

## Association of California Water Agencies

### Summary of Brown Administration's Proposed Budget Trailer Bill Safe and Affordable Drinking Water Act – February 1, 2018 Version (Includes Proposal for a State Tax on Drinking Water)

#### I. INTRODUCTION AND BACKGROUND INFORMATION

The Safe and Affordable Drinking Water Act Budget Trailer Bill (BTB) is essentially the same bill as SB 623 (Monning) with some amendments that do not address ACWA's concerns. ACWA's State Legislative Committee took an "Oppose-Unless-Amended" position on the BTB on February 9, 2018.

Both SB 623 and the BTB are intended to fill gaps in funding for disadvantaged communities and low-income residents without access to safe drinking water. ACWA agrees with that intent but opposes the tax on drinking water proposed in SB 623 and the BTB because it is not the right approach to solving this social issue for the State. ACWA is advancing a more appropriate funding solution – a package of funds that is comprised of federal safe drinking water funds, general obligation bond funds, the assessments related to nitrate in groundwater that are proposed in SB 623 and the BTB and some funding from the State General Fund.

ACWA understand that SB 623 (and now the BTB) is intended to generate \$140 million per year. The proponents have indicated last that the breakdown is supposed to be \$30 million per year (or 21 percent of the funding) in proposed agricultural fees that are related to nitrate in groundwater and \$110 million per year (or 79 percent of the funding) in a proposed State tax on drinking water that would be collected by thousands of community water systems across the State and sent to the State for distributed to selected communities and residents.

SB 623, a two-year bill, is currently at the Assembly Committee on Rules. The Committee could refer SB 623 to one or more policy committees or move SB 623 to the Assembly floor. ACWA expects that SB 623 would be amended to clean it up before any vote on it. **Current legislative activity, however, is focused on the BTB.** As signaled in the summary for the Governor's proposed Budget for Fiscal Year 2018-19, the Brown Administration plans on advancing a BTB that is consistent with the framework of SB 623. The Administration posted the first version of the BTB on February 1, 2018. SB 623 still remains an option to the proponents if the Administration's effort to move the BTB is unsuccessful. Both bills require two-thirds votes by the Assembly and the Senate because of the proposed tax on drinking water. Following is a summary of the BTB.

## II. SUMMARY

### 1. Agricultural Funding Mechanism, Part I – Safe Drinking Water Fee for Confined Animal Facilities Excluding Dairies

The BTB would define “confined animal facilities excluding dairies” (CAFED) to include bovine operations, poultry operations, swine operations, and other livestock operations, explicitly excluding milk cow dairies (see below regarding dairies).

#### A. CAFED Working Group

The BTB would require the Secretary of Food and Agriculture (the Secretary) to convene a working group composed of representatives of CAFED to determine the actual risk to groundwater, if any, from discharges of nitrate from CAFED. The BTB would require by January 1, 2035, the Secretary to convene a working group composed of representatives of CAFED to determine the actual risk to groundwater, if any, from CAFED.

#### B. Initial CAFED Fees - Until January 1, 2036

Beginning January 1, 2021, the Secretary would be required, pursuant to a regulation to be adopted by the Secretary by that date, to establish an annual CAFED fee that would be commensurate with the actual risk, if any, to groundwater from discharges of nitrate as determined by the working group. The BTB would cap this fee at \$1,000 per facility. This version of the CAFED fee requirement would be in effect until January 1, 2036.

#### C. Later CAFED Fees - Beginning July 1, 2036

Beginning July 1, 2036, the Secretary would be required to establish a fee for CAFED, payable annually, to the Secretary by each facility in an amount commensurate with the actual risk to groundwater from discharges of nitrate determined by the CAFED working group. The BTB would authorize the Secretary to adjust the fee through emergency regulation processes, as necessary, to meet but not to exceed the most recent assessment of funding need for nitrate adopted by the State Water Board.

The BTB would generally require this later version of the fee collected from CAFED combined with the Dairy Fee (discussed in Section 3) to total the sum of \$3,000,000 or 30 percent of the funding need for nitrate in the more recent assessment of funding need adopted by the State Water Board, whichever is less. However, the BTB would specify that notwithstanding the emergency regulations fee adjustment authority and the \$3,000,000 or 30 percent provision, the fee on a CAFED could not exceed \$1,000.

### 2. Agricultural Funding Mechanism, Part II - Fertilizer Safe Drinking Water Fee

#### A. Initial Fertilizer Fee – Until January 1, 2034

In addition to already-required fertilizer assessments, the BTB would require a licensee whose name appears on the label of bulk or packaged fertilizing materials to pay to the Secretary a Fertilizer Safe Drinking Water Fee (Fertilizer Fee) of six mills (\$0.006) per dollar of sales for all sales of bulk or packaged fertilizer materials. This version of the Fertilizer Fee would remain in effect until January 1, 2034 and then would be repealed.

**B. Later Fertilizer Fee – Beginning January 1, 2034**

On January 1, 2034, the Safe Drinking Water Fertilizer Fee would be reduced from six mills to two mills (\$0.002) per dollar of all sales of fertilizer. After January 1, 2036, the BTB would authorize the Secretary to adjust the Fertilizer Fee through emergency regulation processes to meet but not exceed the sum of \$7,000,000 or 70 percent (whichever is less) of the anticipated funding need for nitrate in the most recent assessment of funding need adopted by the State Water Board. The BTB would require the Secretary to notify all licensees of the amount of the Fertilizer Fee to be assessed in the following calendar year by October 1 of each year.

**C. Enforcement and Administrative Costs**

The BTB would authorize the Secretary to adopt regulations relating to the administration and enforcement of the Fertilizer Fee. Until July 1, 2021, the Secretary could retain four percent of collected Fertilizer Fees. Beginning, July 1, 2021, that amount would decrease to two percent.

**3. Agricultural Funding Mechanism, Part III – Dairy Safe Drinking Water Fee**

**A. Initial Dairy Fee – January 1, 2021 – December 31, 2035**

This BTB would require, beginning January 1, 2021 and until January 1, 2036, each handler subject to the provisions of a stabilization and marketing plan to deduct from payments made to producers for milk the sum of \$0.01355 per hundredweight of milk as a Dairy Safe Drinking Water Fee (Dairy Fee).

**B. Later Dairy Fee – Beginning January 1, 2036**

On and after January 1, 2036, the BTB would reduce the Dairy Fee to \$0.00678 per hundredweight of milk. The BTB would authorize the Secretary to adjust the fees through emergency regulation processes as necessary to meet but not exceed thirty percent of the anticipated need for nitrate in the most recent State Water Board funding need assessment or the sum of \$3,000,000, whichever was less. In making such an adjustment, the Secretary would have to reduce the Dairy Fee by the amount collected for the CAFED fee. During this period, the BTB would prohibit the total of the CAFED fee and the Dairy Fee from exceeding: 1) the sum of \$3,000,000; or 2) thirty percent of the funding need for nitrate in the more recent assessment of funding need adopted by the State Water Board, whichever was less.

### **C. Enforcement and Administrative Costs**

The BTB would authorize the Secretary to adopt regulations necessary for proper administration and enforcement of the Dairy Fee. Until July 1, 2021, the Secretary could retain four percent of collected Dairy Fees for reasonable implementation and enforcement costs. Beginning, July 1, 2021, that amount would decrease to two percent.

### **4. Proposed Definitions Related to the Fund**

Following are proposed definitions for key terms related to the Fund:

- 1) “Customer” would mean a purchaser of water from a community water system that uses the water for municipal purposes, including **residential, commercial, governmental, and industrial uses**;
- 2) “Eligible applicant” would mean a public water system, including but not limited to mutual water company; a public utility; a public agency, including but not limited to a local education agency that specifically owns or operates a public water system (PWS); 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;
  - 1) “Administrator” would be defined by reference as an entity that has contracted with the State Water Board to provide administrative and managerial services to a designated public water system (see Ca. Health and Safety Code Section 116686);
- 3) “Individual domestic well” would mean a groundwater well used to supply water for the domestic needs of an individual residence or systems of four or less service connections;
- 4) “Low-income household” means a household with an income that is less than 80 percent of the statewide median household income; and
- 5) “Replacement water” would include, but not be limited to, bottled water, point-of-use, or point-of-entry treatment unit.

### **5. General Provisions and Priorities for Funds**

This BTB would establish the Safe and Affordable Drinking Water Fund (the Fund) in the State Treasury and would provide that moneys in the Fund are continuously appropriated to the State Water Board. The purpose of the Fund would be 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. Where money would remain in the Fund at the close of a fiscal year, that money would not revert to the General Fund. Moneys in the Fund

would not be available for appropriation and could not be borrowed for use without an affirmative vote of two-thirds of the membership in each house of the Legislature.

The BTB would require the State Water Board to **prioritize** (not limit) the use of the Fund to: 1) assist disadvantaged communities (DACs) and low-income households served by a state small water system or domestic well; and 2) fund 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 to increase sustainability of drinking water infrastructure and service delivery.

The BTB would require the State Water Board prioritize funding to implement consolidations and service extensions when feasible and administrative and managerial contracts or grants where applicable. The State Water Board would be required to use the agricultural fees to address nitrate-related contamination issues.

The BTB (at Page 13) would specify that neither the State Water Board nor any employee of the Board could be held liable for any act that is necessary to carry out purposes of this proposed law.

## **6. Uses of the Fund**

The State Water Board would be authorized to expend moneys in the Fund for grants, loans, contracts, or services to assist eligible applicants with:

- 1) The provision of replacement water 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, domestic wells, or state small systems;
- 3) The identification of Californians who are eligible to receive assistance from the Fund and outreach to them;
- 4) The testing of drinking water quality of domestic wells serving low-income households and prioritizing those in high-risk areas; and
- 5) The provision of administrative and managerial services (for third-party administrators/contractors).

## **7. Fund Administration**

By July 1 of each year, the BTB would require the Water Board to:

- 1) Make available a report on Fund expenditures;
- 2) Adopt an assessment of funding need, as specified at Pages 13-14, that is based on available data. Some of the proposed elements include:
  - 1) a list of community water systems that serve a disadvantaged community that must charge fees that exceed the affordability threshold established in the *Safe Drinking Water State Revolving Fund Intended Use Plan*;
  - 2) a list of public water systems and state small water systems that “**may be at risk of failing to provide an adequate supply of drinking water**”; and
- 3) Adopt, after a public hearing, a fund implementation plan and policy handbook with priorities and guidelines for expenditures of the Fund.

The BTB would require that the Board work with a multi-stakeholder advisory group to establish the priorities and guidelines. It would provide that the adoption of the Fund implementation and policy handbook would **not** be subject to the Administrative Procedure Act.

Beginning January 1, 2019, the BTB would require an expenditure from the Fund to be consistent with the annual fund implementation plan.

#### **8. State Water Board’s Administrative Costs**

Initially, the BTB would authorize the State Water Board to expend moneys from the Fund for reasonable Fund administration costs. Beginning July 1, 2021, the BTB would limit that expenditure to 5 percent of the annual revenues for reasonable Fund administration costs. The BTB would require the State Water Board to provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the Fund.

The State Water Board would be authorized to take additional action as may be appropriate for adequate administration and operation of the Fund.

#### **9. Mapping of “High Risk Areas”**

The BTB would require, by January 1, 2020, the State Water Board, in consultation with local health officers (officers) and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at “high risk” of containing contaminants. The BTB would require officers or other relevant local agencies by January 1, 2020 to provide all results of, and data associated with, water quality testing performed by certified laboratories for a state small water system or domestic well that is in the officer’s possession to the State Water Board. On and after January 1, 2020, an officer or

other relevant local agency would require testing data to be submitted directly to the State Water Board.

## **10. Proposed State Drinking Water Tax**

Although labeled in the BTB the “Safe and Affordable Drinking Water Fee,” the BTB proposes a state tax on drinking water as summarized here.

### **A. Initial, Statutory Drinking Water Tax Schedule**

The BTB would set the initial tax schedule in the statute. It would go into effect for the period July 1, 2019 through June 30, 2021, except as specified. It would “impose” the drinking water tax on each customer (i.e., residential, business, industry or governmental) that purchases water from a community water system (CWS) as follows:

- 1) Water meters equal to or less than 1 inch in size: \$0.95/month
- 2) No water meter: \$0.95/month
- 3) Water meters greater than 1 inch and less than or equal to 2 inches: \$4/month
- 4) Water meter greater than 2 inches and less than or equal to 4 inches: \$6/month
- 5) Water meter greater than 4 inches: \$10/month
- 6) Cap on the tax for customers that have multiple meters serving a single address at ten dollars per month.

A customer would be exempt from the fee if he or she self-certified to the CWS that he or she either had an income equal to or less than 200% of the federal poverty level (FPL) or operated deed-restricted multi-family housing developing to provide housing to tenants with incomes at or below 200 percent of the FPL.

The BTB would exclude a connection or meter that is used exclusively for fire flow or uses nonpotable water, including but not limited to recycled water.

The BTB would provide that a CWS would 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 CWS that he or she meets a criterion to be exempt.

The BTB would exempt a customer, who is already enrolled in a program offered by the CWS that is designed specifically to reduce the cost of water service incurred by customers who meet established income guidelines, from the payment of the tax.

### **B. State Water Board-Developed Drinking Water Tax Schedule**

Beginning July 1, 2021, the State Water Board would establish a “fee” (tax) schedule that persons or entities that purchased water from a CWS would be assessed by the CWS. The BTB

would prohibit the “fee” schedule from exceeding the above-listed statutory amounts. The BTB would require the State Water Board to review and revise the “fee” schedule as necessary each year to not exceed the anticipated funding need in the most recent assessment of funding need. By July 1, 2021, the State Water Board, in consultation with the Public Utilities Commission, would be required to adopt regulations to exempt households with incomes equal to or less than 200 percent of the FPL.

Beginning July 1, 2023 and going into perpetuity, the BTB would require the State Water Board to set the “fee” schedule at an amount that did 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. Here too, the BTB would prohibit the “fee” schedule from exceeding the above-listed statutory amounts.

The BTB would provide that the “total uncommitted amount in the fund” would not include Fertilizer Fee dollars until January 1, 2033 and would not until January 1, 2035 include Dairy Fees or CAFED fees in the Fund.

#### **11. CWS Administrative Cost Reimbursement (for Collection of Drinking Water Tax)**

The BTB would authorize the CWS to retain an amount, as approved by the State Water Board, as reimbursement of the reasonable costs incurred for the collection of tax. The BTB would allow until July 1, 2021 that a CWS could retain up to 4 percent of the amount collected and beginning July 1, 2021, the reimbursement could not exceed 2 percent of the amount collected. For small CWS, the BTB would allow reimbursement to not exceed \$500 or 4 percent of the total revenue collected, whichever is greater.

The BTB would exempt a CWS with fewer than 200 service connections and its customers from the tax. The State Water Board would be authorized to approve an exemption for CWS with 200 or more service connections and its customers from the tax if they find that the amount required to be remitted to the State Water Board would be de minimis.

The BTB would allow a CWS to apply to the State Water Board to use an alternative method to calculate the amount owed by each customer for the charge imposed by submitting an application, in a form prescribed by the State Water Board that shows that the method required by statute, regulation, or “fee” schedule adopted by the State Water board would be impractical for the CWS to collect; and that the method proposed by the CWS would provide a level of total revenue equivalent to the revenue the CWS would transmit to the State Water Board pursuant to the fee schedule. The State Water Board could deny the application, and the denial would not be reviewable. If the State Water Board approved the application, the approval would be for a specified period – not to exceed five years.

The BTB would authorize the State Water Board, in consultation with the California Department of Tax and Fee Administration, to adopt and enforce regulations relating to the administration and enforcement of the tax on drinking water. The initial adoption would have to comply with

the Administrative Procedures Act. Subsequent amendments could be adopted with the emergency regulation process.

## **12. Nitrate – Enforcement Relief**

The BTB includes detailed enforcement relief provisions at Pages 24-28 for “agricultural operations” that meet certain conditions until January 1, 2034 (i.e., a 15-year period).

The BTB would define “**agricultural operation**” to mean either:

- 1) A discharger that satisfies both the following conditions:
  - A) The discharger is an owner, operator, or both, of land that is irrigated to produce crops or pasture for commercial purposes or a nursery; and
  - B) The discharger is enrolled or named in an irrigated lands regulatory program order adopted by the State Water Board or Regional Board.
  
- 2) A discharger that satisfies both the following conditions:
  - A) The discharger is an owner, operator or both of a facility that is used for the raising or harvesting of livestock; and
  - B) The discharger is enrolled or named in an order adopted by the State Water Board or a Regional Board that regulates the discharges of waste from a facility to protect ground and surface water.

The BTB would specify that “agricultural operation” does **not** include any of the following:

- 1) A facility that processes crops or livestock;
- 2) A facility that manufactures, synthesizes, or processes fertilizer; or
- 3) Any portion of land or activities occurring on those portions of land that are not covered by an order adopted by the State Water Board or a Regional Board.

In general terms, the enforcement relief would be provided where the agricultural operation was in compliance with all applicable provisions of the State Water Board or Regional Water Board Order, and the operation was in compliance with the applicable program of implementation for achieving the groundwater quality objectives for nitrate, as specified.