GOVERNMENT AFFAIRS AND COMMUNITY OUTREACH COMMITTEE MEETING AND SPECIAL MEETING OF THE BOARD OF DIRECTORS

Tuesday, February 13, 2018
5:30 p.m.

Committee Members:
Bryan Urias, Chair
Tony R. Fellow Vice-Chair

Call-In: (877) 411-9748
Participant Code: 8736969

UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT

602 E. Huntington Drive, Suite B
Monrovia, CA 91016

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*The Government Affairs and Community Outreach Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Government Affairs and Community Outreach Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the Committee as advisory to the Board, members of the Board who are not assigned to the Government Affairs and Community Outreach Committee will not vote on matters before the Committee.

Communications
1. Call to Order 2. Public Comment
Discussion/Action
3. Legislative Update a. Washington DC b. Sacramento 4. Review of Legislative Positions. *(Staff memorandum attached.)*
Oral Reports
5. FY 2018/19 Proposed Community Outreach Plan and Budget.
Other Matters
6.
Adjournment

Next Meeting: March 8, 2018 at 5:30 p.m.

American Disabilities Act Compliance

Government Code Section 54954.2(a)

To request special assistance to participate in this meeting, please contact the Upper District office at (626) 443-2297 at least 24 hours prior to meeting.

MEMORANDUM

UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT

ITEM 4.

DATE: February 8, 2018

TO: Government Affairs and Community Outreach Committee and Board of Directors

FROM: Interim General Manager

SUBJECT: Federal and State Legislative Update

Recommendation
Approve staff recommendations for state bill positions which are consistent with Upper District's 2017-18 Legislative Policy principles adopted by the Board in December 2016.

Washington DC Update
(Please see attached memo for DC update from BB&K and bill matrix)

Sacramento Update

Budget Trailer Bill
The Administration has released its first proposed budget trailer bill - the Safe and Affordable Drinking Water Act. The proposal appears to align with the proposed amendments to SB 623 (Monning) establishing a similar fund through a fertilizer and water tax to help disadvantaged communities secure access to safe drinking water, while also ensuring the long-term sustainability of drinking water service and infrastructure. Upper District has not taken a formal position on SB 623. ACWA currently has an Oppose Unless Amended position on SB 623. (Please see attached budget trailer bill summary from ACWA).

Long Term Conservation Framework and Drought Contingency Planning
The authors of SB 606 and AB 1668 continue to work with stakeholder groups on amendments on the remaining policy issues related to variances, outdoor conservation standards as it pertains to MWELO and CII and reporting timeline. The recycled water credit remains at 10%. A round of amendments is expected to address some of the remaining concerns. Once the amendments are in print, further review of the bills will take place and will be brought before this committee. The Governor remains committed to this issue as a policy priority for 2018. Currently, Upper District has a "Support" position on both SB 606 (Hertzberg/Skinner) and AB 1668 (Friedman).

Bill Summaries & Positions

AB 1876 (Frazier) Delta Stewardship Council
Introduced: January 16, 2018
Status: 1/29/18; Water, Parks & Wildlife Committee

Summary: Existing law, the Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council, which consists of 7 members, and requires the council to develop, adopt, and commence

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implementation of a comprehensive management plan for the Delta, known as the Delta Plan.

This bill would increase the membership of the council to 13 members, including 11 voting members and 2 nonvoting members, as specified. By imposing new duties upon local officials to appoint new members to the council, the bill would impose a state-mandated local program.

Analysis: AB 1876 is identical to Assemblymember Frazier's bill from 2017, AB 792 which died in committee. The bill would alter the makeup of the Council so that it is dominated by in-Delta interests which could create a potential bias against projects that have a statewide benefit. The current appointment format for the Council, as established by the Legislature in 2009, reflects the statewide interests of its actions, as nearly 95 percent of all Californians get some or all of their water from the Delta watershed.
STAFF RECOMMENDATION: OPPOSE

AB 2050 (Caballero) Small System Water Authority Act of 2018
Introduced: February 6, 2018; pending referral
Sponsors: Eastern Municipal Water District and California Municipal Utilities Association

Summary: Existing law, the California Safe Drinking Water Act, provides for the operation of public water systems and imposes on the State Water Resources Control Board various responsibilities and duties. The act authorizes the state board to order consolidation with a receiving water system where a public water system or a state small water system, serving a disadvantaged community, as defined, consistently fails to provide an adequate supply of safe drinking water. The act, if consolidation is either not appropriate or not technically and economically feasible, authorizes the state board to contract with an administrator to provide administrative and managerial services to designated public water systems and to order the designated public water system to accept administrative and managerial services, as specified. Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts, except as specified.

Analysis: This bill would create the Small System Water Authority Act of 2018 authorizing the creation of small system water authorities that will have powers to absorb, improve, and competently operate noncompliant public water systems. The bill would define various terms and require a change in organization to be carried out as set forth in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. The bill would state the intent of the Legislature to enact legislation to protect public health that would require the board to provide notice to a water agency that is chronically providing contaminated drinking water, require the agency to develop a plan, as specified, and would subject to a merger with other agencies serving contaminated water an agency that is not able to develop a plan to correct the serving of contaminated water, the merger of which would create a small system water authority.
STAFF RECOMMENDATION: WATCH

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To: Upper San Gabriel Valley Municipal Water District Government Affairs and Community Outreach Committee
From: John Freshman and Ana Schwab
Date: February 3, 2018
RE: Federal Report

Federal Budget

On January 22nd, President Trump signed a stopgap measure that put an end to a short government shutdown. That stopgap will expire on February 8, 2018. There is talk that the House will propose another continuing resolution which would fund the government through March 22, 2018. There is a belief that Congressional leaders will use the time between now and March 22nd to finalize a budget deal. To secure a budget deal, Senate Republicans will require some Democrats to vote with them. Earlier in the process the Senate Democrats were calling for equal increases in defense and domestic spending and in his State of the Union Address President Trump called for an end to defense sequestration. These two factors make it much more difficult for democrats and republicans to find common ground on a budget but they are still working towards that goal. If Congress is able to reach a budget deal it will set the spending levels for FY2018 and the 12 appropriation bills at the appropriate caps could be passed by Congress.

Congress's desire to pass a continuing resolution runs past the estimated deadline for Congress to increase the federal borrowing limit which is reported to run out in the first half of March.

Simultaneous to all of this, Congress is needing to begin the process for FY19 funding. Budget Chairman Steve Womack has said that he is considering skilling a FY19 budget resolution and instead focusing on trying to change the budget process to prevent further delays and with the hope of streamlining and speeding up the process.

Infrastructure

We published an analysis of President's Trumps State of the Union and the leaked infrastructure memo, you can access it by clicking here. It is also pasted below for your convenience.

In President Donald Trump's first State of the Union Address last week, he touched on infrastructure by discussing a proposed plan to direct at least $1.5 trillion toward infrastructure investment over the next decade. To reach this total, federal funds will be partnered with state and local investment and, where appropriate, private investments, he said. Half the funds will be dedicated to new state and local investments.

The administration intends, furthermore, to empower state and local authorities to prioritize infrastructure projects based on their communities' needs. Additionally, through an infrastructure plan, Trump seeks to eliminate redundancies and inefficiencies in the regulatory and permitting

processes affecting infrastructure construction throughout the country, including reducing the federal permitting process to two years — at most. Trump stated that a quarter of the package will be dedicated to addressing rural infrastructure needs as determined by state and local leaders of those communities.

We know from the Address, and a leaked memo on infrastructure from the White House, that the plan will apply 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, and broadband and other high-speed data and communication conduits.

The Transformative Projects Program will provide an avenue to fund projects that the private sector is hesitant to get behind due to the risk involved in deploying new and innovative technologies. The funding will be provided for planning, construction, deployment and evaluation of demonstration trials. The Rural Infrastructure Program will encourage investment to enable movement of freight, reliable transportation, broadband, water, water resources, and power and electricity.

With regard to water infrastructure, the memo suggests that financing would:

- Authorize a Clean Water State Revolving Fund for privately owned public-purpose treatment works,
- Expand EPA's Water Infrastructure Finance and Innovation Act's authorization to include flood mitigation, navigation and water supply,
- Eliminate the requirement under WIFIA for borrowers to be community water systems,
- Authorize Brownfield rehabilitation and clean-up of Superfund sites under WIFIA,
- Reduce rating agency opinions from two to one for all borrowers,
- Provide EPA authority to waive the springing lien in certain lending situations,
- Increase the base level of administrative funding authorized to ensure EPA has sufficient funding to operate the WIFIA program,
- Remove the restriction on the ability to reimburse costs incurred prior to a loan closing under WIFIA and
- Expand the WIFIA program to authorize eligibility for credit assistance for water systems acquisitions and restructurings.

The plan would also expand the Army Corps of Engineers' authority to engage in long-term contracts and accept contributed and advanced funds; retain recreation user fees for operation and maintenance of public facilities; amend the Water Resources Redevelopment Act to allow for waiver of cost limits and expand WIFIA to include federal de-authorized water resource projects.

The infrastructure plan would increase the capacity of existing federal loan programs including TIFIA, WIFIA, USDA Rural Utilities Lending and the Railroad Rehabilitation and Improvement Financing. The plan would create two new funds: the Interior Maintenance Fund and the Federal Capital Financing Fund. The Interior Maintenance Fund is said to be made up of revenue from mineral and energy development on federal lands and waters. The Federal Capital Financing Fund will create a funding mechanism similar to a capital budget and establish a mandatory revolving fund to finance purchases of federally owned civilian real property. Lastly, the plan would amend the United States Code on Private Activity Bonds to allow for more categories of public-purpose infrastructure. By doing so, Trump hopes to encourage more private investment.

At this time, it is unclear when Congress will take up the plan. Additionally, how Trump's vision will couple with Congress' and the administrative agencies' current direction is unknown.

In the coming days, Congress will show what appetite it has for taking up Trump's call for an infrastructure plan, and how its vision may differ from his. It will be very important to monitor and engage with that process, both to share your community's vision and needs for the future of infrastructure, and to ensure existing programs upon which you rely are preserved. Other interest groups will surely do the same, if they are not already, and local governments and special districts need to be active participants to protect their interests. Local public leaders must participate to ensure that the policies proposed will benefit and empower — rather than constrain and sideline — local governments and their constituencies.

Legislation Recently Introduced
Please let us know if you would like us to track any of the below for you

HR 4492 – Water Infrastructure Finance and Innovation Reauthorization Act of 2017
Rep. Brian Mast (R-FL)

To reauthorize and amend the Water Infrastructure Finance and Innovation Act of 2014.

S. 2329 – Water Infrastructure Finance and Innovation Reauthorization Act of 2018
Sen. John Hoeven (R-ND)

To reauthorize and amend the Water Infrastructure Finance and Innovation Act of 2014, and for other purposes.

H.R. 4902 – SRF WIN Act
Rep. John Katko (R-NY)

To amend the Water Infrastructure Finance and Innovation Act of 2014 to provide to State infrastructure financing authorities additional opportunities to receive loans under that Act to support drinking water and clean water State revolving funds to deliver water infrastructure to communities across the United States, and for other purposes.

S. 2364 – SRF WIN Act
Sen. John Boozman (R-AR)

To amend the Water Infrastructure Finance and Innovation Act of 2014 to provide to State infrastructure financing authorities additional opportunities to receive loans under that Act to support drinking water and clean water State revolving funds to deliver water infrastructure to communities across the United States, and for other purposes.

H.R. 904 – Buy America Improvement Act of 2017
Rep. Daniel Lipinski (D-IL)

The bill amends the Safe Drinking Water Act, the Department of Agriculture Reorganization Act of 1994, the Housing and Community Development Act of 1974, the Rural Water Supply Act of 2006, the Federal Water Pollution Control Act (commonly known as the Clean Water Act), and the Railroad Revitalization and Regulatory Reform Act of 1976 to add domestic source requirements, and require public notice and comment before any waivers of such requirements, for projects supported by:

- the Environmental Protection Agency's grants to state drinking water treatment or water pollution control revolving loan funds;
- the Rural Utilities Service;
- the Department of Housing and Urban Development;
- the Department of the Interior for the construction of treatment works for rural water projects; or
- the FRA.

H.R. 434 – New WATER Act
Rep. Jeff Denham (R-CA)

This bill authorizes the Department of the Interior, for 15 years after this bill's enactment, to provide financial assistance, such as secured loans or loan guarantees, to entities that contract under federal reclamation law to carry out water projects within the 17 western states served by the Bureau of Reclamation, other states where the Bureau is authorized to provide project assistance, Alaska, and Hawaii. Projects eligible for assistance include:

- non-federal water infrastructure projects that would contribute to a safe, adequate water supply for domestic, agricultural, environmental, or municipal and industrial use;
- projects for enhanced energy efficiency in the operation of a water system;
- projects for accelerated repair and replacement of aging water distribution facilities;
- brackish or sea water desalination projects; and

- the acquisition of real property or an interest therein for water storage, reclaimed or recycled water, or wastewater that is integral to such a project.

To be eligible for assistance, a project must be deemed creditworthy. Eligible project costs must be reasonably anticipated to be at least $20 million.

Interior shall establish criteria for project selection and may enter into a master credit agreement for projects secured by a common security pledge on terms acceptable to it.

Interior may enter into agreements with obligors to make secured loans to finance or refinance eligible project costs or to refinance long-term project obligations or federal credit instruments to provide additional funding capacity for the completion, enhancement, or expansion of a project.

The total amount of federal assistance for a project shall not exceed 80% of its total cost.

Interior shall establish: (1) a repayment schedule for each secured loan based on the useful life of the project, and (2) a uniform system to service the federal credit instruments made available under this bill.

Interior shall report biennially on the financial performance of the projects that receive assistance under this bill.

H.R. 2329 – Nation Building Here at Home Act of 2017

Rep. Brian Higgins (D-NY)

This bill directs the Department of Transportation (DOT) to establish a transformational infrastructure competitive grant program to award grants to state and local governments, transit agencies, and port authorities for certain public transportation projects (including water infrastructure projects) that will significantly impact a metropolitan area, a region, or all of the United States.

The federal share of project costs is 100%.

The iron, steel, and manufactured goods used in projects funded under this bill must have been produced in the United States, except in specified circumstances.

DOT shall coordinate with relevant federal departments and agencies to ensure that environmental reviews are made in a manner that accelerates delivery of such projects.

The Department of the Treasury shall establish a Nation Building Here at Home Financing Initiative.

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H.R. 4812 – 21st Century Buy American Act
Rep. David Cicilline (D-RI)

To amend chapter 83 of title 41, United States Code (popularly referred to as the Buy American Act) and certain other laws with respect to certain waivers under those laws, to provide greater transparency regarding exceptions to domestic sourcing requirements, and for other purposes.

H.R. 2347 – Regional Infrastructure Accelerator Act of 2017
Rep. Norma Torres (D-CA)

This bill authorizes the Department of the Treasury to establish a regional infrastructure accelerator (RIA) program to provide initial and subsequent grants to RIAs to facilitate investment in, and long-term financing of, economically viable covered infrastructure projects.

An "RIA" is defined as a multi-jurisdictional organization dedicated to providing technical assistance, financing options, and resources for covered infrastructure projects within the represented jurisdictions. A "covered infrastructure project" is defined as a project sponsored by a state, local, or regional public entity that involves the construction, consolidation, alteration, or repair of rail, bus, or public transportation facilities or equipment, highway facilities (including bridges and tunnels), airports, port or marine facilities and equipment, pipelines, inland waterways, intermodal facilities and equipment, water treatment and solid waste disposal facilities, storm water management systems, dams and levees, and facilities or equipment for energy transmission, distribution, or storage.

From applications received, Treasury shall select five RIAs from geographically diverse regions to receive initial grants. An RIA shall use such a grant to:

- assess regional approaches for advancing innovative investment in covered infrastructure projects;
- develop strategies for transparency in the analysis of such projects to ensure protection of the public interest, for the bundling of smaller scale and rural projects into larger covered infrastructure projects to facilitate transactions and investments, and for reducing transaction costs associated with investments in such projects;
- facilitate the creation of a catalog of covered infrastructure projects available for investment; and
- analyze and apply project procurement methods for covered infrastructure projects.

Treasury shall review final reports submitted by RIAs and select four of them to receive subsequent grants. A selected RIA shall use such subsequent grant to make subgrants to public entities for costs associated with a covered infrastructure project.

S. 2346 - To establish an innovative water infrastructure workforce development program, and for other purposes.

Sen. Cory Booker (D-NJ)

Innovative Water Infrastructure Workforce Development Program – Grants administered by the EPA to assist with the development of innovative activities relating to workforce development in the water utility sector. Grants may be used for targeted internship, apprenticeship, preapprenticeship, and post-secondary bridge programs for mission-critical trades, in collaboration with labor organizations, community colleges, and other training and education institutions that provide: on the job training; soft and hard skills development; test preparation for skilled trade apprenticeships; or other support services to facilitate post- secondary success. The grants may also be used for regional industry and workforce development collaborations to identify water utility employment needs, map existing career pathways, support the development of curricula, facilitate the sharing of resources, and coordinate candidate development, staff preparedness efforts, and activities that engage and support: water utilities employers; education and training institutions; local community-based organizations; public workforce agencies; and other related stakeholders.

BUDGET TRAILER BILL:

Budget trailer bill: Safe and Affordable Drinking Water Act

Author: Brown Administration (Based on SB 623 (Monning))	**Introduced:** 02-01-18	**Amended:**
Sponsor:	**Supporters:**	**Opposition:**
Assigned to: Cindy Tuck/Melissa Sparks		**Current Position:** NYC (Position on SB 623: Oppose-Unless-Amended)

Background: Budget trailer bills (BTBs) are introduced by the Governor's Administration each year to accompany the Governor's proposed State Budget. The State Legislative Committee typically does not review BTBs, which often surface with very little time available before action by the Budget Committee's relevant subcommittees. ACWA typically advocates on the Budget and BTBs as they relate to an existing ACWA position on a specific issue area. This BTB is a unique case, because it is an amended version of a top priority policy bill on which ACWA has been actively engaged for almost a year – SB 623 (Monning, D-Carmel). **The BTB is very similar to SB 623, and the comment section further below highlights significant changes.** (See the section entitled "New Language in the Budget Trailer Bill.")

Because this BTB includes clean-up changes to the language in SB 623, ACWA staff is analyzing the BTB for the State Legislative Committee so that the Committee can be aware of the changes in the proposal and the resulting content of the BTB. The changes do not delete the proposed tax on drinking water - ACWA's most significant concern with SB 623.

Summary: Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board (State Water Board) to administer provisions relating to the regulation of drinking water for the protection of public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Board for the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services.

The BTB would establish the Safe and Affordable Drinking Water Fund (the Fund) in the State Treasury and provide that all of the moneys in the Fund would be continuously appropriated to the State Water Board. The funding mechanisms would include: 1) agricultural fees in the context of nitrate contamination in groundwater; and 2) a State tax collected by local water

agencies on drinking water provided to residential, business, industrial and governmental customers. Following is a detailed summary of the bill.

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 that 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. <u>Uses of the Fund</u>

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. <u>CWS Administrative Cost Reimbursement (for Collection of Drinking Water Tax)</u>

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 manufacturers, 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.

Summary of Amendments: N/A

Staff Comments:

1. <u>Introduction and Background Information</u>

This budget trailer bill (BTB) is essentially a cleaned-up version of SB 623 (Monning, D-Carmel). SB 623, the bill on which this BTB is based, is a two-year bill. The measure is 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 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 some funding from the State General Fund.

From discussions with the proponents (e.g., Community Water Center), we understand that SB 623 (and now the BTB) is intended to generate $140 million per year. The proponents have indicated last year that the breakdown was 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.

SB 623 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. We expect that SB 623 would be amended to clean it up before any vote on it.

On Wednesday, January 10, Governor Jerry Brown issued his proposed budget for Fiscal Year 2018-19. In the summary of the proposed budget, the Administration states that it is **"proposing statutory language, consistent with the policy framework of SB 623 (...)."** That policy framework includes creation of the Fund, requirements for the funding mechanisms referenced above and enforcement relief for agricultural operations that meet certain conditions.

As promised on a call that ACWA participated in on January 10 with the Secretaries of the California Natural Resources Agency, Cal/EPA and the California Department of Food and Agriculture regarding the proposed budget, the Department of Finance posted the proposed statutory language on February 1. The statutory language is the BTB that is the subject of this analysis. The BTB is essentially SB 623 with some amendments that do not address ACWA's concerns.

SB 623 still remains an option to the proponents if the Administration's effort to move the BTB is unsuccessful. Both bills require a two-thirds vote on the Assembly and Senate floors because of the proposed tax on drinking water.

2. Safe Drinking Water for All Communities

Since Governor Brown came into office in 2011, safe drinking water for DACs has been a priority for the Brown Administration. Since 2011, there has been a significant focus on nitrate contamination in DACs in some areas of the Tulare Lake Basin and the Salinas Valley. ACWA actively participated in the Governor's Drinking Water Stakeholder Group which focused on nitrate contamination in those two areas. The focus has since broadened to include other contaminants in drinking water in some DACs, such as naturally-occurring arsenic. The Brown Administration's *California Water Action Plan* states that "The administration will work with the Legislature to establish a stable, long-term funding source for provision of safe drinking water and secure wastewater systems for disadvantaged communities."

Proposition 1, which ACWA negotiated and supported in 2014, included $520 million for drinking water and wastewater projects, with priority for projects in DACs. Generally, General Obligation bond funds may be used for capital investments – not for costs associated with long-term operations and maintenance (O&M). Funding of the O&M costs in DACs without access to safe drinking water has been a real challenge.

3. ACWA's Policy on Drinking Water for Disadvantaged Communities

The ACWA Board of Directors decided that one of the policy priorities for 2017 was leading on the development and advancement of drinking water solutions for DACs. The Board approved ACWA's *Disadvantaged Communities Drinking Water Action Plan* in March of 2017. ACWA's DAC Drinking Water Initiative Task Force developed the plan. One element of the plan is working with the State Water Board to improve the needs assessment. The Task Force also noted that the funding issue is really a social issue that must be addressed, and the General Fund would be an appropriate funding source.

4. State Water Board Needs Assessment

At the February 8, 2017 workshop, State Water Board staff shared a preliminary estimate of $45 million per year as the cost to solve the O&M problem for public water systems (PWSs). (That estimate included capital costs, and Chair Marcus directed staff to separate out the capital costs from the O&M costs. This estimate did **not** include annual administrative costs.) The State Water Board staff posted information regarding the assumptions behind this estimate and the associated lists of systems. ACWA's DAC Drinking Water Initiative Task Force met with State Water Board staff regarding the needs assessment on April 21, 2017.

On April 28, 2017, State Water Board staff shared via an e-mail to ACWA a second estimate:

Annualized O&M Costs	$43.17 million per year
Annualized Capital Costs	$18.26 million per year
Total	$61.45 million per year

The State Water Board's document indicates that "Capital costs (...) could be funded fully or in part by different funding sources (bonds or State Revolving Fund) and could be financed over time." The $43.17 million per year O&M total for PWS includes $34.33 million per year for non-nitrate contaminants (e.g., arsenic) and $8.73 million per year for nitrate contamination.

5. New Language in the Budget Trailer Bill

As noted above, the BTB is very similar to SB 623 and the mockup of SB 623 that the proponents were circulating last fall. Following are some notes regarding differences between the BTB and the in-print version of SB 623.

1) **Confined Animals:** The BTB includes the new proposed fee on "confined animal facilities excluding dairies." The proponents are going beyond the Dairy Fee because of concerns that the agricultural fees as proposed in SB 623 would likely not generate $30 million per year.

2) **PWS/CWS:** SB 623 would have PWSs collect the tax on drinking water. The BTB would instead have "community water systems" (CWSs) collect the tax on drinking water. A PWS is a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. CWSs are a large subset of PWSs. (A CWS is a PWS that serves at least 15 service connections used by year-long residents or regularly serves at least 25 year-long residents of the area served by the system.) This change will have the tax apply to year-long residents.

3) **APA:** The BTB would provide that the State Water Board's adoption of the fund implementation plan and policy handbook would not be subject to the Administrative Procedure Act (the APA).

4) **SWRCB Liability Provision:** As noted in the summary, the BTB at Page 13 would prohibit the State Water Board or an employee of the Board from being held liable for any act that is "necessary to carry out the purposes of this chapter." The Chapter in question is proposed Chapter 4.6 regarding implementation of Fund, including the proposed tax on drinking water.

6. Proposed Tax on Drinking Water

ACWA members have many concerns about the proposed tax on drinking water, including:

1) It does not make sense to tax something that is essential to life;

2) Putting a tax on drinking water works against drinking water affordability;

3) It does not make sense to have local drinking water agencies become a tax collector for the state; and

4) It would set the precedent for a state tax on water.

On the precedent issue, as one example, in 2011, ACWA opposed SB 34 (Simitian) which proposed a tax on urban water and a tax on agricultural water – with the funding being proposed for multiple purposes. SB 34 did not pass. The BTB and SB 623 would set a precedent for a state tax on water.

Also, in the AB 401 (Dodd, 2015) implementation process, State Water Board staff have talked about using a tax on water to subsidize water costs for one third of the households in California. Some are talking about a tax on water to fund watershed management in the Sierra. Department of Water Resources staff is floating a tax on water of up to $10 per month as a potential financing option in current California Water Plan update discussions.

As discussed below, ACWA is suggesting an alternative to the tax on drinking water. The tax is not the right solution. The proposal for the tax needs to be deleted.

7. ACWA's Suggested Funding Package

Instead of the state placing a tax on something that is essential to life, ACWA is advocating for the following funding package solution as the alternative approach (updated here to reflect the new CAFED fee):

1) **Safe Drinking Water State Revolving Fund (SRF)** – this federal funding can be used to fund capital costs;

2) **General Obligation (G.O.) Bonds** – Proposition 68 (which went through the Legislature with bipartisan support as SB 5 (de León)) proposes $250 million for safe drinking water and clean water. Another bond, which is expected to be on the November 2018 ballot, proposes $500 million for safe drinking water. Both of these bonds propose to prioritize the drinking water funding to DACs;

3) **Fertilizer, Dairy, and Confined Animal Facilities Excluding Dairies (Nitrate) Fees** – the nitrate-related fee(s) 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 community water systems in certain DACs. The fact that a small percentage of Californians do not have access to safe drinking water makes this issue a social issue for which the General Fund is an appropriate source of funding as part of this funding package.

8. ACWA's Suggested Amendments

In SB 623 and the BTB, there are other issues in addition to the proposed tax on drinking water. ACWA has suggested amendments to SB 623 that the State Legislative Committee helped develop and reviewed. Staff recommends that ACWA add one more suggested amendment relative to the newly-proposed State Water Board reliability relief. Following is the list of ACWA Suggested Amendments that staff recommends for the BTB.

1) **Do NOT include a tax on drinking water (i.e., the proposed drinking water "fee.") Instead, the BTB should propose General Fund funding as the funding source for operation and maintenance costs that do not relate to nitrate contamination.**

2) **Exclude capital costs as an eligible funding category** and focus on funding O&M costs, which are difficult to fund through G.O. bonds and cannot be funded with SRF dollars. (G.O. bonds and the SRF are effective in funding capital costs.)

3) **Limit the funding to 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 BTB should explicitly exclude these two categories from funding with the exception that funding could be made available for replacement water** for individual domestic wells or state small water systems in rural areas of the state for which the local health officer has certified that data documents that the wells for which funding is being sought in that area are contaminated with **nitrate**. The proposed definition of "replacement water" should be narrowed to make this exception workable. (Bottled water, point-of-use treatment and point-of-entry treatment are reasonable parts of this proposed definition.)

5) **Make sure the funding goes to address situations where the water is not safe.** For example, the proposed language in Section 116769 references systems that "may be at risk of failing." Funding for safe drinking water should go to where there are real problems as opposed to going to where there is a chance of a problem.

6) **Focus on safe drinking water and recognize that affordability issues are being discussed in the State Water Board's AB 401 implementation process.** The language should be deleted from Section 116769 which would include in the needs assessment all CWSs in DACs that charge fees that exceed the affordability threshold in the Clean Water State Revolving Fund Intended Use Plan (i.e., fees that equal or exceed 1.5 percent of the median household income). The State Water Board is currently

developing a plan for a low-income water rate assistance program pursuant to AB 401 (Dodd, 2015), and there are many questions being raised about how affordability thresholds should be determined.

7) **Clarify what is intended by the proposed authority for the State Water Board to take "additional action as may be appropriate for adequate administration and operation of the fund."** Instead of simply including this rather vague provision in Section 116768, the BTB should be specific as to what this proposed authority is intended to cover.

8) **Delete the proposal to give the State Water Board and the Board's staff broad liability protection as they implement the Fund.** No case has been made as to why they should have such protection for this program.

9. <u>Moving Forward</u>

ACWA should have an "Oppose Unless Amended" position on the BTB as long as the drinking water tax remains in the measure. **Consistent with the State Legislative Committee's August 25, 2017 decision on SB 623, if the Brown Administration deletes the proposed tax and replaces it with a funding source that is acceptable to ACWA, then ACWA should move to a "Support-if-Amended" position. If the Brown Administration additionally addresses the other policy issues raised in the amendment set in Section 8 above, ACWA should move to a "Support" position.**

This approach moves away from opposition if ACWA's largest concern is addressed but still encourages appropriate policy changes.

Recommended Position: "Oppose-Unless-Amended" (Consistent with the suggestions in Section 9)