

May 21, 2018

The Honorable Bob Wieckowski, Chair  
Senate Budget Subcommittee No. 2  
State Capitol, Room 4085  
Sacramento, CA 95814

The Honorable Richard Bloom, Chair  
Assembly Budget Subcommittee No. 3  
State Capitol, Room 2003  
Sacramento, CA 95814

**Re: Budget Trailer Bill: Safe and Affordable Drinking Water Fund/  
TAX ON DRINKING WATER**

**Position: OPPOSE UNLESS AMENDED**

Dear Chair Wieckowski and Chair Bloom:

The below-listed organizations are **OPPOSED UNLESS AMENDED to the drinking water tax budget trailer bill.**

Alameda County Water District	Citrus Heights Water District	El Dorado Hills Chamber of Commerce
Alhambra Chamber of Commerce	City of Beverly Hills	El Dorado Irrigation District
Amador Water Agency	City of Corona Department of Water and Power	El Monte/South El Monte Chamber of Commerce
Anderson-Cottonwood Irrigation District	City of Fairfield	El Toro Water District
Antelope Valley – East Kern Water Agency	City of Garden Grove	Elk Grove Water District
Association of California Water Agencies	City of Glendale Water and Power	Elk Grove Chamber of Commerce
Bella Vista Water District	City of Newport Beach	Elsinore Valley Municipal Water District
BizFed Los Angeles County	City of Oceanside	Fair Oaks Water District
Brooktrails Township Community Services District	City of Redding	Fallbrook Public Utility District
Browns Valley Irrigation District	City of Rialto/Rialto Utility Authority	Folsom Chamber of Commerce
Calaveras County Water District	City of Roseville	Foothill Municipal Water District
CalDesal	City of San Diego	The Gateway Chambers Alliance
California Cleaners Association	City of Santa Rosa	Georgetown Divide Public Utility District
California Craft Beer Association	City of Shasta Lake	Glendora Chamber of Commerce
California Municipal Utilities Association	Claremont Chamber of Commerce	Glenn-Colusa Irrigation District
California Special Districts Association	Coachella Valley Water District	Greater Coachella Valley Chamber of Commerce
Calleguas Municipal Water District	Coastside County Water District	Hawthorne Chamber of Commerce
Camrosa Water District	Contra Costa Water District	Helix Water District
Carlsbad Municipal Water District	Crescenta Valley Water District	Hidden Valley Lake Community Services District
Carmichael Water District	Crestline-Lake Arrowhead Water Agency	Hollywood Chamber of Commerce
Casitas Municipal Water District	Cucamonga Valley Water District	Humboldt Bay Municipal Water District
Central Basin Municipal Water District	Del Paso Manor Water District	
Centerville Community Services District	Desert Water Agency	
Ceres Chamber of Commerce	Downtown San Diego Partnership	
Cerritos Regional Chamber of Commerce	Dublin San Ramon Services District	
	East Orange County Water District	
	East Valley Water District	
	Eastern Municipal Water District	
	El Dorado County Chamber Alliance	

**ORGANIZATION LIST CONTINUED ON NEXT PAGE**

<b>Humboldt Community Services District</b>	<b>Palm Ranch Irrigation District</b>	<b>Shasta Community Services District</b>
<b>Idyllwild Water District</b>	<b>Palmdale Water District</b>	<b>South Coast Water District</b>
<b>Indian Wells Valley Water District</b>	<b>Paradise Irrigation District</b>	<b>South Tahoe Public Utility District</b>
<b>Indio Water Authority</b>	<b>Pasadena Water and Power</b>	<b>Southern California Water Committee</b>
<b>Irvine Ranch Water District</b>	<b>Pico Water District</b>	<b>Stockton East Water District</b>
<b>Kern County Water Agency</b>	<b>Placer County Water Agency</b>	<b>Sweetwater Authority</b>
<b>Kinneloa Irrigation District</b>	<b>Pleasanton Chamber of Commerce</b>	<b>Tahoe City Public Utility District</b>
<b>Kirkwood Meadows Public Utility District</b>	<b>Quartz Hill Water District</b>	<b>Templeton Community Services District</b>
<b>La Verne Chamber of Commerce</b>	<b>Rainbow Municipal Water District</b>	<b>Textile Rental Service Association</b>
<b>Laguna Beach County Water District</b>	<b>Rancho California Water District</b>	<b>Three Valleys Municipal Water District</b>
<b>Lake Hemet Municipal Water District</b>	<b>Rancho Cordova Chamber of Commerce</b>	<b>Torrance Area Chamber of Commerce</b>
<b>Las Virgenes Municipal Water District</b>	<b>Rancho Cucamonga Chamber of Commerce</b>	<b>Tulare Irrigation District</b>
<b>Long Beach Water Department</b>	<b>Regional Water Authority</b>	<b>Tuolumne Utilities District</b>
<b>Malaga County Water District</b>	<b>Redwood Valley County Water District</b>	<b>Twain Harte Community Services District</b>
<b>Mammoth Community Water District</b>	<b>Richvale Irrigation District</b>	<b>United Chamber Advocacy Network</b>
<b>Mariana Ranchos County Water District</b>	<b>Rincon del Diablo Municipal Water District</b>	<b>United Water Conservation District</b>
<b>McKinleyville Community Services District</b>	<b>Rio Alto Water District</b>	<b>Upper Russian River Water Agency</b>
<b>Mendocino County Russian River Flood Control &amp; Water Conservation Improvement District</b>	<b>Rio Linda Elverta Community Water District</b>	<b>Upper San Gabriel Valley Municipal Water District</b>
<b>Merced Irrigation District</b>	<b>Roseville Area Chamber of Commerce</b>	<b>Vallecitos Water District</b>
<b>Mesa Water District</b>	<b>Rowland Water District</b>	<b>Valley Center Municipal Water District</b>
<b>Mid-Peninsula Water District</b>	<b>Sacramento Suburban Water District</b>	<b>Valley of the Moon Water District</b>
<b>Millview County Water District</b>	<b>San Diego County Water Authority</b>	<b>Ventura County Economic Development Association</b>
<b>Mission Springs Water District</b>	<b>San Diego Regional Chamber of Commerce</b>	<b>Vista Irrigation District</b>
<b>Mojave Water Agency</b>	<b>San Dieguito Water District</b>	<b>Walnut Valley Water District</b>
<b>Monte Vista Water District</b>	<b>San Gabriel County Water District</b>	<b>Westlands Water District</b>
<b>Municipal Water District of Orange County</b>	<b>San Gabriel Valley Economic Partnership</b>	<b>Western Canal Water District</b>
<b>Nevada Irrigation District</b>	<b>San Gabriel Valley Municipal Water District</b>	<b>Western Municipal Water District</b>
<b>North Marin Water District</b>	<b>San Juan Water District</b>	<b>Yolo County Flood Control Water Conservation District</b>
<b>North Tahoe Public Utility District</b>	<b>San Clara Valley Chamber of Commerce</b>	<b>Yorba Linda Water District</b>
<b>Northern California Water Association</b>	<b>Santa Clarita Valley Water Agency</b>	<b>Yuba County Water Agency</b>
<b>Olivenhain Municipal Water District</b>	<b>Santa Fe Irrigation District</b>	<b>Zone 7 Water Agency</b>
<b>Orange County Water District</b>	<b>Santa Margarita Water District</b>	
<b>Orchard Dale Water District</b>	<b>Santa Ynez River Water Conservation District</b>	
<b>Otay Water District</b>	<b>Improvement District No. 1</b>	
<b>Padre Dam Municipal Water District</b>	<b>Scotts Valley Water District</b>	

This budget trailer bill is essentially a modified version of SB 623 (Monning, D-Carmel), which is a 2-year bill. The budget trailer 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. The bill proposes two types of funding: 1) fees related to confined animal facilities excluding dairies (CAFED), fertilizer sales, and dairies to address nitrate contamination; and 2) a state-mandated tax on drinking water that the bill would require local water agencies to assess on their local ratepayers and send to Sacramento. **No policy committee has heard the proposed tax. The above-listed organizations oppose the proposal for a tax on drinking water.**

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

- 1) **Requiring local water agencies and cities across the state to impose a tax on drinking water for the State of California is highly problematic and is not the appropriate response to the problem;**
- 2) **It is not sound policy to tax something that is essential to life;**
- 3) State law sets forth a policy of a human right to water for human consumption that is safe, clean, **affordable** and accessible. **Adding a tax on water works against keeping water affordable for all Californians; and**
- 4) **It is inefficient to turn thousands of local water agencies into taxation entities for the state and require them to collect the tax and send it to Sacramento.**

**CREDIBLE FUNDING ALTERNATIVES:** The above-listed organizations have developed **credible funding alternatives to replace the proposed water tax**, as outlined in **Attachment A** to this letter.

The **first funding alternative** is a funding package, including:

- 1) **Safe Drinking Water State Revolving Fund (SRF)** – this ongoing federal funding can be used to fund capital costs;
- 2) **General Obligation (G.O.) Bonds** – SB 5 (de León, 2017), which will be on the June 2018 ballot as Proposition 68, proposes \$250 million for safe drinking and clean water, and another bond initiative which is expected to be on the November ballot proposes \$500 million for safe drinking water. These bonds propose to prioritize the drinking water funding to disadvantaged communities (DACs);
- 3) **Ag Funding** – the nitrate-related fees proposed in the bill could be used for replacement water, including point-of-use and point-of-entry treatment, for nitrate contamination; and
- 4) **General Fund** – A modest amount of General Fund funding (\$34.4 million per year) can fund the non-nitrate operation and maintenance (O&M) costs needs at public water systems in certain DACs.

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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.

The **second funding alternative** is the **creation of an Irrevocable Safe and Affordable Drinking Water Trust** that could be funded with a one-time infusion of budget surplus dollars and would generate the needed net revenue for safe drinking water.

For more information about additional credible funding alternatives to replace the tax on drinking water, please refer to Attachment A.

**AMENDMENTS:** In addition to replacing the proposed tax on drinking water with one or more acceptable funding alternative, the organizations listed above are suggesting the amendments shown on Attachment B to address various concerns regarding this funding measure. The above-listed organizations urge your “No” vote on the budget trailer bill unless the proposed tax on drinking water is removed and replaced with one or more acceptable alternative funding source.

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](mailto:cindy@acwa.com).

cc: The Honorable Governor Edmund G. Brown Jr.  
Honorable Members, Senate Budget Subcommittee No. 2  
Honorable Members, Assembly Budget Subcommittee No. 3  
The Honorable William W. Monning  
Ms. Kim Craig, Deputy Cabinet Secretary, Office of the Governor  
Ms. Joanne Roy, Consultant, Senate Budget Subcommittee No. 2  
Ms. Susan Chan, Consultant, Assembly Budget Subcommittee No. 3  
Mr. Trevor Taylor, Legislative Aide, Office of Senator William W. Monning  
Ms. Rocel Bettencourt, Budget Consultant, Senate Republican Caucus  
Ms. Barbara Gausewitz, Consultant, Assembly Republican Caucus

# Funding Alternatives to the Proposed Tax on Drinking Water

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## Introduction

The Association of California Water Agencies (ACWA)-led “Oppose-Unless-Amended” coalition agrees on the intent of SB 623 (Monning) and the Administration’s budget trailer bill, which would establish a fund to assist those who do not have access to safe drinking water. The proposed tax on drinking water, however, is not the right solution. The following are credible funding alternatives to the proposed tax on drinking water and a tool to help improve safe drinking water.

## Funding Alternatives

### 1. Current “Oppose Unless Amended” Coalition Funding Proposal

The first alternative to the proposed drinking water tax is the Safe Drinking Water Funding Package, which is the current funding proposal by the coalition. This funding package is comprised of ongoing federal safe drinking water funds, general obligation bond funds, the assessments related to nitrates in groundwater proposed in the budget trailer bill and SB 623, and a limited amount of state general fund dollars. (Attachment 1)

### 2. Safe and Affordable Drinking Water Trust

The creation of an irrevocable trust is the second alternative. The trust would be held for the sole purpose of providing funding for safe and affordable drinking water. (Attachment 2)

### 3. Lease Revenue Bonds for Safe Drinking Water

The third alternative is lease revenue bonds issued for safe drinking water. (Attachment 3)

### 4. Cap and Trade Allocation for Safe Drinking Water

The fourth alternative is to allocate a percentage of Cap and Trade funding via continuous appropriation for safe drinking water. (Attachment 4)

## Other Tools

### 1. Governance Solution

AB 2050 (Caballero, 2018), the Small System Water Authority Act of 2018, would propose a local solution for consolidation of non-compliant public water systems based on regional governance and administration.

Contact: Cindy Tuck, ACWA, [cindy@acwa.com](mailto:cindy@acwa.com), (916) 441-4545

## Funding Alternative #1 to the Proposed Tax on Drinking Water

### Safe Drinking Water Funding Package

<u>Funding Source</u>	<u>Funding Type</u>	<u>Funding Amount</u>
Safe Drinking Water State Revolving Funding (Federal)	Capital	<u>Part of \$81 million<sup>1</sup></u>
General Obligation Bonds	Capital	Proposition 68 <u>\$250 million<sup>2</sup></u> and/or Water Supply/Quality Bond: <u>\$500 million<sup>3</sup></u>
<u>BUDGET TRAILER BILL / SB 623 (Monning)</u>		
Nitrate Assessment	Nitrate: • Replacement Water • Point of Use Treatment • Point of Entry Treatment	Approximately <u>\$30 million per year</u>
General Fund	Operation and Maintenance for Public Water Systems	Approximately <u>\$34.44 million per year<sup>4</sup></u>

<sup>1</sup> \$81 million is estimated SDW SRF Total for California for 2018. Part of this would go to capital costs for disadvantaged communities

<sup>2</sup> For both safe drinking water and clean water

<sup>3</sup> For safe drinking water

<sup>4</sup> State Water Board's estimate for annual non-nitrate O&M costs for public water systems

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## Funding Alternative #2 to the Proposed Tax on Drinking Water in the Budget Trailer Bill

### Irrevocable Safe and Affordable Drinking Water Trust

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The establishment of an Irrevocable Safe and Affordable Drinking Water Trust is a viable alternative to a tax on drinking water because it could provide a stable and perpetual source of funding. The Irrevocable Safe and Affordable Drinking Water Trust could provide a targeted amount of revenue each year into perpetuity to fund safe drinking water solutions for disadvantaged communities and low-income residents. For example, the targeted annual funding generated from the trust could be \$50 million per year.

In general, an irrevocable trust is a mechanism into which an entity or person (the grantor) places assets for the benefit of a designated beneficiary. Once the grantor places the assets into an irrevocable trust, the assets cannot be removed. Instead, the trust assets, which comprise the trust's principal, are managed by a trustee who invests the principal and make distributions from the trust for the benefit of the beneficiary. Trustees have fiduciary duties, responsibilities and obligations to trust beneficiaries.

One type of irrevocable trust is a charitable trust. A charitable trust is a trust designed to advance a charitable or governmental purpose. In the case of the Irrevocable Safe and Affordable Drinking Water Trust, the trust would be created as an irrevocable charitable trust designed to advance the governmental purpose of providing a continual source of funding for drinking water solutions for disadvantaged communities and low-income residents which currently do not have access to safe drinking water. The primary purpose of the Irrevocable Safe and Affordable Drinking Water Trust would be to provide a perpetual source of funding of at least \$50 million dollars each year to the Safe and Affordable Drinking Water Fund.

#### **How the Irrevocable Trust Would Work:**

- 1) The Irrevocable Safe and Affordable Drinking Water Trust Fund would be established in the State Treasury and be designated as the fund which would hold the funds placed into the Irrevocable Safe and Affordable Drinking Water Trust.
- 2) To generate \$50 million per year, the one-time sum of \$725 million would be irrevocably transferred in Fiscal Year 2018-19 from the General Fund to the Irrevocable Safe and Affordable Drinking Water Trust Commission (the Commission) for deposit in the Irrevocable Safe and Affordable Drinking Water Trust Fund. This funding would serve as the trust's principal. (The \$725 million amount is based on an assumption of a 6.5 percent annual rate of return.)

- 3) The Commission would serve as the trustee for the trust and would consist of 3 members and would be comprised of the State Treasurer, the Lieutenant Governor and the State Controller.
- 4) The Commission would invest the trust principal. If the net income earned by the trust during the previous fiscal year is less than or equal to \$50 million, the trustee would deposit the entire value of the net income into the Safe and Affordable Drinking Water Fund for the benefit of the trust's beneficiary.
- 5) If the net income earned by the trust during the previous fiscal year was greater than \$50 million, the trustee would deposit \$50 million into the Safe and Affordable Drinking Water Fund and would split the remaining portion of the net income between the Safe and Affordable Drinking Water Fund and the trust principal. Increasing the size of the trust principal would enable the trust to generate more money annually for transfer to the Safe and Affordable Drinking Water Fund.
- 6) The trustee and others would be statutorily restricted from drawing down the trust principal.



Updated: May 7, 2018

Attachment 3

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## Funding Alternative #3 to the Proposed Tax on Drinking Water in the Budget Trailer Bill

### Lease Revenue Bonds for Safe Drinking Water

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During the height of the budget crisis in 2008, the Legislature authorized the issuance of Lease Revenue Bonds through AB 900 to pay for a variety of costs related to the building of new prisons. A Lease Revenue Bond (LRB) can be generally described as a loan made to the State that is repaid by revenue generated by the project.

Under AB 900, the state envisioned that the Department of Public Works would design and build the prison and incur the debt, and the Department of Corrections would generate the "revenue" to repay the debt. In the case of AB 900, the "revenue" was a transfer of money between two government agencies, and the money came from the General Fund.

Based on a presentation provided by the Treasurer's office on their website, the issuer of an LRB – in this case the State - covenants to appropriate annual lease payments from the General Fund to meet the lease obligations. In this proposal, there would be a commitment of the new revenue from the agricultural taxes proposed in the bill, and revenue would ultimately be deposited in the General Fund. The financial instrument would be structured as lease revenue bonds or "certificates of participation" ("COPs") that are not subject to constitutional debt limits per a lease exception. Unlike General Obligation bonds, no voter approval of the bond issuance is required. Of course, the disadvantage is that the debt payments compete with other General Fund priorities.

These types of bonds are often used for projects of general community benefit and to indirectly leverage a General Fund revenue stream. These bonds are often used to provide "credit enhancement" for less credit-worthy borrowing for desired "risk sharing." Under the LRB alternative financing concept, the State Water Resources Control Board would ask the Board of Public Works to issue Revenue Bonds up to an amount to be determined. The proceeds from the bonds could be used to fund operation and maintenance costs. Capital projects could be constructed with the use of ongoing federal funds and General Obligation bond funding. The debt for the bonds would be securitized by the ongoing cash flow from the agricultural taxes in the budget trailer bill along with a one-time appropriation of General Fund money into a special account –the ultimate guarantor would be the General Fund. All of the funds would be continuously appropriated to pay off the debt obligations.

By the issuance of the LRBs that would be securitized with the already-proposed agricultural tax revenues, this approach ensures that the money would only be spent for the desired purpose.

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Attachment 4

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## Funding Alternative #4 to the Proposed Tax on Drinking Water in the Budget Trailer Bill

### Cap-and-Trade Allocation for Safe Drinking Water

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In 2017, the Legislature passed, and Governor Brown signed into law, AB 398 (Garcia) which extended the State's authority to operate a Cap-and-Trade program through 2030. AB 398 passed by a two-thirds vote which was significant in the context of Proposition 26 requirements.

The Cap-and-Trade program generates revenue annually from the sale of allowances to entities which emit greenhouse gas (GHG) emissions and which need the allowances to continue to emit GHG emissions. By reducing the number of allowances issued over time, the State limits the ability of emission sources to continue emitting. The Legislative Analyst's Office (LAO) has estimated that the program will bring in anywhere from \$2 to \$7 billion annually between 2018 and 2030.

The Governor's Proposed Budget for Fiscal Year 2018-19 includes a \$2.8 billion Cap-and-Trade expenditure plan. \$1.3 billion of this amount is "discretionary" spending which is not subject to continuous appropriation. A small portion of this revenue could be appropriated with a majority vote to fund drinking water solutions for disadvantaged communities and low-income residents who do not have access to safe drinking water. Revenue from the program could also be used to supplement or backstop any other alternative proposal.

Providing clean drinking water to disadvantaged communities is consistent with the historic emphasis on using Cap-and-Trade revenue to benefit these communities. It would also help eliminate the need for some of these communities to rely on the transportation of bottled water or shipped water in order to have access to safe drinking water – thereby resulting in a reduction of GHG emissions.

**Attachment B**  
**SAFE AND AFFORDABLE DRINKING WATER FUND BUDGET TRAILER BILL**  
**AMENDMENTS SUGGESTED BY**  
**WATER AGENCIES AND WATER ORGANIZATIONS LISTED ON THIS LETTER**

- 1) Do NOT include a tax on drinking water. (See Attachment A for four credible funding alternatives to replace the tax on drinking water.)**
- 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 disadvantaged communities (DACs)** and low income 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.** 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 bill 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.