



# ENVIRONMENTAL LAW FOUNDATION

February 3, 2020

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State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Comments submitted electronically to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov).

## Re: Comment Letter – Draft Policy for Developing the Fund Expenditure Plan for the Safe and Affordable Drinking Water Fund

Dear Chair Esquivel, Members of the Board, and State Water Board Staff:

On behalf of the undersigned organizations, we thank you in advance for your consideration of these comments regarding implementation of the Safe and Affordable Drinking Water Fund (Fund), specifically as it relates to the Draft Policy for Developing the Fund Expenditure Plan (Draft Policy).

The goal of this letter is to provide a series of recommendations to inform the Draft Policy.

Before moving into the main portion of this letter, we would like to note our strong support for the appointment of multiple community members onto the Advisory Committee. While not an end point or a substitute for taking action along the lines of the recommendations outlined in this letter, we do consider this a positive step in the right direction and one that better positions the Advisory Committee for success.

### II. Purpose and Objective

We strongly support the recognition of the link between safe drinking water and environmental justice and the key role that this program will play in addressing disproportionate impacts.

The second paragraph of this section is less clear in its restatement of the goals of the program. We feel that the priorities established in Health and Safety Code 116766 via enactment of SB 200

(Monning) are clear. According to statute “***The Safe and Affordable Drinking Water Fund is hereby established in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the short and long term.***” Statute further clarifies how those funds are to be expended:

- (1) Operation and maintenance costs to help deliver an adequate supply of safe drinking water in both the near and long terms.
- (2) Consolidating water systems or extending drinking water services to other public water systems, domestic wells, and state small water systems.
- (3) The provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution.
- (4) The provision of services under Section 116686 for purposes of helping the systems become self-sufficient in the long term.
- (5) The development, implementation, and sustainability of long-term drinking water solutions.
- (6) Board costs associated with the implementation and administration of programs pursuant to this chapter.

We suggest that paragraph 2 of this section be replaced with the statutory language above.

### **VIII. Key Terms and Definitions**

We think three terms included in this section are in fact policy decisions that should be discussed by the advisory committee.

“Affordability Threshold” - the community members of the advisory committee in particular have strong backgrounds in rate-setting and community affordability and would be able to provide the Board with important feedback on the development of this value. It would be helpful to clarify staff’s intent to develop this threshold in partnership with the advisory committee. We recommend the Draft Policy identify and include a discussion of the challenge of providing drinking water solutions to areas of the state where there may be mixed income neighborhoods, where high housing and other costs impact affordability, or where large households with multiple breadwinners may skew a simple affordability evaluation based on median household income (MHI).

“Cost-effective” – we appreciate the flexibility of this definition, but because it is so subjective, it’s appropriate for the Advisory Committee to provide feedback.

“Solution List” – we recommend this definition be defined with more clarity both on the need for the term and what it is intended to describe. While statute clearly requires the fund expenditure plan to incorporate planned expenditures in the coming fiscal year, it also requires a much more robust accounting of the program. This is a multi-year program in which sustainable solutions for specific communities may take multiple years to accomplish.

### **XI. Fund Expenditure Plan Development**

#### **A. Advisory Group**

It would be helpful to incorporate the Advisory Committee' charter into this document so the public could better understand how the Board is soliciting and incorporating feedback from the members. Additionally, the current charter provides an inaccurate synopsis of the requirements of the Bagley-Keene Open Meeting Act. We recommend that staff provide a more comprehensive, plain language version of the Act in English and Spanish and also provide a more substantive briefing at the next meeting.

We are also concerned about the decision of the Board not to develop or identify recommendations that have the support of multiple Advisory Committee members. While we agree that all members should be heard and their views recorded, greater weight should be provided a comment in which multiple members concur. That would also allow meetings to run more smoothly, as members can reinforce their colleagues' input.

*B. Drinking Water Needs Analysis*

While we appreciate and support the current framework of the needs assessment provided in the 2019/2020 budget, we think this document should be more forward-thinking in identifying how this assessment can be improved and expanded moving forward. First, we recommend a more specific focus on assessing the needs of domestic well and state small communities that can then inform future Fund Expenditure Plans. We are aware of the challenges around available data but also believe there are some new data sets and resources around domestic wells, such as work by UC Berkeley, that are becoming available that can improve our understanding of the needs of domestic well and state small communities. We are also interested in leveraging all the work coming out of DWR right now around drought resiliency and water shortage to inform the needs assessment process and future Fund Expenditure Plans and would like to see discussion on these topics included in the Draft Policy.

We are further interested in exploring how all the data and analysis being collected can be utilized for other important state water policy efforts that necessitate understanding impacts to domestic well communities and safe water access, such as with implementation of the Sustainable Groundwater Management Act (SGMA), and would appreciate inclusion of discussion in the Draft Policy about how the data and deliverables being put together from the needs assessment can help benefit other key state water policy efforts.

We would also like to see discussion around how the State Water Board's contractors on the needs assessment process can leverage recent Department of Water Resources work on drought and water shortage contingency planning and risk assessment to benefit both the needs assessment process and broader SAFER Program implementation.

Finally, we urge that future needs assessments include information on the needs of homeless Californians so we can identify and address those needs.

*C. Identification of Water Systems Needing Solutions*

*D. Evaluation and Prioritization of Solutions for Systems in Violation*

*E. Evaluation and Prioritization of At-Risk Systems*

*F. Safe and Affordable Drinking Water Fund Solutions List*

We are concerned that the framing of the plan in this section, as outlined by headers C, D, E and F, perpetuates the Board's current funding paradigm of annual funding tied to projects. We think that the identifying problems, evaluating short and long-term solutions and prioritizing funding are all necessary pieces of an expenditure plan. However, we think the following topics are critical pieces of the fund expenditure plan and should be explicitly listed and described:

### **Implementation: Long-Term SAFER Program Goals**

We recommend Fund Expenditure Plans include specific longer-term SAFER Program implementation goals, including a 5-year (2025) and 10-year (2030) goal. These goals should be benchmarks towards the ultimate goal of making sure every Californian can have access to safe and sustainable drinking water as soon as possible. We recommend the Draft Policy include a discussion related to these longer-term goals (or at least a process discussion about how to develop these longer-term goals).

We would also like to see the State Water Board develop an implementation roadmap to meet these longer-term SAFER Program implementation goals. The roadmap should have specific metrics and milestones to assess progress made towards the longer-term goals. We would recommend the Draft Policy include a commitment to develop this roadmap in conjunction with stakeholders and the public.

### **Interim Needs**

We recommend the Draft Policy to clearly identify short-term needs, such as interim drinking water supplies as well as metrics for identifying whether this requirement is being met. For example, how long should it take from the time a system is unable to provide safe drinking water until it is able to access interim supplies? Or now that technical assistance is more readily available, what is our goal for transitioning a system receiving assistance to a long-term solution?

### **Domestic Well and State Small Communities**

We recommend the State Water Board include as part of the Draft Policy an explicit focus on the needs of domestic well and state small communities as it pertains to implementation of the SAFER program.

As part of this discussion, we recommend the Draft Policy include a discussion about tangible 2020-2021 SAFER goals to meet both the interim (safe) and long-term (sustainable) needs of domestic well and state small communities.

Additionally, and in order to meet this goal, we would recommend inclusion a discussion in the Draft Policy of water quality testing programs for private domestic well and state small communities including how quickly such programs could be developed and scaled. This effort should begin in 2020, in partnership with community-based organizations and technical assistance providers.

We would further recommend the Board create specific metrics tied to state small and domestic well communities -- including but not limited to, the numbers of state small and domestic well communities that receive short and long-term drinking water solutions, the number of state small and domestic well communities that are tested for drinking water contaminants, and the number of Californians from state small and domestic well communities that participate in public processes related to SAFER program governance.

We would like to request a follow up conversation at the next Advisory Committee meeting regarding meeting the needs of domestic well and state small owners as part of achieving the objectives of the SAFER program.

### **Operations and Maintenance (O&M) Funding**

Statute makes it clear that O&M funding is not only an eligible SAFER Program expenditure, but a priority. We understand that this is a new program that will require both research and community engagement to develop. We know that the community representatives on the advisory committee have significant expertise in this area that they can share. Additionally, the Board should also have an initial list of communities with affordability issues based on projects funded since the program moved to the Board in 2014.

We think this subject in particular requires focused discussion and planning, both because it's a new idea for the Board and because there are so many variables. First, this is closely related to the establishment of the affordability threshold. Second, the adoption of a Technical, Managerial and Financial capacity policy is needed to help ensure that funds are not being spent to support an unsustainable system. Finally, the Board will need to develop new funding mechanisms to provide different types of O&M assistance. We recommend there be additional discussion on the topic of O&M at future Advisory Committee meetings.

### **Communities with Unsafe Water that are Deemed in Compliance**

We recommend the Draft Policy include a discussion on how to assist with systems that right now are impacted by unsafe water but may not be in violation. For example, a community whose water supply is impacted by a contaminant with an MCL still in development – Hexavalent Chromium, for example – still requires assistance. We would appreciate a better understanding of how the Board plans to address Hexavalent Chromium and other harmful contaminants that current lack an MCL as part of the upcoming and future Fund Expenditure Plans. We are also concerned about the past practice of *not* deeming a system out of compliance for exceedance of a secondary contaminant and would like a discussion of how the Division of Drinking Water may consider updating its policy for enforcing secondary contaminants. This could be incorporated into a discussion of how to identify systems at risk of failure.

### **Drought, Water Shortage Resiliency and Climate Change Resiliency**

We recommend the Draft Policy include a discussion on how addressing drought and water shortage resiliency can be an element of meeting the Safe and Affordable Drinking Water Fund climate change resiliency requirement. Ideally, this would form part of the development of the list of systems and wells at risk of failure.

### **Regional Solutions**

Consolidation is already a priority for the Fund, but we know that a majority of systems will not be viable candidates for that particular solution. Therefore, we recommend that the State Water Board take a broader view to identify regional solutions as part of the SAFER Program implementation. As part of this, the Board should leverage its regional Division of Drinking Water Offices or other local and regional institutions and/or processes to identify unique local opportunities and challenges. Any regional solutions must be rooted in, and be developed through, community engagement.

### **Public Engagement**

We recommend the Draft Policy include new metrics related to public and community engagement, particularly targeted to low-income communities of color and/or communities that currently lack access to safe water or are vulnerable to water quality or quantity challenges. This will allow the State Water Board to assess how well the communities that are most in need are engaging as part of the implementation process. This could be as simple as identifying how many members from impacted communities attend a meeting or workshop or provide public comment.

Related to this recommendation, we recommend the State Water Board include a discussion in the Draft Policy related to community capacity building. This would include scaling up technical assistance, partnership with community-based organizations and directing State Water Board engagement in low-income communities of color and/or communities that currently lack access to safe water or are vulnerable to water quality or quantity challenges. We strongly believe that the Board needs to scale up community capacity building as soon as possible in order to lay a foundation for effective community participation in development of short and long-term drinking water solutions, which needs to begin this year.

#### *H. Metrics*

We have provided suggestions on metrics throughout the document that could be included here. Additionally, we think it critically important that the Board include metrics that measure its success in delivering safe and sustainable drinking water. We recommend the Board create metrics that can help answer and regularly report on the following questions:

- What is the status of identifying and addressing knowledge gaps in the current needs assessment?
- How long was a community without a safe drinking water source before an interim solution was provided?
- How long was a community reliant on an interim solution before a final solution was implemented?
- How long does it take to achieve specific benchmarks in achieving safe drinking water (such as those identified in the current section H) and how can those times be reduced?
- How are community members being engaged and how is their feedback incorporated into planning a final solution?
- How affordable is the final solution for a community?
- How many Californians still have unsafe drinking water?

We look forward to adding more detail to this list as part of your discussions with the advisory committee.

#### **Workforce Development**

We recommend the Draft Policy include an explicit recognition related to opportunities for local workforce development as part of SAFER program implementation.

We recommend the State Water Board develop metrics to track workforce development as part of SAFER program implementation. This could include metrics around the amount of funding provided to develop curriculum, new partnerships with local schools and/or community-based programs, the number and amount of SAFER program contracts that are provided to entities based in impacted

communities, and the number of residents from impacted communities that are hired as part of SAFER program implementation.

**Conclusion**

We appreciate your consideration of these recommendations and would be happy to meet to discuss them further and answer any questions.

Sincerely,



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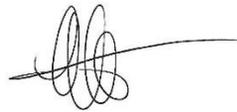
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