, Association of California Water Agencies at (916) 441-4545 or at [cindy@acwa.com](mailto:cindy@acwa.com).

cc: The Honorable Governor Edmund G. Brown Jr.  
Honorable Members, Senate Budget Subcommittee No. 2  
Honorable Members, Assembly Budget Subcommittee No. 3  
The Honorable William W. Monning  
Ms. Kim Craig, Deputy Cabinet Secretary, Office of the Governor  
Ms. Joanne Roy, Consultant, Senate Budget Subcommittee No. 2  
Ms. Susan Chan, Consultant, Assembly Budget Subcommittee No. 3  
Mr. Trevor Taylor, Legislative Aide, Office of Senator William W. Monning  
Ms. Rocel Bettencourt, Budget Consultant, Senate Republican Caucus  
Ms. Barbara Gausewitz, Consultant, Assembly Republican Caucus

**Attachment**  
**SAFE AND AFFORDABLE DRINKING WATER FUND BUDGET TRAILER BILL**  
**AMENDMENTS SUGGESTED BY**  
**WATER AGENCIES AND WATER ORGANIZATIONS LISTED ON THIS LETTER**

- 1) Do NOT include a tax on drinking water. (See Page 3 for the suggested alternative funding solution.)**
- 2) Exclude capital costs as an eligible funding category** and focus on funding O&M costs, which are difficult to fund through G.O. bonds and cannot be funded with SRF dollars. (G.O. bonds and the SRF are effective in funding capital costs.)
- 3) Limit the funding to disadvantaged communities (DACs)** and low income domestic well users that do not have access to safe drinking water, consistent with 4) below.
- 4) Exclude individual domestic wells and “state small water systems” (with 5 to 14 connections) as eligible funding categories (with one exception for nitrate). Data is lacking to support a credible needs assessment.** For example, the state does not require owners of private wells to sample their wells, and consequently a comprehensive database for these groundwater sources does not exist. **The bill should explicitly exclude these two categories from funding with the exception that funding could be made available for replacement water** for individual domestic wells or state small water systems in rural areas of the state for which the local health officer has certified that data documents that the wells for which funding is being sought in that area are contaminated with **nitrate**. The proposed definition of “replacement water” should be narrowed to make this exception workable. (Bottled water, point-of-use treatment and point-of-entry treatment are reasonable parts of this proposed definition.)
- 5) Make sure the funding goes to address situations where the water is not safe.** For example, the proposed language in Section 116769 references systems that “may be at risk of failing.” Funding for safe drinking water should go to where there are real problems as opposed to going to where there is a chance of a problem.
- 6) Focus on safe drinking water and recognize that affordability issues are being discussed in the State Water Board’s AB 401 implementation process.** The language should be deleted from Section 116769 which would include in the needs assessment all CWSs in DACs that charge fees that exceed the affordability threshold in the Clean Water State Revolving Fund Intended Use Plan (i.e., fees that equal or exceed 1.5 percent of the median household income). The State Water Board is currently developing a plan for a low-income water rate assistance program pursuant to AB 401 (Dodd, 2015), and there are many questions being raised about how affordability thresholds should be determined.
- 7) Clarify what is intended by the proposed authority for the State Water Board to take “additional action as may be appropriate for adequate administration and operation of the fund.”** Instead of simply including this rather vague provision in Section 116768, the bill should be specific as to what this proposed authority is intended to cover.
- 8) Delete the proposal to give the State Water Board and the Board’s staff broad liability protection as they implement the Fund.** No case has been made as to why they should have such protection for this program.

current-year estimated expenditures. The decrease is primarily due to an almost \$1.5 billion reduction in bond funding from Proposition 1 (2014).

## SAFE AND AFFORDABLE DRINKING WATER FUND

**LAO Bottom Line.** The administration proposes budget trailer legislation to implement a significant new policy that would impose new charges on water system customers and certain agricultural entities to implement a new financial assistance program to address unsafe drinking water. We identify three issues for the Legislature to consider as it deliberates on the proposal: (1) consistency with the state’s human right to water policy, (2) uncertainty about the estimated revenues that would be generated by the proposal and the amount of funding needed to address the problem, and (3) consistency with the polluter pays principle.

### Background

**Federal, State, and Local Entities Regulate Drinking Water.** The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The 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.

Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

The SWRCB’s Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A “service connection” is usually the point of access between a water system’s service pipe and a user’s piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee them.

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 SWRCB to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of CPUC, the DDW or LPAs share water quality regulatory authority with CPUC.

The DDW 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.

### **Multiple Causes of Unsafe Drinking Water.**

The causes of unsafe drinking water can generally be separated into two categories (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

Three of the most commonly detected pollutants in contaminated water are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

### **Unsafe Drinking Water a Statewide Problem.**

SWRCB has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by SWRCB. Of the 331 systems identified by SWRCB, 68 have violations associated with nitrates (and in some cases, additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address

the problem. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low income of the customers, and the small number of customers across whom the costs would need to be spread.

***Safe and Affordable Drinking Water a Human Right.*** In response to concerns about the prevalence of unsafe drinking water in California, Chapter 524 of 2012 (AB 685, Eng) was enacted. This law declares the state's policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Under Chapter 524, state agencies are required to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria. Chapter 524 clarifies that it does not expand the state's obligations to provide water or require the state to fund water infrastructure.

***SWRCB Administers Programs to Provide Safe Drinking Water.*** The SWRCB administers the Drinking Water State Revolving Fund (DWSRF), which provides continuously appropriated funding for low- and zero-interest loans, debt refinancing, principal forgiveness, and grants to public water systems for infrastructure improvements to correct system deficiencies and improve drinking water quality. Eligible projects include the planning, design, and construction of drinking water projects such as water treatment systems, distribution systems, and consolidation with another water system that has safe drinking water. The program is funded by annual capitalization grants from the U.S. EPA and a federally required 20 percent state match (usually from bond funds). The federal and state funds are then used to provide financial assistance for eligible projects. In 2016-17, SWRCB estimates the DWSRF disbursed about \$330 million and provided technical assistance to water systems.

SWRCB also administers temporary programs to provide safe and affordable drinking water. For example, SWRCB administers the Clean Drinking Water Program for Disadvantaged Households, which provided one-time funding of \$8 million General Fund in 2017-18 to disadvantaged households and small water systems to ensure they have adequate access to clean drinking water and adequate sanitation. Eligible projects include capital costs for replacement and repair of existing domestic wells. The board has also administered funds approved by the voters through

various bond measures for capital investments, and some operations and maintenance costs aimed at providing safe drinking water. For example, Proposition 1 (2014) authorized \$520 million for grants and loans for projects that improve water quality, including to help provide clean, safe, and reliable drinking water to all Californians. Some of this funding supports the DWSRF.

## **Governor's Proposal**

The administration proposes to establish a new program—the Safe and Affordable Drinking Water Fund (SADWF)—to be administered by SWRCB and designed to increase access to safe drinking water for Californians. Specifically, the program would provide certain local water agencies—particularly ones in disadvantaged communities—with grants, loans, contracts, or services to help support their operations and maintenance costs. This funding would be supported by new charges proposed by the Governor on water system ratepayers and certain agricultural entities. For 2018-19, the administration requests a one-time loan of \$4.7 million from the Underground Storage Tank Cleanup Fund to begin implementation of the new program. Below, we provide additional details about key aspects of the administration's proposal.

***Provides Disadvantaged Communities With Funding for Maintenance and Operations.*** Under the administration's proposal, SWRCB would prioritize the use of funds to assist disadvantaged communities and low-income households served by a water system with less than 14 connections. Funding would be prioritized to support operations and maintenance costs, as well as capital costs associated with water system consolidation and service extensions. Allowable uses would include providing replacement water on a short-term basis, as well as the development, implementation, maintenance, and operation of more permanent solutions (such as treatment systems).

***Imposes Various Charges.*** In total, the administration estimates that the various proposed charges would generate roughly \$150 million annually when fully implemented. The charges on agricultural entities would be required to be targeted to water systems affected by nitrate contamination. Specifically, the administration proposes budget trailer legislation to implement the following charges:

- **Charge on Water System Customers (\$130 to \$140 Million).** Beginning July 2019, the administration proposes imposing monthly charges on most water system customers ranging from \$0.95 to \$10 based on the size of the customer's water meter. According to a recent CPUC report, the average water bill across 113 California public water systems was \$78 in the summer and \$60 in the winter. SWRCB estimates that these charges will generate between \$130 million and \$140 million annually when fully implemented. Customers would be exempted from this charge if they (1) belong to a water system with fewer than 200 connections or (2) self-certify that their household income is equal to or less than 200 percent of the federal poverty level (The 2018 federal poverty level is \$25,100 for a family of four.) Beginning July 2021, SWRCB could reduce these charges. Local water systems would be authorized to retain some of the revenue to cover costs associated with the collection of the charges.
- **Mill Fee (\$14 Million).** The administration proposes a mill fee of six "mills" (equal to six-tenths of a cent) per dollar on the sale of all fertilizer. This would be in addition to the current mill fee of three mills. According to the California Department of Food and Agriculture (CDFA), this charge is estimated to generate \$14 million per year when fully implemented.
- **Charges on Milk Producers (\$5 Million).** The administration proposes to impose charges on milk producers beginning January 2021. In total, these charges are estimated to generate \$5 million per year when fully implemented. For context, cash receipts for milk and cream production in California were \$6.1 billion in 2016.
- **Charge on Confined Animal Facilities (Amount Not Estimated).** Finally, the administration proposes to impose a charge on confined animal facilities—excluding dairies—such as egg-production facilities. The charges are capped at \$1,000 per facility per year. At the time this analysis was prepared, the administration did not have revenue estimates available for the confined animal facilities charge.

The administration has not estimated the total cost associated with bringing drinking water systems that are currently unable to meet water quality standards into compliance on an ongoing basis. However, a private consulting firm recently did a statewide drinking water needs assessment for advocates and stakeholders to determine this amount. According to the assessment, \$140 million would be required annually to improve conditions at all drinking water systems and domestic wells with substandard water quality. In our discussions with SWRCB staff, they indicated that the methodology used to generate the estimate appeared reasonable, but any estimate in this area is highly uncertain, particularly due to the lack of data on smaller water systems and domestic wells. The assessment estimated the costs to address systems with nitrate problems would be around \$30 million annually, and the costs to address all other systems would be \$110 million annually.

**Shields Certain Agricultural Entities From Regulatory Actions.** In accordance with current law, SWRCB and regional water boards set objectives for the amount of nitrate contamination in the groundwater. Agricultural entities that contribute to levels of nitrate contamination that exceed these objectives are subject to enforcement actions that can include cleanup and abatement orders and cease and desist orders. However, under the Governor's proposal, if an agricultural operation meets certain requirements, such as implementing the best practicable treatment control, and pays the charges required by this proposal, the operation would not be subject to these types of regulatory actions.

**Requires SWRCB to Administer SADWF.** The proposal includes a number of administrative requirements, particularly for SWRCB. In a process that requires a public hearing and opportunities for stakeholder participation, SWRCB would adopt a fund implementation plan and policy handbook with priorities and guidelines for expenditures from SADWF. In addition, SWRCB staff would be required to annually develop and present to the board an assessment of the total annual funding needed to assist water systems in the state to secure the delivery of safe drinking water. By January 1, 2020, SWRCB—in consultation with local health officers—would also have to make available a map of aquifers that are at high risk of containing contaminants that are used or likely to be

used as a source of drinking water for certain smaller water systems and domestic wells. This would include identification of water systems potentially in need of assistance to address water contamination issues.

Under the Governor's proposal, SWRCB may expend up to 5 percent of revenues from SADWF for costs associated with its administration. In addition, CDFA may retain up to 4 percent of the monies collected from the charges on agricultural entities for its costs associated with implementation and enforcement, such as to establish a charge collection program and perform outreach to affected agricultural entities. This amount would decrease to 2 percent beginning July 2021.

**2018-19 Budget Proposals.** As previously mentioned, the Governor's budget proposes a \$4.7 million loan from the Underground Storage Tank Cleanup Fund in 2018-19 to fund the initial implementation of SADWF. These funds would mainly support 30 new positions at SWRCB and CDFA as follows:

- **SWRCB (\$3.3 Million).** The budget proposes \$3.3 million on a one-time basis primarily to support 23 positions at SWRCB to (1) develop and adopt a fund implementation plan, (2) process charges that would be deposited into SADWF, (3) map areas at high risk for drinking water contamination and process drinking water data provided by local agencies, (4) develop an assessment of the total amount of annual funding needed to assist water systems in the state to provide safe drinking water, and (5) perform accounting and other administrative tasks. The administration indicates it will submit a request next year for permanent resources to administer the SADWF.
- **CDFA (\$1.4 Million).** The budget proposes \$1.4 million in 2018-19 (\$1.1 million ongoing) to support seven positions at CDFA to collect charges from agricultural entities.

## Issues for Legislative Consideration

The Legislature faces a policy decision about whether to increase charges on different products and consumers in order to implement a new program to address unsafe drinking water. Below, we raise some

issues for the Legislature to consider as it deliberates this proposal.

**Proposal Is Consistent With Human Right to Water Policy.** The Governor's proposal is consistent with the state's statutory policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption. The proposal would make safe and affordable drinking water more widely available throughout the state largely by providing funding for operations and maintenance activities for water treatment systems. While the administration has not conducted its own estimate of the number of people this proposal would help, based on the information available, it would appear that this funding could address a large share of the problem. In particular, the proposal would prioritize additional funding to disadvantaged communities and low-income households served by water systems with less than 14 connections.

**Uncertain to the Extent Proposed Revenues Will Fully Address Problems.** As described above, a private consulting firm estimated the total annual cost to address contaminated drinking water at \$140 million (\$30 million for nitrate treatment and \$110 million for other contaminants). However, this estimate is highly uncertain given the lack of data about the number of smaller water systems and domestic wells that fail to provide safe drinking water. It is possible that actual costs could be significantly higher or lower. We note that under the proposal, SWRCB would be required to prepare an annual needs assessment, which could provide the Legislature with greater certainty in the future.

There is also uncertainty about the amount of revenue that will be generated under this proposal, particularly from the agricultural entities. The budget trailer legislation allows SWRCB to adjust ratepayer charges downward if the funding provided exceeds future demand for the funds. However, if the demand exceeds funding in the future, any increase in charges would require approval by the Legislature.

**Might Not Fully Implement the Polluter Pays Principle.** The "polluter pays" principle is the concept that those entities that cause an environmental harm should be responsible for the costs associated with cleaning up that contamination and addressing the harm done. The vast majority of nitrate contamination is caused by agricultural activities. As such, the

administration's proposal to have agricultural entities pay charges to address the effects of that contamination appears consistent with the polluter pays principle. However, in at least two ways, the proposal might not be entirely consistent with the principle. First, it is worth noting that some of the current nitrate contaminants in groundwater are not from current agricultural operations. Instead, some of these nitrates are legacy contamination that could be from as much as decades ago. Therefore, it might not be entirely consistent with the polluter pays principle to have current operators pay for contamination caused by previous operators. Second, based on the information available, it appears that the funds raised by charges on agricultural entities might not be sufficient to address the costs related to nitrate contamination.

As described above, the assessment performed by the private consulting firm estimated annual total costs of \$30 million to address drinking water systems exceeding the nitrate MCL. However, CDFA estimates the charges on dairies and fertilizer combined would total about \$19 million per year when fully implemented. (At the time this analysis was prepared, the administration had not completed a revenue estimate for the charge on confined animals.) Consequently, the proposal could result in nitrate-related contamination in drinking water being addressed from revenues generated by the charge on water system customers rather than from agricultural entities. To the extent that occurs, it would be inconsistent with the polluter pays principle.

## SUMMARY OF RECOMMENDATIONS

Issue	Governor's Proposal	LAO Recommendation
<b>Crosscutting Issues</b>		
Cap-and-trade expenditure plan	\$2.8 billion cap-and-trade expenditure plan, including (1) \$1.5 billion for continuous appropriations and other existing spending commitments and (2) \$1.3 billion in discretionary spending.	Ensure budget allocations and related statutory direction aligns with Legislature's highest priorities. Direct administration to provide certain information, such as estimated outcomes from past funding and proposed funding. Consider alternative strategies to ensure fund solvency as more information about auction revenue becomes available over the next few months.
Resources bond (SB 5)	\$1 billion—including \$989 million for 17 natural resources and environmental protection departments—from natural resources-related bond (Proposition 68) on the June 2018 statewide ballot.	Approve proposals, but (1) adopt budget bill language specifying flood projects and (2) replace \$14 million proposed for specific DFW programs with an equivalent amount from existing Proposition 1 authority. Also, require administration to report at budget hearings on long-term spending plan, and consider alternative funding plan for high-priority projects should voters reject the bond measure.
Ventura Training Program	\$8.8 million in 2018-19 (\$6.3 million ongoing) for three departments—and capital outlay out-year costs of \$18 million—from the General Fund to convert the existing Ventura conservation camp for inmates to a new firefighter training center for parolees.	Reject proposal because program is unlikely to be the most cost-effective approach to reduce recidivism or increase parolee employment, requested resources have not been fully justified, and other options exist for CCC training.
<b>California Conservation Corps (CCC)</b>		
Expansion of residential centers	\$10 million from the General Fund in 2018-19 to begin a major expansion of the CCC residential center program by building four new residential centers. Total cost of projects estimated at \$185 million.	Wait for more information before approving funding for new residential centers and require CCC to provide reporting on corpsmember outcomes.
Corpsmember counseling	\$1.1 million in 2018-19 (\$1.8 million ongoing) from the General Fund and Collins-Dugan Reimbursement Account to improve corpsmember access to mental health and drug dependency counseling and to enhance transition services.	Modify the Governor's proposal to provide three-year funding, rather than ongoing funding, for transition services for corpsmembers and require CCC to prepare a report that will better inform the need for such services on an ongoing basis. Approve proposed funding to improve access to mental health and drug and alcohol dependency counseling.
<b>Department of Fish and Wildlife (DFW)</b>		
Structural deficit and program expansion	\$51 million ongoing augmentation from tire recycling fees, Motor Vehicle Account (MVA), and General Fund. Of this total, \$20 million is to address existing funding shortfall and \$31 million is to expand existing activities.	Adopt funding package that addresses the \$20 million shortfall and expands activities that reflect legislative priorities. Reject use of tire fees, approve level of MVA for which DFW can justify workload nexus, and rely on General Fund and fees for remainder of package. Require administration to report on its DFW budgetary analysis by October 1, 2018.
<b>Department of Parks and Recreation</b>		
Structural deficit and program expansion	\$79 million in increased fuel tax revenues to (1) address the State Parks and Recreation Fund structural deficit and build a reserve, (2) increase service levels at state parks, and (3) continue certain activities begun in the current year.	Adopt a spending package that reflects legislative priorities.

(Continued)

Issue	Governor's Proposal	LAO Recommendation
Regional infrastructure projects	\$7.5 million from the General Fund on a one-time basis for two local parks projects.	Reject proposal should voters approve Proposition 68, which would provide local jurisdictions with additional resources for park projects.
<b>Department of Forestry and Fire Protection (CalFire)</b>		
Helicopter fleet replacement	\$98 million from the General Fund for CalFire to purchase four helicopters to continue its fleet replacement.	Withhold action on the funding pending the provision of information on the ancillary costs associated with fleet replacement and possible alternatives.
<b>Department of Water Resources</b>		
Central Valley Flood Protection Board (CVFPB)	\$1.4 million from the General Fund for two years to support ten existing CVFPB positions.	Adopt proposal and supplemental reporting language requiring CVFPB to provide an update by February 1, 2019 on its efforts to generate new revenues.
<b>State Lands Commission</b>		
Abandoned oil and gas wells	\$58 million in 2018-19 and an additional \$51 million over the subsequent two years from the General Fund to plug and secure two offshore oil and gas sites.	Adopt proposal and adopt supplemental reporting language requiring the commission to provide a status update on funding and activities by January 10, 2019.
<b>Department of Conservation (DOC)</b>		
Well Statewide Tracking and Reporting (WellSTAR)	\$15 million in 2018-19 and an additional \$9.4 million over the subsequent three years from the Oil, Gas, and Geothermal Administrative Fund (OGGAF) for development, implementation, and ongoing maintenance and operations of the WellSTAR database system.	Approve only the request for \$15 million in 2018-19, thereby ensuring that the Legislature has additional oversight opportunities in coming years.
Regulatory field inspections	\$4.3 million from OGGAF and 21 permanent positions to increase inspection and enforcement activities on oil and gas fields.	Approve funding for three years rather than on an ongoing basis as proposed. Require DOC to report on the extent to which it is performing certain regulatory activities. This approach would require the administration to provide additional information in the future to identify the number of positions justified on a permanent basis.
<b>California Energy Commission</b>		
Zero-emission vehicle (ZEV) infrastructure	\$900 million expenditure plan over eight years, including \$235 million in 2018-19, from various special funds to support installation of ZEV charging and refueling infrastructure.	Direct administration to provide (1) a more detailed justification for the amount of funding requested, (2) more information about how the funding would affect key policy outcomes, (3) its assessment of potential risks and costs associated with the expansion of ZEVs, and (4) a plan for evaluating outcomes after program implementation. Direct administration to develop a strategy for coordinating spending across state programs. Adopt spending plan that is consistent with legislative priorities.
<b>State Water Resources Control Board (SWRCB)</b>		
Safe and Affordable Drinking Water Fund	\$4.7 million (\$3.3 million for SWRCB and \$1.4 million for the California Department of Food and Agriculture) to fund the initial implementation of a new financial assistance program to provide clean drinking water.	Consider three issues when deliberating the proposal: (1) consistency with human right to water policy, (2) uncertainty about the estimated revenues that would be generated by the proposal and the amount of funding needed to address the problem, and (3) consistency with the polluter pays principle.