



ACTION ITEM
February 20, 2019

TO: Board of Directors

FROM: **Public Affairs and Legislation Committee**
(Directors Dick, Osborne, and Thomas)

Robert Hunter
General Manager

Staff Contact: Heather Baez

SUBJECT: THE SMALL SYSTEM WATER AUTHORITY ACT OF 2019

STAFF RECOMMENDATION

Staff recommends the Board of Directors vote to adopt a support in concept position on The Small System Water Authority Act of 2019 proposal.

COMMITTEE RECOMMENDATION

Committee recommends (To be determined at Committee Meeting)

BILL SUMMARY

Last year, Senator Ana Caballero (then in the Assembly) introduced AB 2050 sponsored by the Eastern Municipal Water District (EMWD) and the California Municipal Utilities Association (CMUA) that would have created an additional tool to prevent chronically non-compliant water systems from serving contaminated water to Californians. AB 2050 proposed to merge non-compliant water systems into larger and more robust public water system that can take advantage of improved economies of scale, streamlined managerial functions and enhanced financial capacity.

This new bill that will be author again by Senator Caballero makes some changes to what was in AB 2050 while keeping the overall concept that would be effective in helping non-

Budgeted (Y/N): n/a	Budgeted amount: n/a	Core X	Choice __
Action item amount: None	Line item:		
Fiscal Impact (explain if unbudgeted):			

compliant systems. The new bill, has not yet been introduced, but will by February 22, 2019 with a new bill number.

ARGUMENTS IN SUPPORT

Nearly 800,000 people in California lack access to safe and reliable drinking water on a daily basis. The State Water Resources Control Board (State Board) has identified 329 (as of November 2017) systems statewide that chronically serve contaminated drinking water or cannot provide reliable water service due to unsound infrastructure or because they lack the local financial, managerial, and technical resources to do so. The vast majority of these systems are small, rural systems that typically serve less than 10,000 people. A sustainable solution is necessary to address this drastic health and safety crisis.

To date, laws have been passed that address various elements of the water accessibility issue including voluntary and forced consolidations, supplying resources and technical support, and limiting the development of new unsustainable water systems. While these efforts have created a portfolio of options to address this critical issue of water accessibility in California, immediate and lasting changes to the governance structure of chronically noncompliant small systems are still needed to protect public health and safety.

This new measure will provide yet another valuable tool to prevent chronically non-compliant water systems from serving contaminated water to Californians.

ARGUMENTS IN OPPOSITION

AB 2050 (Caballero, 2018) was vetoed by then Governor Jerry Brown. In his veto message he said that, “While I appreciate the author’s intent, this bill creates an expensive, bureaucratic process and does not address the most significant problem with providing safe drinking water – a stable funding source to pay for ongoing operations and maintenance.” While the new version also does not include a funding source, the Association of California Water Agencies and CMUA are co-sponsoring another measure that addresses that issue.

STAFF COMMENTS

MWDOC’s Legislative Policy Principles indirectly reflect supporting legislation that would be an alternative to a tax on water. This measure is another resource that can be used to assist non-compliant water providers that a tax on water is proposing to help. Specifically, *it is MWDOC’s policy to oppose legislation and regulation that: imposes a “public goods charge” “water user fee”, or “water tax” on public water agencies or their ratepayers.*

Attached:

The Small System Water Authority Act of 2019 “Summary of Language Changes”
Pathways to Compliance Infographic

The Small System Water Authority Act of 2019

Summary of Language Changes

Version 1 – Long Version

(Changes reflect differences from AB 2050 [2018])

Part 4. Formation

- Amended Section 78030(a)(2) identifying that a system is deemed out of compliance if they are in violation of one or more state or federal primary drinking water standard maximum contaminant levels based on a running average for the period from July 1, 2018 through December 31, 2019. AB 2050 had identified a term of four consecutive quarters before March 1, 2019. This has since been deleted.
- Section 78032 (c)(2)(C) added the word “reasonable” as, “there is no other *reasonable* alternative that would protect the public drinking water supplies of the public water system...”
- Section 78032(c)(3) added language that directed the state board to remedy the water quality violations if they are unable to make the prescribed findings through the application of their existing authority to order consolidations or through the application of existing funding sources to remedy the failure.
- Added Section 78033(a)(2) identifying that the customers of a failing water system may submit a petition that their public water system be included in a proposed small system water authority by filing a petition comprised of either a specific number of customers or by a specific percentage of the service connections.
- Added Section 78035(6) which identified that the conceptual formation plan must include the identification of interim safe drinking water supplies sufficient to serve the customers of the system from submission of the conceptual plan until the date upon which all infrastructure repairs, construction, rehabilitation or reconstruction are complete.
- Added language to Section 78038(a) that provided flexibility for the system administrator to determine that an authority would be financially and operationally viable with less than five public water systems.
- Added subsection (4) to Section 78038 which outlines systems that may voluntarily opt-in, this subsection clarifies that those systems where the residents petition to be part of the system, may be included as an opt-in system.
- Added Section 78038(b)(1)(D) which ensures that interim water supplies are identified in the plan for service that is submitted to LAFCO.
- Added 78038(b)(2)(G) identifying that where a special district is to be dissolved a successor who will assume responsibility also must identify an interim water supply.
- Added 78038(c)(1) accelerates the period for notification by the Administrator to the State Board that formation of a small system water authority is not feasible.
- Added 78038(c)(2) which requires the State Board develop findings that even though a small system water authority could not be formed that continued operations of the system is still a threat to public health and safety.

- Added 78038(c)(3) specifying that if the previously identified findings have been made then the State Board will either exercise existing consolidation authorities under SB 88 [2015], or use existing funding sources to remedy the failure to meet applicable water quality standards.
- Amended Section 78040(a) which now identifies that both the LAFCO and the State Board (AB 2050 had only identified LAFCO) must receive a report annually for the first three years after formation describing the prior year's operation, any violations of drinking water standards, actions taken, etc.
- Amended Section 78040(b) where previous versions of the bill had identified that the LAFCO may order the authority to remedy any failure to comply with conditions imposed in either the conceptual formation plan or the plan for service, this version identifies the State Board as the entity responsible.
- Added the requested language from the State Controller in section 78041(a) stating that the Controller (instead of a consultant hired by the Controller) shall prepare a report to the Legislature reviewing startup operations, fiscal health, and identifies any supplemental state funding. Further outlines that the Controller may consult with any other individual or organization they deem appropriate including but not limited to a list of identified associations.
- Deleted former description for the qualifications and procedure for hiring an administrator and instead cross referenced the State Board's current authority to hire a system administrator (per the State Board's request).
- Added new Sections 78042(a) and (b) requiring the State Board to prepare a report to the Legislature no later than January 1, 2026 specifying the number of public water systems that, at any time between July 1, 2018 and January 1, 2025 were out of compliance with one or more state or federal primary drinking water standard maximum contaminant levels on a running annual average. The report shall identify public water systems that were a) brought into compliance through the formation of an authority, b) were brought into compliance with consolidations under SB 88 [2015], or c) those systems that remain out of compliance. For those systems that remain out of compliance the report shall further propose one or more plans that will, using financial and other resources available, bring those systems into compliance by January 1, 2029.

Part 8. Financial Provisions: Chapter 3: Fiscal provisions

- Section 78115(a)(1) – (5) removed the reference to specific dollar figures for LAFCO and each of the prescribed state agencies. We are in the process of refining the numbers and will likely be identifying Safe Drinking Water Trust as the method for funding.
- Added Sections 78115(c), (A) and (B) identifying sources of additional funding should the previously identified funding sources be insufficient. At a future date this may be linked to the Safe Drinking Water Trust Funding.

General Changes

- Changes to the timeline in terms of both calendar dates and a reference to a specific number of days have been made throughout the document.

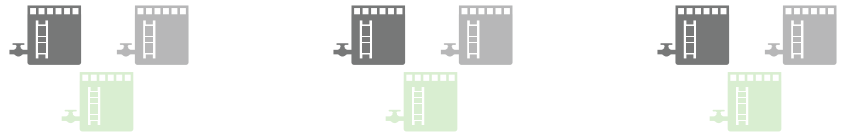
A DUAL-APPROACH TO ADDRESS SAFE DRINKING WATER NEEDS OF CALIFORNIANS

| GOVERNANCE |

A dual-approach that addresses each unsustainable community water system's underlying issues is imperative, and must include transparent and sustainable governance reform.

The goal must be to create highly functioning water systems with self-sustaining financial capacity.

Provides a pathway to compliance and one-time investment that will not impose a statewide water tax on ratepayers.



Pathways to Compliance

Small System Water Authority Formation

SB 88 (BTB, 2015)
SB 552 (Wolk, 2016)

Bring System into Compliance



Provides governance reform, local control and enhanced financial capacity



Consolidation or extension of services utilizing existing tools and resources



Ensures water quality and infrastructure investment

PERMANENT AND SUSTAINABLE

Creates an efficient pathway to compliance and addresses governance issues, and only one path requires a one-time investment applied over four years.

LOCAL CONTROL

Through a public process, establishes special districts called Small System Water Authorities, with locally-elected boards.

TRANSPARENCY

Creates independent special districts with open and public meetings, independent audits, and finances posted on a public website.

FINANCIAL CAPACITY

Generates economies of scale and reduces overhead. Systems with less than 400 service connections can have overhead costs as high as 60 cents for every ratepayer dollar, leaving little to cover water safety needs.



No Water Tax



Creates Economies of Scale



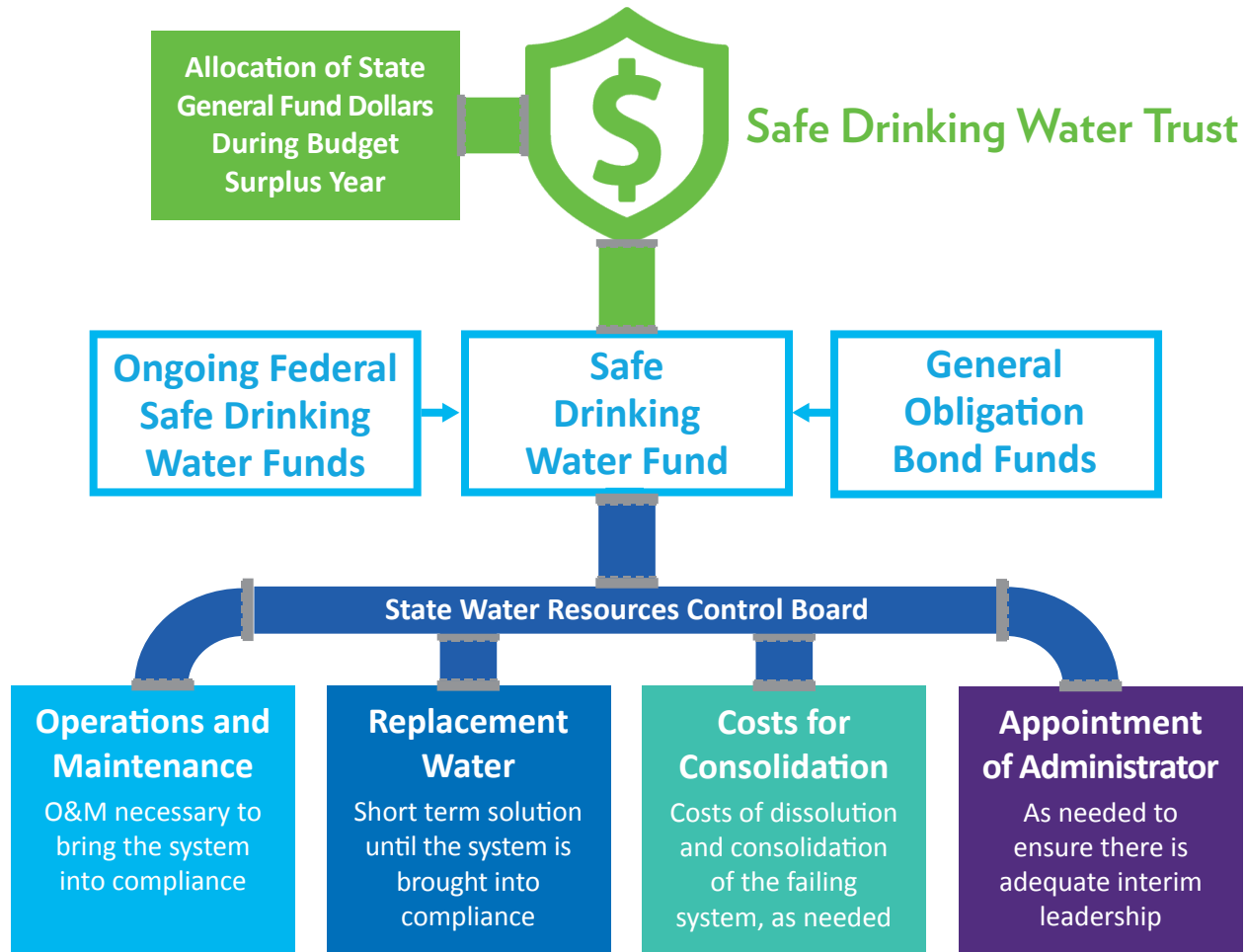
Establishes Self-Sustaining Systems

SEE REVERSE FOR | FUNDING | INFORMATION

Learn more about the Safe Drinking Water Package at emwd.org/SDWP



A DUAL-APPROACH TO ADDRESS SAFE DRINKING WATER NEEDS OF CALIFORNIANS | FUNDING |



A funding solution that does not impose a statewide water tax, and when coupled with governance reforms, establishes a sound process for repairing failing community water systems.

SEE REVERSE FOR | GOVERNANCE | INFORMATION

Learn more about the Safe Drinking Water Package at emwd.org/SDWP



Solving this crisis requires a dual approach that addresses governance and funding.