

CALAVERAS COUNTY WATER DISTRICT LEGAL AFFAIRS COMMITTEE MEETING

AGENDA

Thursday February 22, 2018
3:00 p.m.
CCWD Board Room

Calaveras County Water District
120 Toma Court (P.O. Box 846)
San Andreas, California 95249

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administration Office at (209) 754-3028. Notification in advance of the meeting will enable CCWD to make reasonable arrangements to ensure accessibility for this meeting. Any documents that are made available to the Board before or at the meeting, not privileged or otherwise protected from disclosure, and related to agenda items, will be made available at CCWD for review by the public.

ORDER OF BUSINESS

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE
2. PUBLIC COMMENT: Comments limited to 5 minutes per person.
3. OLD BUSINESS
 - 3a. Update on federal legislative policy matters, e.g. Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. No.: 114-322 (12/16/2016)), infrastructure funding initiative, and forest management (Dave Eggerton, General Manager)
 - 3b. Update on long-term water conservation regulations and permanent water waste prohibitions (Joel Metzger, Manager of External Affairs, Conservation and Grants)
 - 3c. *Update on AB 401 (Dodd): Low-Income Water Rate Assistance Program (Joel Metzger, Manager of External Affairs, Conservation and Grants)
4. NEW BUSINESS
 - 4a. Discussion/direction regarding state water bonds (Joel Metzger, Manager of External Affairs, Conservation and Grants)

- 4b. Discussion/direction regarding SB 623 (Monning): Water quality: Safe and Affordable Drinking Water Fund; and budget trailer bill (Joel Metzger, Manager of External Affairs, Conservation and Grants)
- 4c. *Update on other state and federal legislative and policy matters (Dave Eggerton, General Manager)

5. **GENERAL MANAGER COMMENTS**

6. **DIRECTOR COMMENTS**

7. **FUTURE AGENDA ITEMS**

8. **NEXT COMMITTEE MEETING**

9. **ADJOURNMENT**

Attachments: Mia O'Connell Federal Update
Federal Infrastructure Funding Principles
State Water Board Permanent Water Waste Prohibition Proposal
SWRCB Comment Letter
2018 Water Bonds Summary
2018-Water-Bonds-Brochure
SB 623 No Water Tax Fact Sheet
SB 623 ACWA Coalition Letter

O'Connell & Dempsey, LLC



To: Dave Eggerton, General Manager; Joel Metzger, Manager of External Affairs, Calaveras County Water District

From: Mia O'Connell, President, O'Connell & Dempsey

Date: February 15, 2018

SUBJ: Federal Update

Over the last several weeks, there has been a fair amount of activity on federal issues of interest to Calaveras County Water District (CCWD). The following provides an update:

Administration's FY 2019 Budget Release

On February 12th, the Administration released its FY 2019 Budget covering all of the federal agencies and their proposed operating budgets for the year. Typically, an Administration's budget request is noted, but considered simply a baseline for Congress to shape its appropriations bills around. This year's budget is no different. Congress will draft its own appropriations bills. For the Bureau of Reclamation, the Administration requested \$1.049 billion, which is approximately a 20% reduction from FY 2017 enacted levels. Within Reclamation's Budget, the WaterSMART Program is provided with \$19.9 million.

In the budget justification, the detail for small programs such as Section 4006 of the Water Infrastructure Improvements for the Nation (WIIN) Act, the New Melones Study, which we are engaged in with Reclamation and for which we have submitted a proposal, is not called out in detail. Rather, it is folded into its overall Water and Related Resources Account, under the Water Conservation and Delivery sub-account. We will be working with Reclamation to see how much they requested and if they need additional funds to continue to flesh out the New Melones study and begin the environmental work. Hopefully, they will be considering elements within our Scope of Work in their overall study. We will be working with Congress to encourage such additional funds, if needed.

This is a bare bones request and not unusual from years past. Congress is unlikely to go along with such steep cuts and will likely restore much of the funding in the FY 2019 appropriations bills, and possibly increase funding for Reclamation as well. The Administration knows this and makes these reductions as a way to reduce overall budget levels. The next steps include Reclamation leadership providing testimony on the FY 2019 Budget request before the House and Senate Energy and Water Development Appropriations Subcommittees. We expect Commissioner Brenda Burman to testify in the next several weeks.

In the meantime, Congress is still working to complete a FY 2018 Omnibus Appropriations Bill, which will likely be completed before March 23, when the current Continuing Resolution runs out, and assuming Congress can come to agreement.

Administration's Infrastructure Plan

Also of note, the Administration released its Infrastructure plan on February 12th. The plan calls for \$200 billion in federal funding over 10 years to leverage a total of \$1.5 trillion in total investment. The plan can be found here:

<https://www.whitehouse.gov/wpcontent/uploads/2018/02/INFRASTRUCTURE-211.pdf>

Of the \$200 billion, \$100 billion would be made available for the Incentives Program to maximize investment in infrastructure by providing small grants against large local contributions. The Incentives Program would have all types of infrastructure projects competing against each other and would rely heavily on a much higher level of local cost sharing than traditional water infrastructure cost sharing. Of interest to the District is that \$50 billion would be made available to the Rural Infrastructure Program for capital investments in rural infrastructure investments. \$20 billion would be made available for the Transformative Projects Program to provide funding and technical assistance for large, innovative, and transformative infrastructure projects. The plan would also dedicate \$20 billion to increase the capacity of existing Federal credit programs such as WIFIA and by broadening the use of Private Activity Bonds (PABs). The plan places emphasis on shortening the federal permitting process by consolidating agency reviews into a "one federal decision" process.

The plan had a mixed to negative reaction on Capitol Hill. Now that the principles have been released, Congress will move to craft a piece of legislation in the coming months, which will require negotiation with the Administration, of course. We will keep you updated as things progress.

Farm Bill Reauthorization

During the year, Congress is expected to work to develop a reauthorization of the Farm Bill. Of note to the District is that the consultant submitted to Congressman McClintock's staff language drafted by the District authorizing a pilot project for the Stanislaus Watershed Forest Management to develop an ecologically sound forest restoration project, reducing risk and promoting a healthy and more resilient forest. Congressman McClintock, to avoid the earmark ban, revised the language to cover all National Forests and to do so on a collaborative fashion, as we recommended. The Congressman submitted the language to the Agriculture Committee for inclusion in the Farm Bill. Our language tracks the approach of others including the California Forest Watershed Alliance who is supporting sound forest practices and creating an authority for an accelerated landscape scale restoration pilot for National Forest lands. We will work to make the language highlight the characteristics of the Stanislaus to raise its priority.

DC Visits

Dave will be in Washington the week of February 26th for ACWA and we have set up appointments with the Offices of Senator Feinstein and Congressman McClintock to discuss our proposal and Scope of Work to Reclamation for the Section 4006 New Melones Study and current status, as well as our forestry issues. We are also preparing for the District's Washington Trip on April 12th and 13th to brief our Members and Reclamation on the current status of our discussions with Reclamation on our proposal for the Reclamation's New Melones Study and to seek their support, along with our forestry issues.

Funding Principles

I. Infrastructure Incentives Initiative: encourages state, local and private investment in core infrastructure by providing incentives in the form of grants. Federal incentive funds will be conditioned on achieving milestones within an identified timeframe. *Accounts for 50% of total appropriation.*

- A. Applies to: surface transportation, airports, passenger rail, maritime and inland waterway ports, flood control, water supply, hydropower, water resources, drinking water facilities, storm water facilities, Brownfield and Superfund sites
- B. Eligible entities: States or groups of states, Puerto Rico, U.S. territories, metropolitan planning organizations, units of local government or a group of local governments, special purpose district or public authority responsible for maintaining infrastructure facilities, public utilities, non-profits, tribal governments, multijurisdictional group of eligible entities, private entities with sponsorship from an eligible public entity .
- C. Core infrastructure projects are eligible. The lead federal agency administering the initiative will define eligible costs and conduct audits to ensure funds are used appropriately.
- D. The lead federal agency will solicit applications every 6 months. Criteria includes:
 - 1. Dollar value of project (weighted at 10%)
 - 2. Evidence supporting how applicant will secure and commit new, non-federal revenue to create sustainable, long-term funding (weighted at 50%)
 - 3. Evidence supporting how applicant will secure and commit new, non-federal revenue for operations, maintenance and rehabilitation (weighted at 20%)
 - 4. Updates to procurement policies and project delivery approaches to improve efficiency in project delivery and operations (weighted at 10%)
 - 5. Plans to incorporate new technology (weighted at 5%)
 - 6. Evidence to support how project will spur economic and social returns on investment (weighted at 5%)
 - a. Calculated by multiplying the weighted score by the percentage of non-federal revenues used to fund the project
 - b. Lookback period:

Years Passed	New Revenue Credit Score Multiplier
>3 years	0%
2-3	30%
1-2	40%
0-1	50%
After Jan. 2018	100%

E. Grant awards can't exceed 20% of total project cost. Any individual state can't receive more than 10% of the amount available

II. Transformative Projects Program: makes available federal funding and technical assistance for innovative and transformative infrastructure projects based on competitive basis to viable projects unable to secure financing through private sector due to the uniqueness of the program. Applicable projects must be exploratory and ground-breaking ideas that have more risk than

standard infrastructure projects but offer a larger reward profile. Covered sectors include: transportation, clean water, drinking water, energy, commercial space, and telecommunications. *Accounts for 10% of total appropriation.*

- A. Dept. of Commerce chairs administration of the program.
 - B. Eligible entities: States or groups of states, Puerto Rico, U.S. territories, metropolitan planning organizations, units of local government or a group of local governments, special purpose district or public authority responsible for maintaining infrastructure facilities, public utilities, non-profits, tribal governments, multijurisdictional group of eligible entities, private entities with sponsorship from an eligible public entity.
 - C. Funding tracks: *Applicants could apply for all or specific tracks.*
 1. Demonstration: funding provided for planning, construction, deployment and evaluation of demonstration trials. Can't be used for applied R&D activities but instead where a prototype is operated at or near full scale. *Federal funding may be used for up to 30% of eligible costs.*
 2. Project Planning: funding provided for final pre-construction activities – i.e. final design and engineering. Demonstration trial must have occurred and been successful. Must demonstrate construction would begin within a reasonable time frame. *Federal funding may be used for up to 50% of eligible costs.*
 3. Capitol Construction: funding provided for capital projects having independent utility and ready for intended use upon completion. *Federal funding may be used for up to 80% of eligible costs.*
 - a. Under this track, applicant required to enter into a financial partnership agreement with the Federal Government requiring that if a project begins to generate value, the Federal Government would have rights to share in the project value. The Federal Government would not assert first claim under any such agreement, would not accept a seat on any company's board of directors, and all partnership agreements would provide that the company retains ownership of any and all intellectual property.
 - D. Minimum match requirements in the form of equity investments by private or non-profit organizations. Applicant must demonstrate equity is committed and available.
 - E. Federal technical assistance available in addition to funding tracks, but no funding provided.
 - F. Dept. of Commerce would administer the program with an interagency selection committee. A notice of funding opportunity would be published in the federal register soliciting applications on an annual basis. Cost benefit analysis is required and applications are limited to one per lead applicant, although there would be no limit to the number of applications on which an applicant could be listed as a partner applicant.
 - G. Applicants selected would enter into a partnership agreement with the Federal Government which would specify terms and would not exceed 7 years to outlay funds. Milestones and schedules included in the agreement, the progress for which the lead Federal agencies would conduct regular audits.
- III. Rural Infrastructure Program: designed to encourage investment to enable rural economies, facilitate freight movement, improve access to reliable and affordable transportation, etc. States are incentivized to partner with local and private investment for completion and operation of projects under this program. *Accounts for 25% of total appropriation.*
- A. Eligible entities rural programs include:

1. Transportation - roads, bridges, public transit, rail airports, and maritime and inland waterway ports;
 2. Broadband - and other high-speed data and communication conduits;
 3. Water and waste – drinking water, waste water, land revitalization, and Brownfields;
 4. Power and electric – governmental generation, transmission and distribution facilities; and
 5. Water resources – inland waterway ports, flood risk management, maritime ports and water supply.
- B. Funding:
1. 80% of funds made available for states would be provided to the Governor of each state via the following formula:
 - a. Ratio based on total rural lane miles in a state in relation to total rural lane miles in all states and a ratio based on the total adjusted rural population of a State in relation to the total adjusted rural population of all states.
 2. 20% reserved for rural performance grants
 - a. States encouraged to do so within 2 years of enactment
 - b. Grants available for up to 10 years after enactment or until funds run out.
 - c. To qualify, states must publish a comprehensive rural infrastructure investment plan (RIIP) within 180 days of receipt of formula funds.
 3. Funds made available would be distributed as block grants without Federal requirements, but must be used for projects in rural areas with a population of less than 50,000.
 4. Provides investment designed to address infrastructure needs on tribal lands and U.S. Territories.
- IV. Federal Credit Programs: designed to increase the capacity of existing Federal lending programs to increase investment. *Accounts for 7.05% of total appropriation.*
- A. Would establish the (1) Transportation Infrastructure Finance and Innovation Act, (2) Railroad Rehabilitation and Improvement Financing, (3) Water Infrastructure Finance and Innovation Act, and (4) United States Department of Agriculture Rural Utilities Lending Programs under which specific funds would be set aside and appropriated to the relevant U.S. agency and would remain available until 2028.
- V. Public Lands Infrastructure Fund: would create a new infrastructure fund in the U.S. Treasury called the Interior Maintenance Fund comprised of additional revenues from the amounts due and payable to the U.S. from mineral and energy development on Federal lands and waters.
- VI. Disposition of Federal Real Property: would establish through executive order the authority to allow for the disposal of Federal assets to improve the overall allocation of economic resources in infrastructure investment.
- VII. Federal Capital Financing Fund: creates a funding mechanism similar to a capital budget but that operates within the traditional rules used for the Federal budget by establishing a mandatory revolving fund to finance purchases of federally owned civilian real property. Once approved in an Appropriations Act, the revolving fund would transfer money to agencies to finance large-dollar real property purchases. Purchasing agencies would then be required to repay the fund in 15 equal annual amounts using discretionary appropriations. *Accounts for 5% of total appropriation.*

- VIII. Private Activity Bonds: would amend 26 U.S.C. 142 to allow broader categories of public-purpose infrastructure, including reconstruction projects, to take advantage of PABs would encourage more private investment in projects to benefit the public.
- A. Elimination of the AMT provision and the Advance Refunding prohibition on PABs
 - B. Elimination of the transportation volume caps on PABs and expend eligibility to ports and airports
 - C. Removal of state volume cap on PABs
 - D. Provide change-of-use provisions to preserve the tax exempt status of governmental bonds
 - E. Require public attributes for core public infrastructure projects
 - F. Provide change-of-use cures for private leasing of projects to ensure preservation of tax exemption for core infrastructure bonds

Principles for Infrastructure Improvements

- I. Transportation
 - A. Financing
 - 1. Allow states flexibility to toll on interstates and reinvest toll revenues in infrastructure
 - 2. Reconcile the grandfathered restrictions on use of highway toll revenues with current law
 - 3. Extend streamlined passenger facility charge process from non-hub airports to small hub sized airports
 - 4. Support airport and non-federal maritime and inland water way ports financing options through broadened TIFIA program eligibility
 - 5. Subsidize railroad rehabilitation and improvement financing for short-line and passenger rail
 - 6. Provide states flexibility to commercialize interstate rest areas
 - 7. Remove application of federal requirements for projects with de minimis Federal share
 - 8. Expand qualified credit assistance and other capabilities for state infrastructure banks
 - B. Highways
 - 1. Authorize federal land management agencies to use contracting methods available to states
 - 2. Raise the cost threshold for major project requirements to \$1 billion
 - 3. Authorize utility relocation to take place prior to NEPA completion
 - 4. Refund of federal investment to eliminate perpetual application of federal requirements
 - 5. Provide small highway projects with relief from the same Federal requirements as major projects
 - C. Transit
 - 1. Require value capture financing as condition for receipt of transit funds for major capital projects (Capital Investment Grants)
 - 2. Eliminate constraints on use of public-private and public-public partnerships in transit
 - 3. Codify expedited project delivery for Capital Investment Grants pilot program

- D. Rail
 - 1. Apply Fast Act streamlining provisions to rail projects and shorten the statute of limitations
 - E. Airports
 - 1. Create more efficient federal aviation administration oversight of non-aviation development activities at airports
 - 2. Reduce barriers to alternative project delivery for airports
 - 3. Clarify authority for incentive payments under the Airport Improvement program
 - 4. Move oversight of AIP funds to post-expenditure audits
- II. Water Infrastructure
- A. Financing
 - 1. Authorize Clean Water State Revolving Fund for privately owned public purpose treatment works
 - 2. Expand EPA's WIFIA authorization to include flood mitigation, navigation and water supply
 - 3. Eliminate requirement under WIFIA for borrowers to be community water systems
 - 4. Authorize Brownfield rehabilitation and clean up of superfund sites under WIFIA
 - 5. Reduce rating agency opinions from two to one for all borrowers
 - 6. Provide EPA authority to waive the springing lien in certain lending situations
 - 7. Increase the base level of administrative funding authorized to ensure EPA has sufficient funding to operate the WIFIA program
 - 8. Remove the restriction on the ability to reimburse costs incurred prior to loan closing under WIFIA
 - 9. Expand the WIFIA program to authorize eligibility for credit assistance for water systems acquisitions and restructurings.
 - B. Water programs
 - 1. Remove the application of Federal requirements for de minimis Federal involvement
 - 2. Provide EPA infrastructure programs with "SEP-15" authorizing language
 - 3. Apply identical regulatory requirements to privately owned "public purpose" treatment works and publicly owned treatment works
 - C. Inland waterways
 - 1. Authorize all third party construction and operation arrangements as eligible expenses for inland waterways trust fund and treasury appropriations
 - 2. Authorize non-federal construction and operation of inland waterways projects
 - D. Water infrastructure resources
 - 1. Authorize user fee collection and retention by the Federal government and third parties under the WRDA Section 5014 pilot program
 - 2. Expand U.S. Army Corps of Engineers' authority to engage in long-term contracts
 - 3. Authorize operation and maintenance activities at hydropower facilities
 - 4. Deauthorize certain federal civil works projects
 - 5. Expand authority for acceptance of contributed and advanced funds
 - 6. Retain recreation user fees for operation and maintenance of public facilities
 - 7. Amend the Water Resources Development Act to allow for waiver of cost limits

8. Expand WIFIA authorization to include Federal deauthorized water resource projects
- III. Veterans Affairs: designed to provide Veteran's with state-of-the-art facilities
 - A. Authorize VA to retain proceeds from sales of properties
 - B. Authorize VA to exchange existing facilities for construction of new facilities
 - C. Authorize pilot for VA to exchange land or facilities for lease of space
 - D. Increase threshold above which VA is required to obtain Congressional authorization for leases
 - IV. Land Revitalization (Brownfield/Superfund Reform)
 - A. Replicate the Brownfield Grant/Revolving Loan Fund program for Superfund projects
 - B. Clarify EPA's ability to create special accounts for third party funds for CERCLA clean up response without state assurances
 - C. Provide liability relief for states and municipalities acquiring contaminated property through actions as sovereign governments
 - D. Provide EPA express settlement authority to enter into administrative agreements
 - E. Integrate clean up, infrastructure and long-term stewardship needs by creating flexibility in funding and execution requirements
 - F. Authorize national priority list sites to be eligible for Brownfield grants
 - G. Clarify risks to non-liable third parties that perform superfund cleanup.



Fact Sheet

Changes to the Proposed Regulation on Wasteful Water Use Practices

As directed by Executive Order B-40-17, the State Water Board is conducting a rulemaking to prohibit wasteful water use practices. These prohibitions also support the California Water Action Plan goal of “Making Conservation a California Way of Life.”

State Water Board staff proposed an initial set of prohibited water use practices in November 2017. After reviewing public comment, staff are recommending a few changes, which are described below. There will be an additional 15-day comment period for the revised proposal, with comments accepted until 12:00pm on February 14, 2018, and the State Water Board will consider the proposed regulation at its February 20, 2018 meeting.

The proposed permanent prohibitions are similar to the emergency prohibitions on wasteful water uses that were in effect during the 2012-2017 drought. There are a few differences that reflect the permanent nature of these prohibitions.

Key Provisions

The following wasteful practices would be prohibited, unless exempt to protect health and safety, to meet state and federal permit obligations, when used exclusively for commercial agricultural purposes, or for other reasons noted below:¹

- Using potable water to wash sidewalks and driveways;
- Allowing more than incidental runoff when irrigating turf and other ornamental landscapes;
- Using hoses without automatic shutoff nozzles to wash motor vehicles;
- Using potable water in ornamental fountains or decorative water features that do not recirculate the water²
- Irrigating turf and ornamental landscape during and within 48 hours following measurable rainfall;
- Hotels and motels laundering towels and linens daily without providing guests the option of using them again;

¹ See the last page of this Fact Sheet for a comparison of the emergency drought regulations and the changes to the proposed regulation.

² Fountains listed on the *National Register of Historic Places* are also exempt.



- During a drought emergency, the serving of drinking water in restaurants and bars without it being requested; and
- As of January 1, 2025, irrigating turf on public street medians and *parkways*³ unless the turf serves a community recreational or civic function, the turf is irrigated incidentally with trees, or the turf is watered with recycled water by an irrigation system installed prior to January 1, 2018.

In addition, the regulation retains penalties for homeowners' associations or community service organizations that block, stifle, or threaten homeowners from reducing or eliminating the irrigation of vegetation or lawns during a declared drought emergency in violation of existing law. The regulation also retains penalties for cities and counties that fine homeowners for failing to irrigate a lawn or for having a brown lawn during a declared drought emergency in violation of existing law.

Questions and Answers (see also the *Frequently Asked Questions [webpage](#)*): The responses below refer to the changes to the proposed regulatory text dated January 31, 2018.

- ***When does a “health and safety need” exist?*** Water is used to address many different types of health and safety needs, such as controlling dust, suppressing fires, and removing pathogenic waste from sidewalks. The Water Board has included the “health and safety” exemption to allow the otherwise prohibited wasteful water use practices to address reasonable and legitimate healthy and safety needs.
- ***How will I know if “measurable” rainfall of ¼ of an inch has been reached locally?*** The closest weather station or reliable rain gauge may be used to measure rainfall. Nothing in the proposed regulation prevents a water supplier from developing or adopting a more limiting definition of measurable rainfall for their service area.
- ***What is “incidental runoff” and what are some examples?*** Incidental runoff refers to a minimal amount of irrigation water that escapes the area of intended use. This may include minor windblown overspray, mist extending onto sidewalks within a park, or minor runoff from watering trees.
- ***The provision prohibiting the serving of drinking water unless upon request now only applies during a drought emergency. Does it apply to local drought emergencies or only state-declared drought emergencies?*** The prohibition on serving drinking water unless upon request during a drought emergency applies for

³ The regulatory text refers to the “landscaped area between the street and sidewalk.” Different communities use different terms to describe these areas. *Parkways* is a common term. So is *verges*.

drought emergencies issued by the Governor. Check with your local water agency for information on local drought emergencies.

- ***Will the provision prohibiting the irrigation of turf on public street medians and publicly owned and maintained landscaped areas between the street and sidewalk (i.e., parkways) allow communities to irrigate trees?*** Yes. The changes to the proposed regulation allow the incidental irrigation of turf while irrigating trees. See [FAQ](#) for more information on trees.
- ***Who determines whether irrigating turf on a median or ‘parkway’ serves a “community or neighborhood function”?*** Generally, local land use authorities (e.g. the City or County) will make that determination. A key consideration is whether the turf must be irrigated to provide functional (e.g., a place to hold events) or recreational (e.g., a place for sports and exercise) benefits. Aesthetics alone are not a community or neighborhood function. Many attractive low-water options exist for landscaping medians and parkways. See [FAQ](#) for more examples of turf serving a community or neighborhood function.
- ***Why does the provision prohibiting the irrigation of turf on medians and ‘parkways’ not become effective until January 1, 2025?*** The effective date in 2025 provides several years for a public entity to make any desired changes to a median or parkway. Changes could include planting a low-water alternative to turf or planting trees, if so desired. The State Water Board encourages the planting of [climate-appropriate](#) trees. These trees generally require less water than other trees. See [FAQ](#) for information on funding tree planting projects.
- ***Will the provision prohibiting the irrigation of turf on medians and parkways allow the use of recycled water?*** Yes, for recycled water irrigation systems installed prior to January 1, 2018. The changes to the proposed regulation exempt existing recycled systems, but not new ones.
- ***Will the provision prohibiting the irrigation of turf on medians and ‘parkways’ allow irrigation of low-impact development or green infrastructure (e.g., rain gardens or bio-swales)?*** Yes, provided these landscapes are not turf and are designed to use minimal or no irrigation.
- ***Where can someone report water waste or violations of these prohibitions?***
Check with your local water agency or report water waste at this webpage:
<http://www.savewater.ca.gov/>

Background

In response to severe drought, Governor Brown declared a drought emergency in January 2014. The State Water Board first adopted drought emergency conservation regulations in July 2014, which included prohibitions on certain wasteful water use practices. As drought persisted, the State Water Board readopted the emergency regulations several times, most recently in February 2017. Governor Brown declared the end of the statewide drought emergency in April 2017. These prohibitions against wasteful water use practices remained in place until the last emergency regulation expired on November 25, 2017.

Governor Brown also issued executive orders B-37-16 and B-40-17 to *Make Conservation a California Way of Life*. The orders direct the Board to permanently prohibit practices that waste water. The formal rulemaking process and public comment period began in November 2017. The State Water Board heard from 113 individuals by the December 26, 2017 deadline. Staff reviewed all public comments and made changes to the proposed regulatory text based on those comments. A second 15-day public comment period runs from January 31 through noon February 14, 2018. The State Water Board will consider the final regulatory text for adoption at a hearing on February 20, 2018.

Compliance

Current law allows public agencies to enforce their own conservation ordinances and rules and to enforce drought emergency rules adopted by the State Water Board. During the recent drought, public entities enforced the State Water Board's prohibitions against wasteful water uses. Because the proposed regulation is not a drought emergency regulation, only the State Water Board would enforce the proposed regulation at this time. Local public agencies can enforce their own conservation rules. To enforce the provisions in the proposed regulation, they can modify those rules to mirror the proposed prohibitions. Proposed legislation (SB 606), however, would allow public agencies to enforce certain rules, such as the prohibitions contained in the proposed regulation, in the same manner they could the Board's drought emergency regulations.

Contact and additional information

- Charlotte Ely: (916) 319-8564, Charlotte.Ely@waterboards.ca.gov
- Kathy Frevert: (916) 322-5274, Kathy.Frevert@waterboards.ca.gov
- [Web page for rulemaking on Wasteful Water Use Practices](#)

(This fact sheet was last updated February 1, 2018)

Comparing the emergency regulations to the proposed changes to the permanent regulation

Italics show text in regulation

Prohibitions in Emergency Conservation Regulations (2014 -2017)	Prohibitions in Revised Proposed Regulation (2018 and onward)
<p>Irrigating landscapes <i>The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;</i></p>	<p><i>The application of water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;</i></p>
<p>Washing Vehicles <i>The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;</i></p>	<p><i>The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;</i></p>
<p>Watering sidewalks <i>The application of potable water to driveways and sidewalks;</i></p>	<p><i>The application of potable water directly to driveways and sidewalks;</i></p>
<p>Operating fountains <i>The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;</i></p>	<p><i>The use of potable water in an ornamental fountain or other decorative water feature, except where: (D)(i) the water is part of a recirculating system; or (D)(ii) the fountain is registered on the National Register of Historic Places as of January 1, 2018;</i></p>
<p>Irrigating landscapes after rainfall <i>The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;</i></p>	<p><i>The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision;</i></p>
<p>Serving drinking water <i>The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;</i></p>	<p><i>The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased, during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions;</i></p>



<p>Irrigating medians and parkways <i>The irrigation with potable water of ornamental turf on public street medians;</i></p>	<p><i>As of January 1, 2025, the irrigation of turf on public street medians or publicly owned and maintained landscaped areas between the street and sidewalk, except where:</i> <i>(i) the turf serves a community or neighborhood function, including, but not limited to, recreational uses and civic or community events;</i> <i>(ii) the turf is irrigated incidentally by an irrigation system, the primary purpose of which is the irrigation of trees; or</i> <i>(iii) the turf is irrigated with recycled water through an irrigation system installed prior to January 1, 2018.</i></p>
<p>Hotel and motel towels and linens <i>To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.</i></p>	<p><i>To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.</i></p>
<p>Exemptions <i>To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:</i></p>	<p><i>Notwithstanding subdivision (b)(1), the use of water is not prohibited by this article under the following circumstances:</i> <i>(A) To the extent necessary to address a health and safety need. This may include, but is not limited to, street sweeping and pressure washing of public sidewalks and the use of potable water in a fountain or water feature when required by law to be potable.</i> <i>(B) To the extent necessary to comply with a term or condition in a permit issued by a state or federal agency.</i> <i>(C) When the water is used exclusively for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b).</i></p>

December 18, 2017

VIA EMAIL TO: commentletters@waterboards.ca.gov

Offices of John S. Mills
P.O. Box 1160
Columbia, Ca. 95310

The Honorable Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, Ca. 95814

SUBJECT: Comment letter prohibiting wasteful water use.

Dear Chair Marcus:

I am submitting these comments on behalf of the El Dorado County Water Agency (ECWA) and the Calaveras County Water District (CCWD). ECWA's member agencies include: a) the South Tahoe Public Utilities District; b) the County of El Dorado; c) the Georgetown Divide Public Utilities District and; d) the El Dorado Irrigation District.

My clients provide public water supplies to communities within the County of El Dorado and the County of Calaveras. They individually and cumulatively provide water supplies for municipal and agricultural uses, as well as for hydroelectric generation through the development of water rights - both pre-1914 and post-1914. As water rights holders and public agency suppliers, they have a direct and vested interest in SWRCB determinations of what constitutes a wasteful and unreasonable use of water under the authority of Article X, Section 2, of the California Constitution.

We wish to affirm their strong commitment to the utilization of all water resources for beneficial uses in the most efficient manner that is both practical and cost effective. They also wish for the Board to appreciate and recognize that during the recent severe drought, they exceeded the amount of water required to be saved under the Board's emergency conservation criteria illustrating in a most convincing manner their commitment to the doctrine of beneficial and efficient use of water resources – surface and groundwater.

ECWA and CCWD are progressive, efficient stewards of the water resources they manage, even within the fiscal constraints of economically disadvantaged areas within their service areas. It should be noted that some of the proposed regulations duplicate local water management practices already implemented by these agencies. However, there are differences based upon local conditions (hydrologic, geographic, institutional, weather and fiscal to name a few) and needs that should be recognized in any regulations, based on Article X Section 2 of the California Constitution.

What is or is not a wasteful and unreasonable use of water is a matter not to be taken lightly. There should be a prudent reflection of the guidance of the courts on this issue and recognition as to what use and amount of use is reasonable and what is not. The U.S. Supreme Court¹ found that a 75% loss of applied irrigation water and a 68% loss of conveyed water was not wasteful based upon the facts of the case.

One commonly hears laypersons complain of water being lost through conveyance system leaks, but that water is neither lost, or universally wasted according to California's own courts² which found unlined canal seepage beneficially supported non-indigenous vegetation consistent with Article X, Section 2. It also becomes relevant as to the amount of water being wasted based on specific local conditions, per the 1971 decision *Erickson v. Queen Valley Ranch Co.*³ In this instance the court determined that a conveyance loss amounting to over 80% of the water carried in an irrigation ditch system violated California prohibition against waste and such waste was unreasonable. Therefore, we should consider on a case specific basis, how much water may be being wasted to render a judicious application of constitutional prohibitions.

Let us then consider the total annual statewide savings that would result from the proposed regulations. The total amount of water to be "saved" through the combined application of these regulations – statewide - is just over 12,000 acre-feet per year. According to the Board's own analysis, the annual savings in the San Joaquin hydrologic region would be just 840 acre feet, or about .0467% of the average annual unimpaired runoff of the upper San Joaquin River. In the South Coast region⁴ the annual savings would be approximately one quart of water per person each day. These savings are not representative of large amounts of water alleged to being "wasted" or used "unreasonably" statewide, by hydrologic region, or even by personal consumption standards. By comparison, Californians collectively flush their toilets to the tune of about one hundred forty-two billion, three hundred and fifty million gallons of water a year. That's about four hundred and thirty seven thousand-acre feet per year or about thirty six times the amount of water that would be saved by these regulations each year.

In short, the amount of water that would be saved statewide each year, via the new regulations is small, very small. Instead of invoking waste and unreasonable use sanctions, the Board could strongly recommend, and perhaps legislatively find methods to achieve more significant savings.

The potential, for ongoing defense of one's water rights over perhaps a quart of water per day per person alleged to be wasted, could in itself waste millions of dollars and tens of thousands of hours of work, every year and to what end?

¹ *Colorado v. New Mexico*, 467 U.S. 319, 319 (1984)

² *Cf. Krieger v. Pacific Gas and Electric Co.*, 119 Cal. App. 3d 137 (3d Dist. 1981)

³ 22 Cal.App.3d 578 (1971)

⁴ Population 19,578,208, California State Water Plan Update 2013, Volume 2, Regional Reports, South Coast Region

Some of the uses identified as wasteful, do not recognize either existing case law to the contrary, or the utility of using the identical restriction as a public outreach information tool during times of a true water supply emergency. One example is the proposed restriction on serving customers a glass of water in private or public venues where food and beverages are served. People expect to receive water at these establishments so when they are advised they will have to ask for it, it removes a learning moment for the local water agency to inform their customers and those visiting their service area, that there is a supply shortage. If people get that “don’t ask – don’t get” message every day, even in extremely wet years, they will become inoculated in a fashion to the message to conserve, when there really is a need. The SWRCB runs the risk of “crying wolf” every day with little actual savings and predictable long-term results with consumers.

We therefore urge the Board to not adopt the regulations as written and specifically any universal finding that water use in such small amounts be determined to be individually and cumulatively significant as to the point of invoking the Constitutional provisions regarding waste and unreasonable use. However should the Board choose to move ahead with new regulations we hope that the regulations would follow our suggestions.

The attached edited version of the draft regulations reflects our recommendations of those areas to be deleted as shown in strikeout format. New text is represented as underlined and bold text.

For each section that contains edits we have provided brief reasoning below.

§963(b)(1)(C) Clarifying - Non-paved driveways often have dust abatement water applications during dry months in rural areas. Dust abatement is not a waste of water but rather a protection of air quality and oft times a mitigation measure applied on commercial, recreational and industrial uses as well.

§963(b)(1)(E) Clarifying - Some storm events (occurring during the summer and in isolation) would meet this threshold, but could occur in foothill and mountain areas when soil and vegetation moisture-levels are extremely low, irrespective of small amounts of rain. We also clarify between native grasses and non-native, ornamental grasses. We also provide for exceptions in conditions of certain wildfire conditions as determined by state or local officials.

§963(b)(2)(A) Clarifying - The use of water for cleaning sidewalks for health and safety reasons should also enable non-public sidewalks to be cleaned. Such sanitary protections must be afforded to non-public surfaces inasmuch as sanitation is ownership neutral.

The use of water for maintaining fire resistant wildfire fuel breaks and buffer zones in areas designated as very high or high fire hazard on CAL FIRE Fire Hazard Severity Zone Maps or to maintain areas of defensible space around homes as may be required by local, regional or state fire officials is also a public safety matter.

§963(b)(2)(B) Permits and/or entitlements covered with this exception must include local permits as well. Local permits and entitlements often include provisions that reflect the “teeth” needed to implement General Plan policies, local ordinances, and so on. They are equally as important as state permits.

§963(b)(2)(C) The agricultural use exception language should also include non-commercial agricultural uses. A profit function within a marketplace fails to recognize the growing of agricultural products for home consumption which is functionally as important to the grower for personal use and perhaps more so, than to a commercial grower.

§963(b)(2)(D) New language - Water use necessary to implement final CEQA and/or NEPA mitigation measures should not be classified as wasteful and unreasonable uses of water.

§963(b)(2)(E) New language - Air quality as compromised by dust is a public health concern. The use of water to lessen the impacts of dust should not be classified as wasteful and unreasonable uses of water. It is not uncommon for municipal water – and water taken from fire hydrants – to be used to supply dust abatement programs.

§963(b)(2)(F) New language - Any water use when the purpose is to meet an emergency related need during any local, state or federally declared emergency is by definition not waste or unreasonable use. To the contrary, it is the highest and best use of that water under those conditions at that particular time.

We wish to thank the Board and its staff for providing the opportunity to submit written comments on this initiative. If there are any questions, we would be happy to answer them at your convenience.

Sincerely,

John S. Mills

John S. Mills

ACWA 2018 WATER BONDS SUMMARY

Two water bonds will likely be on the ballot in 2018. The bonds, if approved, would provide more than \$10 billion for drought preparedness projects, flood protection, safe drinking water, implementation of the Sustainable Groundwater Management Act, and other projects that will improve water supply reliability and ecosystem health. Though separate initiatives, both bonds would work together to assist in securing California's water future.

ACWA members are encouraged to support both bonds and educate water customers, local officials and the media on the measures.

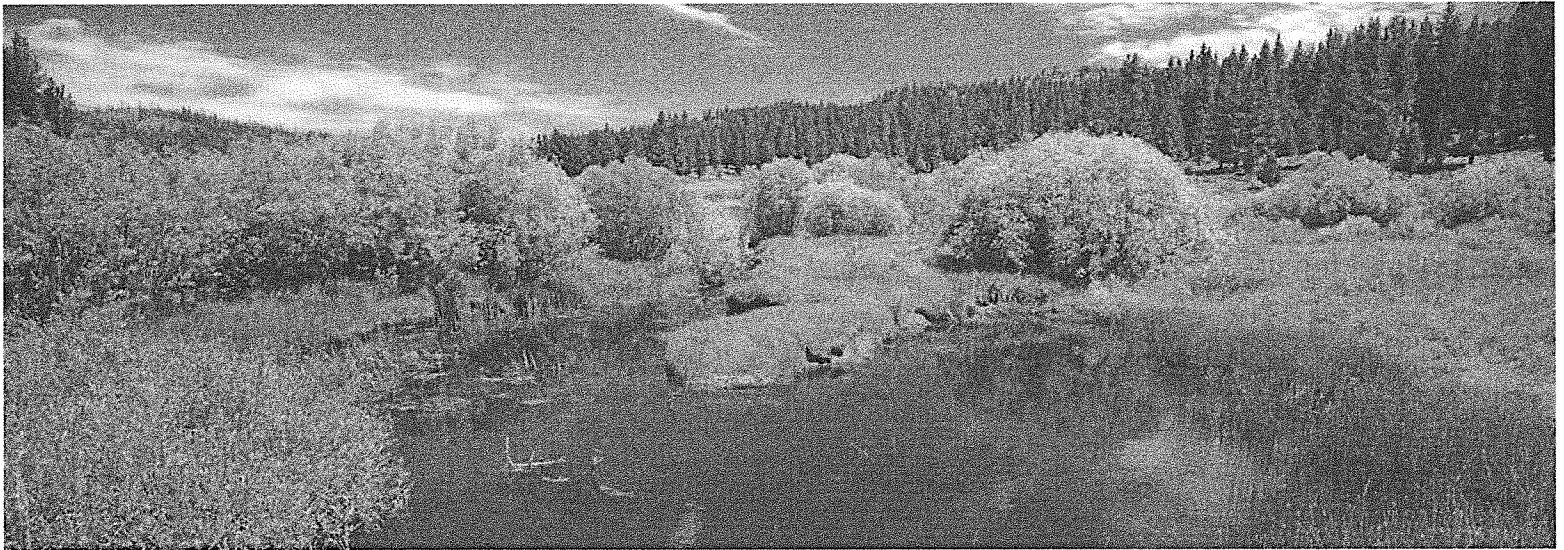
About the Bonds

Proposition 68, a \$4.1 billion bond which will appear on the June 2018 ballot, would provide \$1.6 billion to fund water-related projects, if approved by voters. Additionally, pending the bond's qualification for the November ballot, voters will be asked to approve an \$8.9 billion water bond known as the State Water Supply Infrastructure, Water Conveyance, Ecosystem and Watershed Protection and Restoration, and Drinking Water Protection Act of 2018 (the November bond). If approved by voters, the funds would provide safe drinking water, repairs to major infrastructure, and additional drought solutions.

ACWA's Board of Directors in November voted to support both measures and views the two measures as complementary.

Suggested Steps

- **Support both bonds and educate the public:** Ask your Board of Directors to adopt a resolution in support of the bonds and share information with the public.



TWO COMPLEMENTARY WATER BONDS WILL GO BEFORE VOTERS IN 2018

As securing California's water future becomes increasingly challenging, ensuring funding to mitigate the results of climate change, aging infrastructure, natural disasters and population growth are more important than ever. In response to those challenges, voters will have the opportunity to approve two general obligation bonds in 2018. One measure will appear on the June 2018 ballot, and the other measure will likely appear on the November 2018 ballot.

The two measures are complementary and, if approved, would work together to fund water-related projects intended to provide safe drinking water to disadvantaged communities, improve water supply reliability, help implement the Sustainable Groundwater Management Act (SGMA) and restore watersheds.

In recognition of the need for this funding, the Association of California Water Agencies (ACWA) Board of Directors voted unanimously to support both bonds.

The California Drought, Water, Parks, Coastal Protection, and Outdoor Access for All Act of 2018, will be placed on the June 2018 ballot as Proposition 68. This legislative bond measure resulted from the passage with bipartisan support of SB 5 (de León, 2017). This measure would authorize \$4.1 billion in general obligation bonds to finance water and park projects, climate change preparedness, coastal protection, and outdoor access.

Examples of its water project funding include money for safe drinking water for disadvantaged communities and funding for SGMA implementation.

The State Water Supply Infrastructure, Water Conveyance, Ecosystem and Watershed Protection and Restoration and Drinking Water Protection Act of 2018 (the November bond) is an \$8.9 billion water bond initiative measure. Initiative backers are currently completing the signature collection process to qualify the measure for placement on the November 2018 ballot. This bond would fund a wide range of water projects from safe drinking water projects to SGMA implementation and watershed improvements.

Though two separate measures, both would work together as a complementary pair to appropriate funding to a variety of needed projects. Together, they would provide more than \$10 billion for drought preparedness projects, flood protection, safe drinking water, implementation of the Sustainable Groundwater Management Act, and other projects that will improve water supply reliability and ecosystem health.

The Association of California Water Agencies Board of Directors voted unanimously to support both bonds.

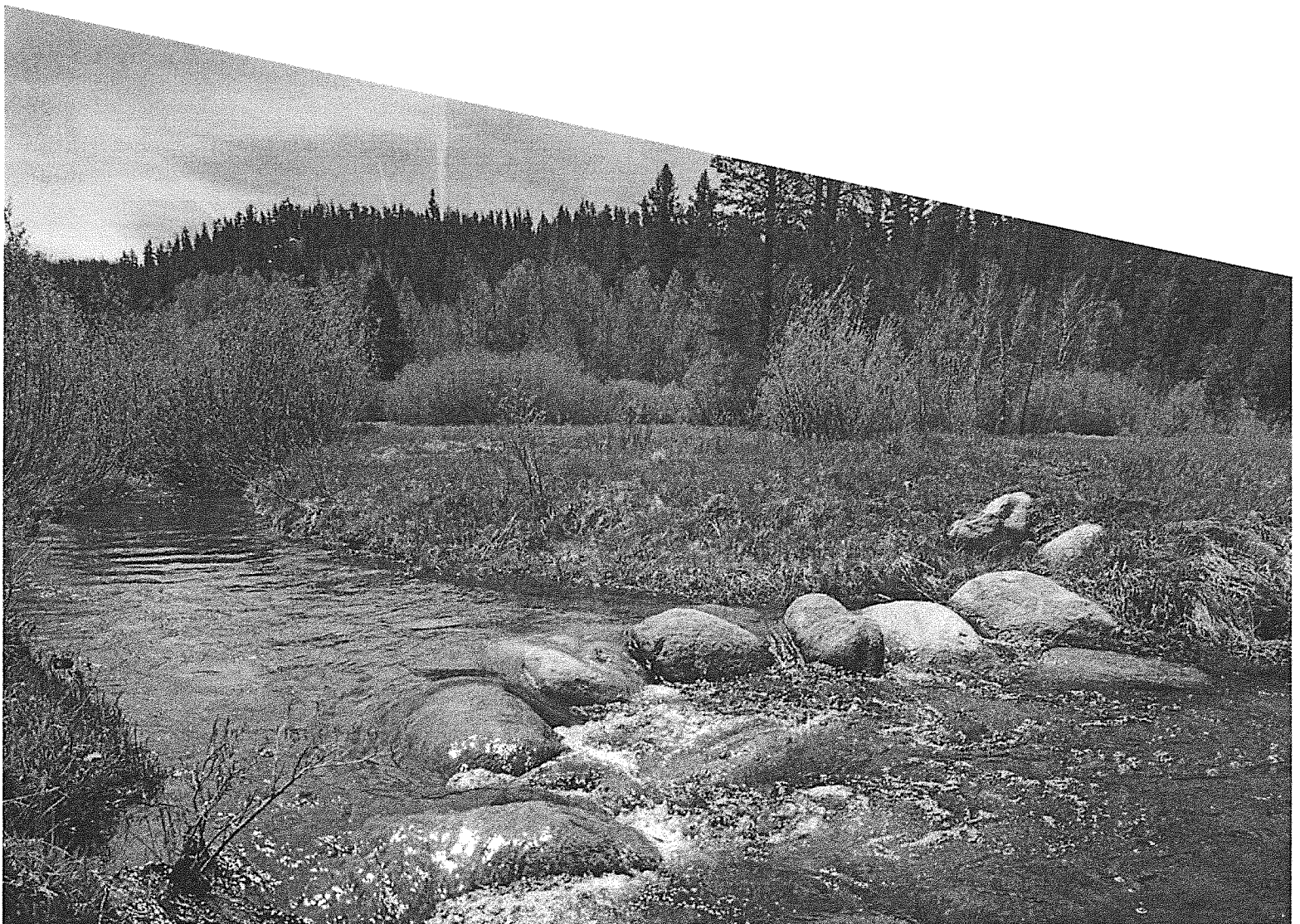
INVESTMENT IN THE CALIFORNIA WATER ACTION PLAN

The California Water Action Plan of 2014, was a major step in the right direction during California's most severe drought in recent history. The multi-prong plan, whose roots stem from ACWA's Statewide Water Action Plan (SWAP), outlines priority actions addressing water conservation, groundwater management, ecological restoration, Delta conveyance solutions, water storage, safe drinking water and more.

Since 2014, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (also known as Proposition 1) has provided much needed investment in water supply reliability and ecosystem health projects and has also leveraged local and federal cost share funds.

Much like Proposition 1, both 2018 bonds, if approved, would result in an influx of local investment. Except for the storage component, pending qualification for bond funds, it's expected most of the money from Proposition 1 will be committed by 2019. As such, Proposition 68 and the November bond will help replenish the soon-to-be depleted funding source.

ACWA believes the two bonds are complementary initiatives that would serve California tremendously and help build upon the successes of Proposition 1. Enactment of the measures would secure further investment in the California Water Action Plan.





FUNDING THE FUTURE OF **SUSTAINABLE GROUNDWATER MANAGEMENT**

The Sustainable Groundwater Management Act of 2014 (SGMA) established a new program for management of California's groundwater. SGMA required the formation of local Groundwater Sustainability Agencies (GSAs). It requires GSAs to develop and implement Groundwater Sustainability Plans (GSPs) that are consistent with Department of Water Resources' GSP regulations. This is a complex program that is very challenging and costly to implement.

The Legislature passed SGMA and the bill (AB 1471, Rendon, 2014) that became Proposition 1 (the 2014 Water Bond) in the same year. Because the bills that comprised SGMA and AB 1471 were being written and

moved through the Legislature at the same time, the funding for SGMA implementation was added late in the bond negotiation process. As a result, Proposition 1 included only \$100 million for SGMA implementation. The Legislature recognized then that more funding was needed. Essentially all of the remaining Proposition 1 SGMA funding is being committed in 2018.

The writers of Proposition 68 and the November bond recognized that additional bond funding was needed for SGMA implementation. Proposition 68 and the November bond would provide \$50 million and \$640 million, respectively, for SGMA implementation.

| Essentially all of the remaining Proposition 1 SGMA funding is being committed in 2018.

WATER BONDS FUNDING COMPARISON

Funding Category	Proposition 68 \$4.1 B (June Ballot)	November Bond \$8.9 B
	Funding in Millions	Funding in Millions
Forest Protection	\$110	\$120
Recycled Water and Desalination	\$80	\$800
Safe Drinking Water (and Wastewater)	\$330	\$750
SGMA Implementation	\$50	\$640
Conservation	\$20	\$365
Flood Management	\$550	\$500
Stormwater	\$100	\$400
Oroville Dam Safety	\$0	\$222
Madera & Friant-Kern Canals Improvements	\$0	\$750

This is a highlight comparison of the funding categories in the two water bonds. This is not a complete list of the funding categories.

This publication is intended to provide general information about how Proposition 68 and the proposed November water bond would affect ACWA member agencies. Readers are encouraged to research the opponents' and proponents' views on both bonds.

FOR MORE INFORMATION

Questions about the two water bonds may be directed to ACWA Deputy Executive Director for Government Relations **Cindy Tuck** at cindy@acwa.com.

Updated: February 6, 2018 / Originally Sent: August 18, 2017

The Honorable Lorena Gonzalez Fletcher
Chair, Assembly Appropriations Committee
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

Re: SB 623 (Monning): Safe Drinking Water Funding/TAX ON WATER
Position: OPPOSE UNLESS AMENDED (As Amended August 21, 2017)

Alameda County Water District	Fallbrook Public Utility District	Rancho California Water District
Amador Water Agency	Foothill Municipal Water District	Regional Water Authority
Anderson-Cottonwood Irrigation District	Georgetown Divide Public Utility District	Richvale Irrigation District
Antelope Valley – East Kern Water Agency	Glenn-Colusa Irrigation District	Rincon del Diablo Municipal Water District
Association of California Water Agencies	Helix Water District	Rio Alto Water District
Bella Vista Water District	Hidden Valley Lake Community Services District	Rio Linda Elverta Community Water District
Brooktrails Township Community Services District	Humboldt Bay Municipal Water District	Rowland Water District
Browns Valley Irrigation District	Humboldt Community Services District	Sacramento Suburban Water District
Calaveras County Water District	Indian Wells Valley Water District	San Diego County Water Authority
CalDesal	Indio Water Authority	San Gabriel Valley Municipal Water District
California Municipal Utilities Association	Irvine Ranch Water District	San Juan Water District
California Special Districts Association	Kern County Water Agency	Santa Fe Irrigation District
Calleguas Municipal Water District	Kinneloa Irrigation District	Santa Margarita Water District
Camrosa Water District	Laguna Beach County Water District	Scotts Valley Water District
Carmichael Water District	Lake Hemet Municipal Water District	Shasta Community Services District
Casitas Municipal Water District	Las Virgenes Municipal Water District	South Coast Water District
Citrus Heights Water District	Long Beach Water Department	South Tahoe Public Utility District
City of Beverly Hills	Malaga County Water District	Southern California Water Committee
City of Fairfield	Mammoth Community Water District	Stockton East Water District
City of Garden Grove	McKinleyville Community Services District	Tahoe City Public Utility District
City of Glendale Water and Power	Merced Irrigation District	Three Valleys Municipal Water District
City of Newport Beach	Mesa Water District	Tulare Irrigation District
City of Oceanside	Mid-Peninsula Water District	Tuolumne Utilities District
City of Redding	Mission Springs Water District	United Water Conservation District
City of Roseville	Mojave Water Agency	Upper San Gabriel Valley Municipal Water District
City of San Diego	Monte Vista Water District	Vallecitos Water District
City of Santa Rosa	Municipal Water District of Orange County	Valley Center Municipal Water District
Coachella Valley Water District	Northern California Water Association	Valley of the Moon Water District
Contra Costa Water District	Olivenhain Municipal Water District	Vista Irrigation District
Crescenta Valley Water District	Orange County Water District	Walnut Valley Water District
Cucamonga Valley Water District	Orchard Dale Water District	Westlands Water District
Del Paso Manor Water District	Otay Water District	Western Canal Water District
Desert Water Agency	Padre Dam Municipal Water District	Western Municipal Water District
Dublin San Ramon Services District	Palm Ranch Irrigation District	Wheeler Ridge-Maricopa Water Storage District
East Orange County Water District	Palmdale Water District	Yolo County Flood Control Water Conservation District
East Valley Water District	Paradise Irrigation District	Yorba Linda Water District
Eastern Municipal Water District	Pico Water District	Yuba County Water Agency
El Dorado Irrigation District	Placer County Water Agency	
El Toro Water District	Quartz Hill Water District	
Elsinore Valley Municipal Water District	Rainbow Municipal Water District	
Fair Oaks Water District		

Dear Chair Gonzalez Fletcher:

The above-listed organizations are OPPOSED UNLESS AMENDED to SB 623 (Monning) and **OPPOSE THE TAX ON WATER BEING ADDED TO SB 623.**

This 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.

As the Legislature departed Sacramento for Summer Recess, the intended funding sources for SB 623 had yet to be identified in the bill. The Author is adding the funding sources just prior to the Assembly Appropriations Committee voting on the measure. Senator Monning is adding two types of funding: 1) fees related to fertilizer and dairies to address nitrate contamination; and 2) a state-mandated tax on water that the bill would require local water agencies to assess on their local ratepayers and send to Sacramento. The above-listed organizations oppose the proposal for a tax on water.

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

- 1) **Requiring local water agencies and cities across the state to impose a tax on water for the State of California is highly problematic and is not the appropriate response to the problem;**
- 2) **State law sets forth a policy of a human right to water for human consumption that is safe, clean, affordable and accessible. It is not sound policy to tax something that is a human right;**
- 3) **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:

FUNDING SOLUTION:

- 1) **Safe Drinking Water State Revolving Fund (SRF)** – this federal funding can be used to fund capital costs;
- 2) **General Obligation (G.O.) Bonds** – SB 5 (de León) proposes \$175 million for safe drinking water and two new bond initiatives have been filed with the Attorney General which both propose \$500 million for safe drinking water. All of these bonds propose to prioritize the drinking water funding to disadvantaged communities (DACs);
- 3) **Ag Funding** – the nitrate-related fee(s) that is expected to be added to the bill can 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 a funding source instead of a tax on 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 SB 623 unless the bill does not include a tax on water and these concerns are addressed.

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.

cc: The Honorable William W. Monning
Honorable Members, Assembly Appropriations Committee
Ms. Kathy Smith, Senior Legislative Consultant, Office of Senator William W. Monning
Ms. Jennifer Galehouse, Deputy Chief Consultant, Assembly Appropriations Committee
Mr. Jared Yoshiki, Consultant, Assembly Republican Caucus

Attachment

SB 623 (MONNING) AMENDMENTS SUGGESTED BY WATER AGENCIES AND WATER ORGANIZATIONS LISTED ON THIS LETTER

- 1) Do NOT include a tax on water (i.e., the proposed drinking water “fee.”) Instead, the bill should propose General Fund funding as the non-nitrate funding source in the bill.
- 2) Exclude capital costs as an eligible funding category and focus on funding operation and maintenance (O&M) costs, which are difficult to fund through G.O. bonds and cannot be funded with Safe Drinking Water State Revolving Fund (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 individual 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. The proposed language in Section 116769 references: A) “systems and populations potentially in need of assistance”; and B) 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 SWRCB’s AB 401 implementation process. The language should be deleted from Section 116769 which would include in the needs assessment all community water systems 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 SWRCB is currently developing a plan for a low-income water rate assistance program pursuant to AB 401 (Dodd, 2015), and there many questions being raised about how affordability thresholds should be determined.
- 7) Clarify what is intended by the proposed authority for the SWRCB to take incidental action as may be appropriate for adequate administration and operation of the fund. Instead of simply including this rather vague provision, the bill should be specific as to what this proposed authority is intended to cover.

WE CAN SOLVE IT WITHOUT A **DRINKING WATER TAX**



February 2018

Facts on Proposed State Tax on Drinking Water

ACWA strongly opposes a proposed state tax on Californian's drinking water. The proposal is being advanced through SB 623 by Sen. William Monning (D-Carmel), a two-year bill introduced in 2017, and a Brown Administration budget trailer bill related to safe drinking water.

ACWA is committed to developing effective solutions and advancing appropriate funding strategies to address this important public health and social issue. However, an effort in the Legislature to impose a state tax on drinking water is **NOT** the right funding solution.

Background on Drinking Water Tax Proposals

In March 2017, Sen. Monning introduced SB 623, a bill aimed at funding drinking water solutions for disadvantaged communities. The bill was amended at various times throughout the year, however, language proposing the tax on drinking water was added to the bill on Aug. 21 – just two days before the bill was scheduled to be heard in the Assembly Appropriations Committee.

After extensive advocacy and an unprecedented outreach campaign by ACWA and its members, SB 623 was made a two-year bill on Sept 1, 2017. The Assembly Appropriations Committee referred the bill to the Assembly Rules Committee, where it remains today. The Assembly Rules Committee could refer the bill to one or more policy committees, or move the bill directly to the Assembly floor at any time.

In January, Gov. Jerry Brown released his proposed 2018-'19 budget, and the summary document signaled that the administration will be advancing statutory language consistent with the framework of SB 623. The California Department of Finance posted the budget trailer bill language on Feb. 1 that is essentially the SB 623 language with some changes that do not change ACWA's position. ACWA's State Legislative Committee took an oppose-unless-amended position on the budget trailer bill on Feb. 9, 2018.

If the Brown Administration is not successful with the budget trailer bill, Sen. Monning will likely try to move SB 623. Regardless of whether the vehicle is a budget trailer bill or a policy bill, a proposal for a new tax requires a two-thirds majority vote of both the Assembly and the Senate.

A Tax on Drinking Water is NOT the Solution

Local, public water agencies are committed to providing safe and reliable water and support the intent of the bill. However, taxing Californians' drinking water is not the solution. ACWA maintains an oppose-unless-amended position for several reasons, including:

- The state should not tax something that is essential to life. California does not currently tax water or essential food products. The public does not support the precedent of starting to tax resources that are essential to life.
- The cost of living in California is already too high. Californians do not support a new tax on drinking water.
- A tax on drinking water would work against the goal of keeping water affordable for Californians.
- This new law would turn local water agencies into tax collectors for the state of California.

A Better Approach

ACWA believes that this important public health and social issue requires focused state leadership. A more appropriate way to fund the solution for this state social issue is a package of funds comprised of ongoing federal safe drinking water funds, voter-approved general obligation bond funds, the agricultural assessments related to nitrate in groundwater proposed in the budget trailer bill and SB 623 and dollars from the state general fund.

The state appropriately uses its general fund to pay for other important programs and social issues that have been identified as state priorities – including public health, education, housing, disability services, and other programs that serve and protect residents and communities in need.

More Information

Additional information about the proposed drinking water tax and ACWA's advocacy efforts has been posted on ACWA's website at www.acwa.com/no-water-tax.

ACWA is a statewide association of public agencies whose more than 440 members are responsible for about 90% of the water delivered in California. For more information, visit www.acwa.com.