



SENATE BILL 623:
WATER QUALITY: SAFE AND AFFORDABLE DRINKING WATER FUND

April 2018

SDCTA Position:

OPPOSE

Rationale for Position:

The policies proposed in SB 623 and the budget trailer bill place a disproportionate responsibility on ratepayers for cleaning up groundwater contamination caused by other actors. These proposals require the agriculture and dairy industries to pay fees, but their combined contributions would make up less than 20% of the likely revenue being created by the bill. Though the Association recognizes a real need for solutions to provide safe drinking water to all Californians, SB 623 and the budget trailer bill are not the best methods for accomplishing the goals they set out to achieve.

<p>Title: Senate Bill 623</p> <p>Jurisdiction: State of California</p> <p>Type: California State Senate Bill</p> <p>Vote: Two-Thirds Vote of the California Legislature</p> <p>Status: Active Bill – In the Assembly Committee Process</p> <p>Issue: The creation and funding of a Safe Drinking Water Fund</p> <p>Description: The implementation of fees related to water, fertilizer, and milk to provide sustainable access to safe drinking water for all Californians</p> <p>Fiscal Impact: Estimated revenue from the new water fee will total \$100 million annually, with up to \$6 million in increased costs for the SWRCB. Revenue from the new fertilizer fee is expected to total \$17 million each year from 2018 to 2033 and \$6.8 million per year thereafter. Revenue from the new dairy fee is expected to total \$5.3 million per year from 2020 to 2035 and \$2.3 million per year thereafter. In addition to the new fee revenue, SB 623 would create unknown and potentially significant costs for local health officers and other agencies for data collection and submission. Most households would see an annual fee of \$11.40.</p>
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Background

Safe Water in Disadvantaged Communities

Many small public water systems throughout California face consistent problems with the quality of their drinking water. Various factors, including a small or disadvantaged base of ratepayers and insufficient technology/capacity to affordably operate and maintain infrastructure, leave these populations vulnerable to contaminants in their drinking water. This problem currently affects over 300 drinking water systems serving approximately 200,000 people, including 30 schools and daycare centers that serve over 12,000 children.¹

¹ Josh Tooker, “Assembly Committee on Environmental Safety and Toxic Materials Analysis,” *California State Assembly*, July 11, 2017.

California Safe Drinking Water Act

In 1974, the United States Congress passed the Safe Drinking Water Act (SDWA) to help regulate contaminants in the national drinking water supply for the protection of public health. The California Safe Drinking Water Act enforces and strengthens the requirements in the federal SDWA.

The California SDWA requires local water systems to monitor a specified list of contaminants, engage in activities to reduce contaminants, and report their findings to the California State Water Resources Control Board (SWRCB). The law also requires the development of a Safe Drinking Water Plan and the creation of drinking water standards.

The SWRCB is authorized to order a small water system serving a disadvantaged community to consolidate with another system when the small system consistently fails to provide an adequate supply of safe drinking water to its population. If this is not feasible, the SWRCB is authorized to contract with an administrator to help provide safe drinking water for disadvantaged communities.

The Water Quality, Supply, and Infrastructure Improvement Act

In 2014, voters approved the Water Quality, Supply, and Infrastructure Improvement Act. This act authorized \$7.12 billion and reallocated \$425 million in general obligation bonds to help address California's water quality, supply, and infrastructure needs. \$520 million of these funds were dedicated to projects meant to provide clean and safe drinking water. Some of these projects were aimed at addressing the water supply needs of small and disadvantaged communities.

Pollution from the Agriculture Industry

Pollution, especially of nitrates, from agricultural operations is one of the leading sources of contaminants in our water supply. Runoff from fertilizer, pesticides, waste, manure, soil, and other toxins often soaks into the ground and carries into other water sources, polluting drinking water and creating public health concerns.

Polluter Pays Principle

The "Polluter Pays Principle" holds that those who are responsible for producing pollution should also be responsible for mitigating its effects on the environment and public health. Many environmental laws in California are based on this principle, including through regulations and fees on the agricultural industry. Regional water quality control boards have regulations in place which require agricultural polluters to pay scaled fees, employ nutrient management plans, and monitor and report water quality.²

Proposal

² "National Pollutant Discharge Elimination System," *California Environmental Protection Agency*, 2018, www.waterboards.ca.gov/water_issues/programs/npdes/cafo.shtml.

California Senate Bill 623 (SB 623), coauthored by Senators Kevin de León and Robert Hertzberg, was introduced by Senator Bill Monning in 2017 and referred to the Assembly Rules Committee as a two-year bill. The bill would create the Safe and Affordable Drinking Water Fund in the State Treasury. The money in the fund would be allocated to the SWRCB for the purpose of providing sustainable access to safe drinking water for all Californians. The SWRCB would have the authority to develop regulations to enforce the new mandates created by SB 623.

Funds to be deposited into the Safe and Affordable Drinking Water Fund include government and private contributions, gifts, grants, settlements from parties who have been found responsible for water contamination, and additional new fees described below. The SWRCB must annually adopt a funding needs assessment and develop a fund implementation plan with expenditure priorities and guidelines developed with public input. The SWRCB would spend these funds in a manner consistent with the implementation plan and would be required to create annual reports on its spending.

SB 623 would also create a safe and affordable drinking water fee on each customer of a public water system until July 1, 2020, the revenues from which would be deposited into the Safe and Affordable Drinking Water Fund. Fees range from \$0.95 per month to \$10 per month depending on the size of the customer's water meter.

After July 1, 2020, the SWRCB must annually determine the level at which the fee needs to be set to meet the funding needs laid out in the most recent needs assessment. The fees set cannot exceed the amount originally imposed through July 1, 2020. The SWRCB would be required to work with the Public Utilities Commission to create exemptions for individuals under certain income levels who must certify that they meet the specified low-income criteria under penalty of perjury.

Public water systems would be responsible for collecting this fee and providing the revenues to the SWRCB for deposit into the Safe and Affordable Drinking Water Fund. Water systems can retain some of the fee to reimburse collection costs. Public water systems may also apply to use an alternative fee calculation method under certain circumstances.

The bill would also require those licensed to manufacture and distribute fertilizing materials to pay a fertilizer safe drinking water fee of \$0.005 per dollar of sale of these materials until January 1, 2033. After this time, the fee would be reduced to \$0.002 per dollar of sale and would allow the Secretary of Food and Agriculture to determine the fee level required to meet (and not exceed) the funding needs laid out in the most recent needs assessment. All fees would be deposited into the Safe and Affordable Drinking Water Fund, but the Secretary could retain a certain amount for cost reimbursement.

Existing law requires those who handle milk for manufacturing, processing, or sale to pay assessments and fees to the Secretary of Food and Agriculture to cover regulation costs. SB 623 would require milk handlers, from January 1, 2020 to January 1, 2035, to deduct from payments made to milk producers \$0.01355 per hundredweight of milk as a dairy safe drinking water fee. After this time, the fee would be reduced \$0.00678 per hundredweight of milk and would allow the Secretary of Food and Agriculture to determine the fee level required to meet (and not exceed) the funding needs laid out in the most recent needs assessment. All fees would be deposited into the Safe and Affordable Drinking Water Fund, but the Secretary could retain a certain amount for cost reimbursement.

The bill would prohibit the SWRCB until January 1, 2033 from subjecting agricultural operations to certain existing regulations related to the contamination of groundwater with nitrates if those agricultural operations have completed certain mitigation requirements including the payment of the fertilizer or dairy safe drinking water fee. The SWRCB would also be required to evaluate the progress of various water quality objectives related to these contaminants.

By January 1, 2019, SWRCB would be required to create, through the mandated collection of local water quality data, a map of aquifers likely to be used for drinking water that are at high risk of containing contaminants.

SB 623 creates a state-mandated local program through its mandated reporting of water quality information and expansion of perjury and criminal penalties. The Constitution of the State of California requires reimbursement to local agencies for certain state-mandated costs.³ If the Commission on State Mandates views the bill as containing new state-mandated costs, local agencies would be reimbursed for those costs.

Governor Brown's 2018-19 Budget Trailer Bill

On February 1, 2018, the Department of Finance posted trailer bill language for Governor Brown's proposed budget that included content very similar in nature to SB 623. The language includes fees for confined animal facilities including bovine, poultry, swine, and other livestock operations; fertilizer manufacturers and distributors; milk handlers; and public water systems. Trailer bills are intended to change law in such a way as required to implement the proposed budget. If the Governor's trailer bill does not pass, SB 623 would likely be moved forward in the California legislature.

The trailer bill includes a safe drinking water fee for "confined animal facilities excluding dairies" (various agricultural operations). Beginning in 2021, the fee would be based on the facilities' risk to groundwater from nitrate discharge but could not exceed \$1,000 per facility per year. The risk would be determined by a working group in 2021 and again in 2035. Through emergency regulation, the fee could be adjusted up to, but not exceeding, the rate needed to meet the funding need for nitrate in the most recent needs assessment.

The bill also includes a safe drinking water fee for dairy of \$0.01355 per hundredweight of milk beginning in 2021. In 2036, the fee is reduced to \$0.00678 per hundredweight of milk and could be adjusted as needed to meet but not exceed the funding needs in the most recent needs assessment. The confined animal facilities and dairy fees would collectively total the lesser of \$3,000,000 or 30 percent of the nitrate funding need.

The trailer bill establishes a safe drinking water fee for licensees of \$0.006 per dollar of sales of fertilizing materials through 2034, and \$0.002 per dollar of sales of fertilizing materials thereafter. The Secretary of Food and Agriculture can adjust the fee as needed to meet but not exceed the lesser of \$7,000,000 or 70 percent of anticipated funding needs for nitrate in the most recent needs assessment.

Lastly, the trailer bill establishes safe and affordable drinking water fee on every customer of a community water system. Fees vary from \$0.95 to \$10 per month depending on the size of the

³ *Constitution of the State of California*, Article XIII B, Section 6.

customer's water meter. Connections and meters that are used exclusively for fire flow or that use nonpotable (e.g., recycled) water are exempt.

Each of these fees would be deposited into the Safe and Affordable Drinking Water Fund for securing access to safe drinking water for all Californians, with prioritization of disadvantaged communities and low-income households. The SWRCB is to prioritize funding for costs other than capital construction costs, except those related to consolidation and service extension. The legislature would require a two-thirds vote of approval to increase these fees.

Fiscal Impact

The Assembly Appropriations Committee estimates that revenue from the new water fee will total \$100 million annually, with up to \$6 million in increased costs for the SWRCB. Revenue from the new fertilizer fee is expected to total \$17 million each year from 2018 to 2033 and \$6.8 million per year thereafter. Revenue from the new dairy fee is expected to total \$5.3 million per year from 2020 to 2035 and \$2.3 million per year thereafter.

In addition to the new fee revenue, SB 623 would create unknown and potentially significant costs for local health officers and other agencies for data collection and submission.

As most households require a small water meter and would be obligated to pay \$0.95 monthly, the estimated annual safe and affordable drinking water fee for each household is \$11.40.

Governance Impact

Many of California's environmental laws are shaped by the polluter pays principle. SB 623 and the budget trailer bill require the agricultural and dairy industries to contribute toward the mitigation of water contamination but would also require ratepayers to contribute significantly to this effort. In exchange for paying their respective fees on time and having other best practices in place, these industries would receive relief from enforcement of certain nitrate pollution regulations.

Proponents

American Heart Association
Agricultural Council of California
California Citrus Mutual
California Rice Commission
California Water Service

Clean Water Action
Community Water Center
Leadership Counsel for Justice and
Accountability
The Water Foundation

Proponent Arguments

"The policies represented in SB 623 are informed by years of discussion about how to solve California's long-standing gap in operations and maintenance funding for drinking water treatment. They are the result of a year of bipartisan policy discussions, convened by the author, Senate Majority Leader Senator Bill Monning, and crafted with input from major environmental justice, environmental, water, health, and agricultural stakeholders. The historically diverse coalition behind

SB 623 is a testament to the urgency of this issue and the unique opportunity afforded by SB 623.” – California Citrus Mutual

Opponents

Association of California Water Agencies
142 water districts and agencies throughout California
Business Alliance for Water
Carlsbad Chamber of Commerce
Chula Vista Chamber of Commerce
City of San Diego
East County Economic Development Corporation
Escondido Chamber of Commerce
Fallbrook Public Utility District
Helix Water District
Industrial Environmental Association
League of California Cities San Diego
National City Chamber of Commerce
Oceanside Chamber of Commerce
Olivenhain Municipal Water District
Otay Mesa Chamber of Commerce

Otay Water District
Padre Dam Municipal Water District
Rainbow Municipal Water District
Rincon del Diablo Municipal Water District
San Diego County Water Authority
San Diego Hotel Motel Association
San Diego North Economic Development Council
San Diego Port Tenants Association
San Diego Regional Chamber of Commerce
San Diego Regional Economic Development Corporation
Santa Fe Irrigation District
Vallecitos Water District
Valley Center Municipal Water District
Vista Chamber of Commerce
Vista Irrigation District

Opponent Arguments

“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.” – Association of California Water Agencies

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