

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 1195 (Cristina Garcia) – As Amended April 6, 2021

SUBJECT: Drinking water

SUMMARY: Creates the Southern Los Angeles County Human Right to Water Collaboration Act. Requires the State Water Resources Control Board (State Water Board) to appoint a Commissioner to implement the Safe and Affordable Funding for Equity and Resilience (SAFER) Program in southern Los Angeles County. Specifically, **this bill:**

- 1) Requires the State Water Board, to appoint a commissioner to implement the SAFER Program in southern Los Angeles County, within the jurisdictional boundaries of the Water Replenishment District of Southern California and in collaboration with the communities and operators of public water systems in the region.
- 2) Requires the Commissioner, appointed by the State Water Board, to expend moneys from the Safe and Affordable Drinking Water Fund, subject to the State Water Board's approval, for the purposes and to the eligible recipients identified in the SAFER Program. Requires the Commissioner to make reasonable efforts to ensure that funds are used to secure the long-term sustainability of drinking water service and infrastructure, including, but not limited to, requiring adequate technical, managerial, and financial capacity of eligible applicants as part of funding agreement outcomes.
- 3) Authorizes the Commissioner to assist operators of public water systems in operating and managing their public water systems, including, but not limited to, funding, technical assistance, and other collaboration that promotes economies of scale; and serve as an administrator or as a receiver of a public water system pursuant to a court order, for a public water system that serves a disadvantaged community or that consistently fails or is at risk of doing so, as determined by the Commissioner.
- 4) Requires the Commissioner to seek available funding from state and local sources to fund its activities.
- 5) Requires the Commissioner to, on or before December 31, 2024, develop and submit to the State Water Board a plan (Plan) for the long-term sustainability of public water systems in southern Los Angeles County. In preparing the Plan the Commissioner shall do all of the following:
 - a) Oversee the work of the Water Replenishment District (WRD) of Southern California in assessing the condition of small public water systems in its jurisdiction;
 - b) Review the assessment of small public water systems by WRD and evaluate public water systems and other water infrastructure in the region;
 - c) Identify projects, processes, and systems that may assist public water systems that consistently fail or are at risk of failing as determined by the Commissioner;

- d) Plan for the consolidation of public water systems that either consistently fail or are at risk of failing as determined by the Commissioner; and,
 - e) Consult with the Los Angeles County Local Agency Formation Commission (LAFCO) regarding effective public water system governance strategies in the region and how the LAFCO may facilitate consolidation of public water systems that consistently fail or are risk of failing as determined by the Commissioner.
- 6) Requires the Commissioner to oversee the operations of the Central Basin Municipal Water District (Central Basin) in selling drinking water and recycled water to public water systems in its jurisdiction. Requires the Central Basin to cooperate with the Commissioner in exercising the Commissioner's oversight responsibilities.
 - 7) Requires the Commissioner to oversee, on behalf of the State Water Board, the expenditure of all state funding for groundwater cleanup in the region.
 - 8) Requires the Commissioner to be advised by a technical advisory board of experts in water management or water policy consisting of an unspecified number of members.
 - 9) Authorizes the technical advisory board to promote regional collaboration by developing alternatives for creating sustainable public water systems in the region, which the Commissioner may consider in preparing the Plan.
 - 10) Provides that surface water rights or groundwater rights exercised by an operator of a public water system for the benefit of the public water system shall not be severed or otherwise separated from the public water system.

EXISTING LAW:

- 1) Establishes the California Safe Drinking Water Act (SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, *et seq.*)
- 2) Requires the State Water Board to submit to the Legislature a comprehensive Safe Drinking Water Plan for California every five years. (HSC § 116355 (a))
- 3) Creates the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. (HSC § 116766)
- 4) Authorizes the State Water Board, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order a physical or operational consolidation with a receiving water system. (HSC § 116682 (a))
- 5) Authorizes the State Water Board, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to:

- a) Contract with an administrator to provide administrative and managerial services to a designated public water system to assist the designated public water system with the provision of an adequate and affordable supply of safe drinking water; and,
 - b) Order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board. (HSC § 116686 (a))
- 6) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author,

"The people in southern Los Angeles County depend on a multitude of small water systems. These water systems are growing old, and the operator/owner may lack the funding to pay to rebuild the system or clean up water contamination. If the system fails, there is no public agency with the capacity to save them and the people's water supply. By contrast, other neighboring companies owned by outside investors charge higher water rates and they are not accountable to the public. In fact, some of the region's disadvantaged communities of color pay some of the highest water prices in the County, depending on which retailer sells them water.

Some small water systems may be close to failure, but there is no public agency with the capacity to take them over to fix the problems. This may lead to privatization of these water systems, as investor-owned utilities, which generally charge higher water rates, have the capacity and the authority to increase water rates to pay for rebuilding the system. This bill will create a regional administrator identified by the State Water Board to help resolve the many water challenges facing the region and build regional collaboration, to keep water rates low, increase water quality, and keep management of southeast water public."

Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Regulation of drinking water: The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own SDWA to implement the federal law and establish state standards. The United States Environmental Protection Agency (U.S. EPA) enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

The State Water Board regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee those systems. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the State Water Board or LPAs share water quality regulatory authority with CPUC.

The State Water Board regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

Lack of clean safe drinking water: Although most of the state's residents receive drinking water that meets federal and state drinking water standards, many drinking water systems in the state consistently fail to provide safe drinking water to their customers. Lack of safe drinking water is a problem that disproportionately affects residents of California's disadvantaged communities.

Disadvantaged communities often lack the rate base, as well as the technical, managerial, and financial capacity to show they can afford and effectively manage operations and maintenance costs related to water treatment. Without being able to pay for maintenance, these communities are effectively barred from accessing capital improvement funding. In contrast, larger water systems have the financial capacity both to pay treatment costs and to provide for a well-trained and technically competent workforce of water system operators.

Consolidation of water systems: According to the U.S. EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

Authority to require consolidation and the appointment of an administrator: Effective June 24, 2015, SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate.

The following year, SB 552 (Wolk, Chapter 773, Statutes of 2016) expanded the State Water Board's authority by enabling it to, in order to provide affordable, safe drinking water to

disadvantaged communities and to prevent fraud, waste, and abuse, contract with a competent administrator to provide managerial and technical expertise to that system, if sufficient funding is available. SB 552 also authorizes the State Water Board to order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

The Safe and Affordable Funding for Equity and Resilience (SAFER) program: SB 200 (Monning, Chapter 120, Statutes of 2019) created SAFER and the Safe and Affordable Drinking Water Fund (Fund). The SAFER program supports permanent and sustainable drinking water solutions that ensure all Californians have access to safe, affordable, and reliable drinking water. The Fund was established to address funding gaps and provide solutions to water systems, especially those serving disadvantaged communities, to address both their short- and long-term drinking water needs. SB 200 requires the annual transfer of 5 percent of the Greenhouse Gas Reduction Fund (GGRF) (up to \$130 million) into the Fund until June 30, 2030. Money transferred into the Fund is continuously appropriated and must be expended consistent with the Expenditure Plan (Plan), which is adopted annually by the State Water Board. The Plan is based on a drinking water needs assessment and will document past and planned expenditures and prioritize projects for funding. Potential options for funding include consolidation with larger water systems, operations and maintenance costs, building local technical and managerial capacity, providing interim replacement water, and administrators to run the small systems. Additionally, SAFER funds will provide short-term operation and maintenance support as a bridge until long-term sustainable solutions are in place, and providing long-term operation and maintenance support when necessary.

Expenditure Plan (Plan): The Safe and Affordable Drinking Water Fund Expenditure Plan (Plan) is adopted annually by the State Water Board, and directs how money from the Fund can be spent. The Plan will be based on a drinking water needs assessment, documents past and planned expenditures, prioritizes projects for funding, and includes the following elements:

- Identify public water systems, community water systems, state small water systems and regions where domestic wells consistently fail or are at risk of failing to provide adequate safe drinking water, the causes of failure, and appropriate remedies,
- Determines the amounts and sources of funding needed to provide safe drinking water or eliminate the risk of failure to provide safe drinking water; and,
- Identify gaps in supplying safe and affordable drinking water and determine the amounts and potential sources of funding to eliminate those gaps.

Needs Assessment: The annual Drinking Water Needs Assessment (Needs Assessment) required to be carried out by the SAFER Program provides foundational information and recommendations to guide the Plan. The Needs Assessment is comprised of Risk Assessment, Affordability Assessment, and Cost Assessment components. Development of the 2021 Needs Assessment consisted of stages between September 2019 and March 2021.

The results from the 2021 Needs Assessment illustrate the breadth and depth of challenges to safe and affordable water supply provision across system types in California for the first time. The Needs Assessment identifies water systems that are failing and those that are at-risk of failing to provide safe and affordable drinking water. The 2021 Risk Assessment was conducted for 2,779 public water systems and evaluated their performance across 19 risk indicators within the following four categories: Water Quality, Accessibility, Affordability, and Technical,

Managerial, and Financial (TMF) Capacity. The results identified 326 water systems as failing; 617 water systems at-risk of failing, 552 water systems potentially at-risk of failing, and 1,284 water systems not at-risk of failing.

Water rights: A water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself. They possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Board, whose objective is to ensure that the State's waters are put to the best possible use, and that the public interest is served. The State Water Board's duties are not limited to permits and licenses. It may be called upon to adjudicate water for entire systems or to act as a "referee" or fact-finder in court cases involving water rights. This bill seeks to make some changes to how water rights are or are not transferred from public water systems.

Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid (PFOS): PFOA and PFOS are fluorinated organic chemicals that are part of a larger group of chemicals referred to as per- and poly-fluoroalkyl substances (PFASs). PFOS and PFOA have been extensively produced and studied in the United States. These manmade substances have been synthesized for water and lipid resistance. They have been used extensively in consumer products such as carpets, clothing, fabrics for furniture, paper packaging for food, and other materials (e.g., cookware) designed to be waterproof, stain-resistant, or non-stick. In addition, they have been used in fire-retarding foam and various industrial processes.

Exposure through drinking water has become an increasing concern due to the tendency of PFASs to accumulate in groundwater. Such contamination is typically localized and associated with a specific facility, for example, an industrial facility where these chemicals were manufactured or used in other products, or airfield which used the chemicals for firefighting. The State Water Board is also seeking to establish its first enforceable regulatory standards for PFOA and PFOS. In August 2020, the Board requested that OEHHA develop public health goals (PHGs) for the two chemicals as the next step in developing regulatory standards, known as maximum contaminant levels (MCLs). Other PFAS chemicals may be considered for PHG and MCL development later, as data permits.

This bill acknowledges the new emerging concerns of PFOA and PFOS and requires the Commissioner to oversee, on behalf of the State Water Board, funding for the cleanup of groundwater contamination in the region. This bill is designed to help coordinate the efforts of the myriad public water systems in southern Los Angeles County in addressing groundwater contamination, especially, the emerging contamination from PFAS.

Water Replenishment District of Southern California: The Water Replenishment District of Southern California (WRD) is the largest groundwater agency in the State of California, managing local groundwater resources for over four million residents. WRD's service area covers a 420-square-mile region of southern Los Angeles County, the most populated county in the United States. The 43 cities in the service area, including a portion of the City of Los Angeles, use about 250,000 acre-feet (82 billion gallons) of groundwater annually which accounts for approximately half of the region's water supply. WRD ensures that a reliable supply of high quality groundwater is available through the use of recycled water and stormwater capture. WRD is responsible for monitoring and testing groundwater throughout the region.

This bill requires the Commissioner to oversee the work of WRD in assessing the conditions of small public water systems in its jurisdiction.

Central Basin Municipal Water District: The Central Basin Municipal Water District (district) was established by a vote of the people in 1952 under the Municipal Water District Law of 1911. The district currently serves a population of more than two million people in 24 cities in southeast Los Angeles County and in some unincorporated areas of the county. The district's mission includes acquiring, selling, and conserving imported water and other water that meets all required standards and furnishing it to customers in a planned, timely, and cost-effective manner that anticipates future needs. The district purchases the imported water from the Metropolitan Water District of Southern California and wholesales it to cities, mutual water companies, investor-owned utilities, and private companies. Additionally, the district supplies water for groundwater replenishment and provides the region with recycled water for municipal, commercial, and industrial use.

This bill requires the Commissioner to oversee the operations of the district in selling drinking water and recycled water to public water systems in its jurisdiction.

Audit of the Central Basin Municipal Water District: In 2015, the California State Auditor released an audit report concerning the Central Basin Municipal Water District's (district) planning, operations and management, long-term financial viability, and control environment. The audit report stated,

"This report concludes that the district's board of directors (board) has failed to provide the leadership necessary for the district to effectively fulfill its responsibilities. For example, we found that the board failed to ensure that the district maintained stability in key executive management positions throughout our review period. Further, we found that the board failed to take basic steps to ensure the district's long-term financial viability, including engaging in long-term financial planning and performing the necessary study to ensure the district's water rate structure is appropriate and that it will collect sufficient revenues to meet its costs. Finally, the board's actions contributed to the district losing its insurance coverage, forcing the district to purchase insurance with higher premiums for considerably less coverage than in previous years.

Although the district has recently taken some steps to address these issues, the magnitude of the problems we found suggests that the district could benefit from a different governance structure. The district's board is currently publicly elected, yet the board's customers, to which it should be held accountable, are those various entities the district wholesales water to which is, in turn, then sold throughout the district. If the Legislature chooses to change the governance structure, it could consider a structure in which the board would be composed of members appointed by the district's direct customers. Such a change would not be a novel approach—as we note, it is already used by certain other water agencies in the region—and it would enable the district's customers to hold the board accountable when it takes actions or makes decisions that are not in the best interests of the district."

Challenges for small water systems serving disadvantaged communities in Los Angeles County: In early 2021, "The Human Right To Water In Poor Communities of Color: Southern Los Angeles County, UCLA Institute of the Environment and Sustainability" was released. This report identified the 64 community water systems in Los Angeles County serving disadvantaged

or severely disadvantaged populations. These 64 water systems have 281,000 connections, serving approximately 1 million people, nearly 10% of the population of Los Angeles County in 2019. The largest population is concentrated in 29 disadvantaged community water systems in Southern Los Angeles County who largely serve communities of color. According to the report, "Disadvantaged communities concentrated in southern Los Angeles County lack fair options when it comes to water supply. When served by public utilities, aging infrastructure, water quality problems, and other complications can translate into sacrifices in quality or reliability. When supplied by investor-owned utilities, they receive reliable water supply but pay more than affluent communities."

Drinking water: multiple problems and multiple solutions: There are multiple factors impacting the ability of a public water system to provide safe, clean, affordable, drinking water. Additionally, the very nature of delivering water to millions of customers in Los Angeles County poses added complexities. While the State Water Board's implementation of SAFER has begun with early emphasis on the state's Central Valley, it is now time to address challenges facing urban water systems, especially in disadvantaged communities. However, where do you start? The problems facing urban water systems in this region are many and complex, including lack of resources, lack of sufficient infrastructure, challenges with contamination, and the reality that the number and size of these public water systems may not be sufficient to address today's problems. AB 1195 was introduced to further the dialogue with the State Water Board and all of those in the region with the goal of providing some type of bridge or foundation for how to use all of the state's resources collectively to bring safe, clean, affordable drinking water to the communities in southern Los Angeles County. There are likely other regions of the state that also face unique challenges specific to their region.

This bill, once more fully negotiated, could help provide a model of how to address the regional complexities of providing drinking water.

Issues for further discussion: AB 1195 raises many important issues; however, there are several issues that may warrant further consideration. The author may wish to continue a dialogue with the State Water Board and public water systems in southern Los Angeles County regarding the role of the Commissioner, including clarifying whether the Commissioner will be a separate entity or perhaps will be a new or existing staff person within the State Water Board who will act as a facilitator and collaborator between the different programs within the State Water Board and the many public water systems in southern Los Angeles County. The SAFER Program is statewide; however, this bill is focusing on one region of the state. Given that there may be other regions of the state that may also need specialized attention for their unique needs, the author may wish to work with the State Water Board to see if the processes identified in the bill could be used as a model approach for the State Water Board to work with different regions of the state. Also, AB 1195 makes a change to water rights as it relates to public water systems. The author may wish to consider continuing to work with stakeholders to refine this language. Lastly, the bill creates a technical advisory board to assist the Commissioner in carrying out its duties. The author may wish to look at some of the similar expert review panels that have been created under the State Water Board for other purposes as a model of how to structure an advisory board.

Arguments in Support: None received.

Arguments in Opposition: According to the district, "The district writes in opposition to AB 1195, which proposes to create the Southern Los Angeles County Human Right to Water Collaboration Act, which would require the state board to appoint a commissioner to, among other things, expend moneys from the Safe and Affordable Drinking Water Fund on behalf of the state board for eligible purposes and recipients in southern Los Angeles County, within the jurisdictional boundaries of the Water Replenishment District of Southern California. The proposed governance structure within AB 1195 doesn't respect existing local representation from diverse communities or disadvantaged communities. This act ostensibly seeks to improve water quality in areas that cannot endure substantial increases in water rates, but does not empower local representation from the region who are seeking relief. The result will be another well-intentioned government act that does not live up to its acclaim. AB 1195 authorizes the commissioner and the "unspecified advisory board" to develop a plan that could result in the acquisition, or consolidation of existing water systems, without assessing whether an existing agency can provide clean water at a lower cost to the current water system's ratepayers. We don't need a new layer of government and complexity added to our existing layers of government; we need the state to more aggressively fund projects that (1) improve the quality of drinking water and (2) create jobs in our communities, for the benefit of our communities."

Double Referral: Should this bill pass this committee it will be re-referred to the Assembly Local Government Committee.

Related Legislation:

- 1) SB 200 (Monning, Chapter 120, Statutes of 2019). Created SAFER and the Safe and Affordable Drinking Water Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long-term. Requires the State Water Board to develop a fund expenditure plan and provide funding according to that expenditure plan to identify failing water systems and provide safe and affordable drinking water in the short- and long-term to those who rely on drinking water from those failing water systems.
- 2) AB 217 (E. Garcia, 2019). Would have created the Safe Drinking Water for All Act (Act), which would have established the Safe and Affordable Drinking Water Fund (Fund) to provide a source of funding for safe drinking water for all Californians, and long-term sustainability of drinking water systems. Would have imposed several fees on agricultural activities and a charge on retail water systems that together would provide the source of revenue to the Fund. This bill was subsequently amended into another subject.
- 3) SB 669 (Caballero, 2019). Would have established the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Would have created the Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in the Senate Appropriations Committee.
- 4) SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, and would have imposed water, fertilizer, and dairy fees to fund safe drinking water programs. This bill was held in the Assembly Rules Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Association of California Water Agencies (ACWA)
Central Basin Municipal Water District

Analysis Prepared by: Josh Tooker / E.S. & T.M. /