2023 Intro to Environmental Law Series

- Drinking Water/PFAS Law 101 – August 2, 2023 at 12pm
- Land Use Law 101 – August 29, 2023 at 12pm
- 2023 Environmental Law Conference at Yosemite – October 19-22, 2023
California Lawyers Association (CLA)
- Nonprofit, voluntary organization dedicated to the professional advancement of attorneys practicing in the state of California

Environmental Law Section (ELS)
- Mission is to advance the quality, breadth, and availability of information and services related to environmental, natural resources, land use, and energy law, and to enhance the profession by cultivating a well-informed, collegial, and diverse group of lawyers and law students throughout the state

New Lawyers Section (NLS)
- Represents all lawyers in California in their first 8 years of practice
- Mission is to advance practical skills, leadership and pro bono opportunities, networking, and support to meet the unique needs of California’s diverse community of new lawyers
Intro to Environmental Law Series
Drinking Water/PFAS Law 101

Moderator:
Paige Samblanet, Associate, Brownstein Hyatt Farber Schreck, LLP

Speakers:
Nicole G. Di Camillo, Attorney IV, State Water Resources Control Board
George Croton, Attorney, East Bay Municipal Utility District
AGENDA

• DRINKING WATER & PFAS LAW OVERVIEW
• WORK EXAMPLES
• OPPORTUNITIES
• RESOURCES
• WAYS TO GET INVOLVED
• QUESTIONS & DISCUSSION
Intro to Environmental Law Series: Drinking Water 101

State Water Resources Control Board
Division of Drinking Water

Nicole Di Camillo, Attorney IV

August 2, 2023
Nicole Di Camillo, Attorney IV
Office of Chief Counsel (OCC)
State Water Resources Control Board
(State Water Board)

Nicole.DiCamillo@waterboards.ca.gov

Standard Lawyerly Disclaimer:

The views expressed in this presentation are those of the author, and do not necessarily reflect the views of the State Water Board, its individual members, or the State of California.
State Water Resources Control Board

Mission Statement

To preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.
State Water Resources Control Board

The State Water Board has Several Divisions, responsible for different areas of Water Law:

- Division of Water Rights
- Division of Water Quality
- Division of Financial Assistance
- Regional Water Quality Control Boards
- Division of Drinking Water
Division of Drinking Water (DDW or Division)
Division of Drinking Water (DDW or Division)

- Field Operations Branch
- Program Management Branch
  - Environmental Laboratory Accreditation Program (ELAP)
  - Technical Operations
  - Regulatory Development Unit, *et al.*
- Resiliency and Data Branch
- Quality Assurance
- SAFER
DDW is divided up into Northern and Southern California Field Operations Branches, which are further divided up into 5 Sections, which are further divided up into 28 District offices.

The Districts and Branches are not directly correlated with Regional Water Quality Control Boards.
Responsibilities of the Division of Drinking Water:

1. Maintain primary enforcement authority for the Federal Safe Drinking Water Act ("primacy") under the U.S. Environmental Protection Agency (US EPA).

2. Implement and Enforce the California Safe Drinking Water Act (Health & Safety Code, § 116270 et seq.) and its Regulations (California Code of Regulations, title 22, Division 4.)

3. Implement State Programs and Policies designed to increase access to affordable and safe drinking water (Human Right to Water Law, Safe and Affordable Funding for Equity and Resilience – SAFER, and SB 1263)
Regulatory Framework

US EPA –
Federal Safe Drinking Water Act (SDWA)
Drinking Water Regulations

State Water Board –
Federal SDWA
California Safe Drinking Water Act and Regulations
CA-specific laws & policies

Local Primacy Agencies (LPAs)
Counties with a certified program that can regulate small public water systems (< 200 service connections)

Counties –
Environmental/ Public Health Departments

State small water systems: at least 5, but not more than 14, service connections

Private and domestic wells
Primary Enforcement Authority ("Primacy") – Cooperative Federalism

Drinking Water Requirements for States and Public Water Systems

Primacy Enforcement Responsibility for Public Water Systems

The Safe Drinking Water Act (SDWA) requires EPA to establish and enforce standards that public drinking water systems must follow, including:

- Maximum contaminant levels or treatment techniques
- Monitoring and reporting requirements

EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and Indian Tribes if they meet certain requirements. EPA recently released revisions to the primacy requirements.

Applicable law, regulations, and guidance

- Safe Drinking Water Act, 1974, as amended in 1986 and 1996
- Primary Regulations 40 CFR Part 142, Subpart B, 1976, as amended in 1986
- State Programs Priority Guidance (1992)
- Revisions to Primary Requirements (1998), 63 FR 23362 codified at 40 CFR Part 142

Requirements for state primacy (from 40CFR142, Subpart B)

The state must:
Primary Enforcement Authority ("Primacy")

• USEPA adopts national drinking water regulations under the Federal Safe Drinking Water Act, including primary drinking water standards.

• Federal Safe Drinking Water Act authorizes states to apply for primary authority ("primacy") to enforce federal Safe Drinking Water Act requirements (primacy). (42 U.S.C. § 300g-2.)

• The state of Wyoming and the District of Columbia do not have primacy. The Navajo Nation has been approved for primary responsibility for implementing SDWA on their lands, but USEPA implements the SDWA on all other tribal lands.
Requirements for Maintaining Primacy (Excerpt from 40 C.F.R. 142.10)

- State has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations
- State has the right of entry and inspection of public water systems
- State has adopted and is implementing adequate procedures for the enforcement of such State regulations.
- State has the authority to require public water systems to give public notice that is no less stringent than the EPA requirements
- State has the authority to assess civil or criminal penalties for violation of the State's primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues.
Requirements for Maintaining Primacy (Excerpt from 40 C.F.R. 142.10)

Environmental Laboratory Accreditation Program (ELAP)

- The establishment and maintenance of a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants pursuant to the requirements of the State primary drinking water regulations.
Primary Enforcement Authority ("Primacy")

- **California Safe Drinking Water Act** is intended to enable the state to **obtain and maintain the minimum requirements for primacy**. (Health & Safety Code, § 116270, subd. (h).)

- The California Safe Drinking Water Act provides the State Water Board authority to enforce the federal Safe Drinking Water Act and implementing regulations. (*Id.*, § 116350, subd. (b)(2).)

- The State Water Board may set additional or more stringent requirements. The **California Safe Drinking Water Act is intended to improve on the minimum requirements of the federal act**. (*Id.*, § 116270, subd. (f).)
Primary Enforcement Authority ("Primacy") – What do the Attorneys Do?

• Provide guidance on interpretation of USEPA’s primacy requirements

• Assist with responding to USEPA’s requests of the Division – e.g., enforcement inquiries, Division’s interpretation of federal requirements, etc.

• Assist Division’s regulatory development unit in crafting regulations that comply with and implement federal drinking water standards/rules
Responsibilities of the Division of Drinking Water:

1. Maintain primary enforcement authority for the Federal Safe Drinking Water Act (“primacy”) under the U.S. Environmental Protection Agency (US EPA)

2. Implement and Enforce the California Safe Drinking Water Act (Health & Safety Code, § 116270 et seq.) and its Regulations (California Code of Regulations, title 22, Division 4.)

3. Implement State Programs and Policies designed to increase access to affordable and safe drinking water (Human Right to Water Law, Safe and Affordable Funding for Equity and Resilience – SAFER, SB 1263)
Implement and Enforce the California Safe Drinking Water Act and its Regulations

The California Safe Drinking Water Act regulates **public water systems** to protect public health.

Public water systems include both **publicly owned and privately owned** systems “for the provision of water for **human consumption** through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.”

Health & Safety Code, § 116275, subd. (h)
Public water systems include community systems, which serve 15 or more connections for yearlong residents or 25 or more yearlong residents.

Public water systems also serve transient and nontransient noncommunity water systems.
What is a “Human Consumption”? 

“Human consumption” means the use of water for drinking, bathing or showering, hand washing, oral hygiene, or cooking, including, but not limited to, preparing food and washing dishes.
How Many Public Water Systems are there in California?

If I tell you how many other types of utilities there are, can you guess how many water systems there are in the state of California?

1. Electric utilities: 75
2. Wastewater Treatment plants: 900
3. Public Water Systems?
   1. 150
   2. 2030
   3. 7300
   4. 4027
How Many Public Water Systems are there in California?

Comparison with Other Utilities

- Public Water Systems: 7,300
- Electricity Utilities: 75
- Wastewater Treatment Plants: 900
Fragmented Infrastructure and Too Many Small Systems

![Graph showing the number and percentage of community water systems](image-url)
Small Water Systems Struggle
Small Water Systems Struggle

88% of the State’s failing water systems serve less than 500 connections
What does it mean to be a “failing” water system?

Systems that are on the Failing list are those that are out of compliance or that consistently fail to meet drinking water standards:

- Primary MCL Violation/s with Open Enforcement
- Secondary MCL Violation/s with Open Enforcement
- *E. Coli* Violation with Open Enforcement
The State Water Board adopts primary drinking water standards for contaminants in drinking water – maximum contaminant levels (MCLs) – which must be at least as stringent as national primary drinking water standards adopted by the United States Environmental Protection Agency (USEPA). (Health & Safety Code, § 116365, subd. (a).)

The standards must be as close to the public health goal set by the Office of Environmental Health Hazard Assessment as is technologically and economically feasible, placing primary emphasis on public health. (Ibid., see id. subd. (c).)
# What are Drinking Water Contaminants?

## National Primary Drinking Water Regulations

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>MCL or TT(^1) (mg/L(^2))</th>
<th>Potential health effects from long-term(^3) exposure above the MCL</th>
<th>Common sources of contaminant in drinking water</th>
<th>Public Health Goal (mg/L(^2))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acrylamide</td>
<td>TT(^4)</td>
<td>Nervous system or blood problems; increased risk of cancer</td>
<td>Added to water during sewage/wastewater treatment</td>
<td>zero</td>
</tr>
<tr>
<td>Alachlor</td>
<td>0.002</td>
<td>Eye, liver, kidney, or spleen problems; anemia; increased risk of cancer</td>
<td>Runoff from herbicide used on row crops</td>
<td>zero</td>
</tr>
<tr>
<td>Alpha/photon emitters</td>
<td>15 picocuries per Liter (pCi/L)</td>
<td>Increased risk of cancer</td>
<td>Erosion of natural deposits of certain minerals that are radioactive and may emit a form of radiation known as alpha radiation</td>
<td>zero</td>
</tr>
<tr>
<td>Antimony</td>
<td>0.006</td>
<td>Increase in blood cholesterol; decrease in blood sugar</td>
<td>Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder</td>
<td>0.006</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.010</td>
<td>Skin damage or problems with circulatory systems, and may have increased risk of getting cancer</td>
<td>Erosion of natural deposits; runoff from orchards; runoff from glass &amp; electronics production wastes</td>
<td>0</td>
</tr>
</tbody>
</table>
Primary and Secondary Drinking Water Standards

- Maximum Contaminant Levels (MCLs) set by USEPA and the State Water Board

- Public water systems are required to comply with primary and secondary drinking water standards. (Health & Safety Code, § 116275, subd. (a)(1).)

- The State Water Board adopts secondary drinking water standards, as necessary to protect the public welfare, including standards for contaminants adversely affecting odor and appearance. (See Health & Safety Code, § 116275, subd. (d), 116375.)
## What are Common Drinking Water Contaminants?

<table>
<thead>
<tr>
<th>Common Contaminants in Drinking Water</th>
<th>Health Impacts from Exposure above the MCL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nitrate:</strong> Runoff from fertilizer use or sewage; erosion of natural deposits</td>
<td>• Infants could become seriously ill and, if untreated, may die</td>
</tr>
</tbody>
</table>
| **Arsenic:** Erosion of natural deposits, runoff from orchards or glass and electronics production wastes | • Skin damage  
• Circulatory problems  
• Increased risk of cancer |
| **Combined uranium:** Runoff from fertilizer use or sewage; erosion of natural deposits | • Increased risk of cancer  
• Kidney toxicity |
| **Total trihalomethanes:** Runoff from fertilizer use or sewage; erosion of natural deposits | • Liver and kidney problems  
• Central nervous system problems  
• Increased risk of cancer |
What are Common Drinking Water Contaminants?

<table>
<thead>
<tr>
<th>Common Contaminants in Drinking Water</th>
<th>Health Impacts from Exposure above the MCL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total haloacetic acids</strong>: Runoff from fertilizer use or sewage; erosion of natural deposits</td>
<td>• Increased risk of cancer</td>
</tr>
</tbody>
</table>
| **Fluoride**: Water additive that, at safe levels, promotes strong teeth; erosion of natural deposits; discharge from fertilizer and aluminum factories | • Bone disease (pain and tenderness of the bones)  
  • Children may get mottled teeth                                           |
| **Microbiological contaminants**: Human and animal fecal waste             | • Short-term effects: Gastrointestinal illness, such as diarrhea, vomiting, and cramps  
  • Legionnaire's Disease, a type of pneumonia                                  |
### What are Common Drinking Water Contaminants?

<table>
<thead>
<tr>
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<th>Health Impacts from Exposure above the MCL</th>
</tr>
</thead>
</table>
| **E. coli**: Human and animal fecal waste | • Short-term effects: Gastrointestinal illness, such as diarrhea, cramps, nausea, and headaches  
• Special health risk for infants, young children, and people with severely compromised immune systems |
| **DBCP (1,2-Dibromo-3-chloropropane)**: Runoff from soil fumigant | • Reproductive difficulties  
• Increased risk of cancer |
Permits (Health & Safety Code, § 116525 et seq.)

1. A public water system cannot operate without a permit from the State Water Board. (Health & Safety Code, § 116525.)

2. The permit implements applicable requirements, and may include conditions for system improvements or for technical, financial or managerial capability to ensure a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers. (Health & Safety Code, § 116540.)
How Does DDW Implement and Enforce the SDWA?

Permits (Health & Safety Code, § 116525 et seq.)

3. The State Water Board may suspend or revoke a permit for failure to comply with the permit or any requirements of the California Safe Drinking Water Act, implementing regulations, or State Water Board orders. (Health & Safety Code, § 116625.)
How Does DDW Implement and Enforce the SDWA?

**Monitoring and Reporting.** The State Water Board may require monitoring and technical reporting as part of a permit application, as a condition of a permit, or in a separate order. (Health & Safety Code, § 116530.)

**Public Notification** (Health & Safety Code, § 116450 et seq.)

1. A public water system must notify the State Water Board and users of violations of primary drinking water standards and other requirements. (Health & Safety Code, § 116450.)

2. A public water system must prepare an annual consumer confidence report and distribute it to customers. (Health & Safety Code, § 116470.)
Consumer Confidence Reports – Look Up Your Water System’s Compliance!
How Does DDW Implement and Enforce the SDWA?

**Enforcement**

The California Safe Drinking Water Act includes substantial enforcement authority. (Health & Safety Code, §§ 116625, 116655 et seq., 116725 et seq.)

1. The State Water Board may issue a citation or other order requiring correction of a violation. (Health & Safety Code, §§ 116650, subd. (c), 116655.)
How Does DDW Implement and Enforce the SDWA?

**Enforcement**

2. The State Water Board may issue a citation assessing a civil penalty. (Health & Safety Code, § 116650, subds. (d) & (e).)

3. Civil penalties may be imposed in court for violations, including violation of a citation or other order or operation with or without a permit. (Health & Safety Code, § 116725.)
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF DRINKING WATER

Name of Public Water System: Howell Mountain Mutual Water Company
Water System No: 2810001

Attention: Tanner Hers, Administrative Contact
Howell Mountain Mutual Water Company
P.O. BOX 9
Angwin, CA 94508

Issued: September 21, 2022

CITATION FOR NONCOMPLIANCE
CALIFORNIA HEALTH AND SAFETY CODE, SECTION 116555 AND
CALIFORNIA CODE OF REGULATIONS, TITLE 22, SECTION 64534.2
FAILURE TO MONITOR FOR DISINFECTION BYPRODUCTS
2022

The California Health and Safety Code (hereinafter “CHSC”), Section 116550
authorizes the State Water Resources Control Board (hereinafter “State Water Board”)
to issue a citation to a public water system when the State Water Board determines that
the public water system has violated or is violating the California Safe Drinking Water
Act (hereinafter “California SDWA”), (CHSC, Division 104, Part 12, Chapter 4,

Citation No. 02_03_22C_023

Failure to Monitor for Disinfection Byproducts for Second Quarter 2022

Enclosed is Citation No. 02_03_22C_023 (hereinafter “Citation”), issued to the Howell
Mountain Mutual Water Company (hereinafter “System”), public water system. Please note
that there are legally enforceable deadlines associated with this Citation.

The System will be billed at the State Water Resources Control Board’s (hereinafter “State
Water Board”) hourly rate for the time spent on issuing this Citation. California Health and
Safety Code, (hereinafter “CHSC”) Section 116577 provides that a public water system
must reimburse the State Water Board for actual costs incurred by the State Water Board
for specified enforcement actions, including, preparing, issuing and monitoring compliance
with a citation. The System will receive a bill sent from the State Water Board in August of
the next fiscal year. This bill will contain fines for any enforcement time spent on the
System for the current fiscal year.

A process exists by which a public water system can petition the State Water Board for
reconsideration of this citation. Petitions sent to the State Water Board “shall include the
name and address of the petitioner, a copy of the order or decision for which the petitioner
seeks reconsideration, identification of the reason the petitioner alleges the issuance of
the order or decision was inappropriate or improper, the specific action the petitioner
requests, and other information as the state board may prescribe. The petition shall be
accompanied by a statement of points and authorities of the legal issues raised by the
petition.” (Health & Saf. Code, § 116701, subd. (b).)

Petitions must be received by the State Water Board within 30 days of the issuance of this
citation by the State Water Board. If the 30th day falls on a Saturday, Sunday, or state

September 21, 2022

System No. 2810001

Tanner Hers, Administrative Contact
Howell Mountain Mutual Water Company
P.O. BOX 9
Angwin, CA 94508

CITATION NO. 02_03_22C_023
FAILURE TO MONITOR FOR DISINFECTION BYPRODUCTS
FOR SECOND QUARTER 2022

Enclosed is Citation No. 02_03_22C_023 (hereinafter “Citation”), issued to the Howell
Mountain Mutual Water Company (hereinafter “System”), public water system. Please note
that there are legally enforceable deadlines associated with this Citation.

The System will be billed at the State Water Resources Control Board’s (hereinafter “State
Water Board”) hourly rate for the time spent on issuing this Citation. California Health and
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How Does DDW Implement and Enforce the SDWA?

What Do Attorneys Do?

- Provide guidance on interpretation and implementation of the California Safe Drinking Water Act and its implementing regulations

- Assist Division with the PWS permitting process

- Assist Division with enforcement of violations of the Act, regulations, permit requirements, etc., including the process for revocation of permits
How Does DDW Implement and Enforce the SDWA?

What Do Attorneys Do?

• Assist Division’s regulatory development unit in crafting regulations that implement drinking water standards and other requirements

• Assist Division in implementation and enforcement of the Environmental Laboratory Accreditation (ELAP) rules and regulations

• Review and respond to petitions challenging the Division’s orders, citations, etc.
How Does DDW Implement and Enforce the SDWA?
What Do Attorneys Do?

• Assist Division in drafting legislation and responding to legislation affecting the Division

• Advise the State Water Board on the Division’s responsibilities and drinking water matters

• Assist in litigation brought against the State Water Board concerning drinking water matters
Responsibilities of the Division of Drinking Water:

1. Maintain primary enforcement authority for the Federal Safe Drinking Water Act ("primacy") under the U.S. Environmental Protection Agency (US EPA)

2. Implement and Enforce the California Safe Drinking Water Act (Health & Safety Code, § 116270 et seq.) and its Regulations (California Code of Regulations, title 22, Division 4.)

3. Implement State Programs and Policies designed to increase access to affordable and safe drinking water (Human Right to Water Law, Safe and Affordable Funding for Equity and Resilience – SAFER, SB 1263)
California-specific Laws and Policies for Increasing Access to Safe and Affordable Drinking Water

- **Human Right to Water Law (2012)**
- **SB 200: Safe and Affordable Funding for Equity and Resilience (SAFER) (2019)**
- **SB 1263 (2016):** New requirements designed to discourage the establishment of new, unsustainable public water systems.
California-specific Laws and Policies for Increasing Access to Safe and Affordable Drinking Water

Human Right to Water Law

On September 25, 2012, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 685, making California the first state in the nation to legislatively recognize the human right to water.

Now in the Water Code as Section 106.3, the state statutorily recognizes that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”
California-specific Laws and Policies for Increasing Access to Safe and Affordable Drinking Water

- SB 200: Safe and Affordable Funding for Equity and Resilience (SAFER) (2019)
- SB 1263 (2017): New requirements designed to discourage the establishment of new, unsustainable public water systems.
California-specific Laws and Policies for Increasing Access to Safe and Affordable Drinking Water

Safe and Affordable Funding For Equity and Resilience (SAFER) Program (SB 200, 2019)
SAFER – Tools and Funding

- SAFER Program establishes a set of **tools, funding sources, and regulatory authorities** to help struggling water systems sustainably and affordably provide safe drinking water.

- The SAFER Program is driven by **collective responsibility**: water systems, non-profit organizations, governments, a community advisory board, and other interested parties work together to develop and implement solutions.
SAFER – Tools and Funding

- Building local capacity through consolidations, administrators, technical assistance, and working with systems, the communities they serve and other partners to find long-term solutions to their specific problems.

- Close collaboration with the Division of Financial Assistance (DFA) and Office of Public Participation (OPP). Funding through DFA and public notifications and meetings are integral to these processes.
SAFER – Tools and Funding – Division of Financial Assistance (DFA)

• DFA is essential to implementation of funding solutions for water systems, including consolidations, administrators, technical assistance, emergency funds, funds for capacity and infrastructure, etc.

• DFA provides grants, loans, etc. from federal and state sources.
SAFER – Drinking Water Needs Assessment

Large-scale study designed to identify the greatest areas of need, and prioritization for available state funding, technical assistance, and intervention measures such as mandatory consolidation or administrator appointments.

https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/needs.html
SAFER – Ongoing Data and Information Collection

Table 29: 2023 Risk Assessment Results by Systems Size and Type

<table>
<thead>
<tr>
<th>System Type</th>
<th>Small Systems</th>
<th>Medium Systems</th>
<th>K-12 Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing</td>
<td>311</td>
<td>12</td>
<td>58</td>
</tr>
<tr>
<td>At-Risk</td>
<td>442</td>
<td>26</td>
<td>44</td>
</tr>
<tr>
<td>Potentially At-Risk</td>
<td>377</td>
<td>32</td>
<td>44</td>
</tr>
<tr>
<td>Not At-Risk</td>
<td>1,254</td>
<td>241</td>
<td>212</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>2,384</strong></td>
<td><strong>311</strong></td>
<td><strong>358</strong></td>
</tr>
</tbody>
</table>

Figure 29: Risk Assessment Results by Number of Service Connections

SAFER – Drinking Water Needs Assessment

How many Californians don’t consistently have access to clean water that meets DW standards?

1. 128,540
2. 1,211,766
3. 25,060
4. 680,784
SAFER – Drinking Water Needs Assessment

How many Californians don’t consistently have access to clean water that meets DW standards?

1. 128,540
2. **1,211,766***
3. 25,060
4. 680,784

*And if taking into account K-12 schools that are a failing PWS = 1,229,671
SAFER – Drinking Water Needs Assessment

Table 1: Summary of Systems on the Failing List Throughout 2022

<table>
<thead>
<tr>
<th>Water Systems</th>
<th>Number of Unique Systems</th>
<th>Total Population Served</th>
<th>Average Number of Service Connections</th>
<th># of Systems on List Greater than 3-Yrs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Water Systems*</td>
<td>353</td>
<td>318,209</td>
<td>249</td>
<td>195</td>
</tr>
<tr>
<td>Medium Water Systems*</td>
<td>23</td>
<td>893,557</td>
<td>9,868</td>
<td>11</td>
</tr>
<tr>
<td>K-12 Schools</td>
<td>65</td>
<td>17,805</td>
<td>6</td>
<td>45</td>
</tr>
<tr>
<td>TOTAL:</td>
<td>441</td>
<td>1,229,671</td>
<td>715</td>
<td>251</td>
</tr>
</tbody>
</table>

PROVIDING ASSISTANCE

The goal of the SAFER Program is to help Failing and At-Risk systems operate sustainably and achieve the HR2W. It does this by building local capacity through consolidations, administrators, technical assistance, and working with systems, the communities they serve.

* 3,000 service connections or less.
* Greater than 3,000 service connections. No system with greater than 30,000 service connections has been on the Failing list since September 2019.
Table 39: 2021 Average Monthly Residential Customer Charges for 6 HCF by SAFER Status

<table>
<thead>
<tr>
<th>SAFER Program Status</th>
<th>Total Systems</th>
<th>Average Customer Charges for 6 HCF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing Systems</td>
<td>236</td>
<td>$72.67</td>
</tr>
<tr>
<td>Failing DAC/SDAC</td>
<td>143</td>
<td>$60.01</td>
</tr>
<tr>
<td>At-Risk Systems</td>
<td>331</td>
<td>$86.48</td>
</tr>
<tr>
<td>At-Risk DAC/SDAC</td>
<td>228</td>
<td>$77.84</td>
</tr>
<tr>
<td>Potentially At-Risk Systems</td>
<td>283</td>
<td>$75.74</td>
</tr>
<tr>
<td>Potentially At-Risk DAC/SDAC</td>
<td>161</td>
<td>$61.62</td>
</tr>
<tr>
<td>Not At-Risk System</td>
<td>1,183</td>
<td>$58.97</td>
</tr>
<tr>
<td>Not At-Risk System DAC/SDAC</td>
<td>460</td>
<td>$50.30</td>
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<td>$43.98</td>
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<td>Not Assessed System DAC/SDAC</td>
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<td><strong>STATEWIDE:</strong></td>
<td><strong>2,162</strong></td>
<td><strong>$67.06</strong></td>
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Systems that Do Not Charge for Water or Missing Charge Data: 683
SAFER – Expanding Consolidations

- Consolidation is the joining of two or more water systems, which commonly includes a smaller, failing system being absorbed into a larger, more well-functioning water system.

- Can be mandatory or voluntary.

- Can be physical or managerial.
Mandatory Consolidation Requirements *(Excerpt from Health & Safety Code, § 116682):*

- 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, or is an at-risk water system.

- Consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible.

- Consolidation or extension of service is an effective and cost-effective means to provide an adequate supply of safe drinking water.
SAFER – Funding for More Consolidations

State Water Resources Control Board
Division of Drinking Water

November 17, 2021

Shawn Lewis, Owner
NorrCal Water Works
14142 Norwich Circle
Magaia, CA 96654

Dear Mr. Lewis,

This letter concerns the current and future operations of Norcal Water Works. The State Water Resources Control Board’s (State Water Board), Division of Drinking Water (Division) has serious concerns regarding Norcal Water Works’ current and historic deficiencies and the ongoing and future ability of Norcal Water Works to provide a safe and affordable supply of drinking water to its customers.

As explained below, the Division is taking the first steps towards ordering consolidation of Norcal Water Works with Del Oro Water Company—Larkspur Meadows (Del Oro). The first step in this process is to provide a six-month period for the parties to negotiate a voluntary consolidation, pursuant to Section 116682 of the California Health and Safety Code (CHSC). This letter serves as official notification that pursuant to CHSC Section 116682(b), Norcal Water Works is to negotiate with Del Oro.

Background

NorrCal Water Works is classified as a community public water system with a population of 45 residents, served through 17 service connections. Norcal Water Works provides groundwater to its customers. As documented in the following findings, Norcal Water Works consistently fails to provide an adequate supply of safe drinking water.

1. Norcal Water Works fails to employ a chief and shift distribution operator that meets the requirements specified in the California Code of Regulations (CCR) Section 63770 from September 2019 to the present.


In light of the above findings, the Division is taking steps to ensure the health and safety of the Norcal Water Works customers. The Division is considering ordering consolidation of Norcal Water Works with Del Oro Water Company—Larkspur Meadows (Del Oro), as permitted under Section 116682 of the CHSC.

We appreciate your cooperation in this matter.

Sincerely,

[Signature]

VIA ELECTRONIC MAIL TO: safe@waterboards.ca.gov

[Environmental Law] CALIFORNIA LAWYERS ASSOCIATION

- 94 Completed Consolidations
- 56,000 more people now have safe drinking water
SAFER – Expanding Consolidations

Orosi High School

County: Tulare
Population: 1,200
Challenges: Nitrates MCL violation
Consolidation date: April 2022

Orosi High School is located in Orosi, CA in Tulare County and serves a population of 1,200 staff and students. The school previously supplied water from a single well and a partial connection to the Orosi Public Utilities District (PUD). In 2018, Orosi High School was issued Compliance Order 03_24_18R_002 for violation of the Nitrates maximum contaminant level.

Although the school was partially connected to Orosi PUD, all restrooms and sinks were still connected to the contaminated well. The State Water Resources Control Board’s Division of Financial Assistance provided $514,383 in Urgent Drinking Water Needs funding to get the remainder of the school connected. As of April 22, 2022, Orosi High School has been receiving 100% of their drinking water supply from the Orosi PUD through a master meter connection. The existing well will be used for irrigation for the school site only.

De Rancho Y Mobile Villa

County: Kern
Population: 200
Challenges: Loss of water supply
Consolidation date: November 2022

De Rancho Y Mobile Villa (De Rancho) is in Bakersfield, CA and serves a population of 200 through 90 unmetered service connections. The community was served by one groundwater well source drilled to a depth of 300 feet equipped with a submersible pump and one hydro pneumatic pressure tank. The water system did not maintain storage or back-up power supply.

On August 16, 2022, the water system experienced a full water outage. De Rancho is within the California Water Service Company – Bakersfield (CWS – Bakersfield) service area and Self-Help Enterprises (SHE) helped facilitate an emergency connection to CWS – Bakersfield. De Rancho self-funded the emergency connection and installation of a backflow device to a CWS – Bakersfield water meter. SHE provided residents an interim supply of bottled water and the temporary connection was made on August 19, 2022.

In October 2022, the Division of Financial Assistance approved the use of SHE Technical Assistance Emergency Funding to permanently connect De Rancho to CWS – Bakersfield. The project included permanent installation of approximately 600 feet of piping and the destruction of De Rancho’s on-site wells. Following the completed consolidation, the Visalia District inactivated the De Rancho Y Mobile Villa water system on November 30, 2022.
SAFER – Administrator Authority and Funding

A **Water System Administrator** is a qualified specialist that provides Technical, Managerial, and/or Financial expertise to struggling water systems.

Disadvantaged communities served by a failing water system on the Human Right to Water list are eligible for an Administrator Appointment **funded by the State Water Board**, through SAFER program funding.
SAFER – Administrator Authority and Funding

- An administrator steps in to help run a PWS that is failing or at-risk.

- Various Entities:
  - Non-profit technical assistance providers (e.g., CRWA)
  - Counties (e.g., Sonoma and Tulare)
  - For-profit water systems (e.g., Russian River Utilities), and
  - Engineering services providers (e.g., Provost and Prichard, Stantec).

- Funded by SAFER.
The State Water Board has currently designated 18 public water systems in need of an administrator, representing approximately 4,252 people and 1,309 service connections, in 8 counties.
SAFER – Additional Funding Sources Bring Success

- 95% more grant funding distributed since SAFER launched in 2019 than the three years prior.
- $700 MILLION in grants provided by SAFER since 2019 to bring safe drinking water to California’s small, disadvantaged communities.
- $50 MILLION provided by SAFER since 2019 to repair 150 failing water systems serving 9,456 households.
- 300 projects accelerated in disadvantaged communities since 2019 through SAFER’s expanded technical assistance.
SAFER – Additional Funding Sources Bring Success

• 3,100 letters to water systems recommending consolidation
• 22 water partnership workshops
• 40% of our failing water systems are in consolidation discussions or considering the feasibility of consolidation
• 200+ consolidations currently in the queue
• Targeted letters to At-Risk systems in the future
• Focus on Regional Projects

State Water Resources Control Board Meeting - April 19-20, 2022 – YouTube (starting at 4:06:27)
California-specific Laws and Policies for Increasing Access to Safe and Affordable Drinking Water

- SB 200: Safe and Affordable Funding for Equity and Resilience (SAFER) (2019)
- SB 1263 (2017): New requirements designed to discourage the establishment of new, unsustainable public water systems.
SB 1263 – Avoiding New, Unsustainable PWS

• “It is the policy of the state to discourage the establishment of new, unsustainable public water systems when there is a feasible alternative.”
  - California Legislature, S.B. 1263 (2016)

• Requires a “Preliminary Technical Report” (Health & Safety Code, § 116527)

• Applies to applications for permits for new public water systems. Requirements in addition to a standard public water system permit application.
SB 1263 – Avoiding New, Unsustainable PWS

- Preliminary Technical Report is a detailed technical report studying the feasibility of consolidating or connecting with another system nearby, sources of water, capacity, estimates of long-term costs of operation and maintenance, cost-comparison with consolidation, etc.

- Preliminary Technical Report must be submitted six (6) months before any water-related construction can occur.
Additional Laws and Programs Implementation

What Do Attorneys Do?

• Advise Division on SAFER requirements and authorities provided by SAFER, SB 1263, etc.

• Advise Division on procedures and requirements for Consolidations and appointment of Administrators

• Liaison with DFA regarding funding for technical assistance, infrastructure, etc. for failing systems

• Assist in drafting and review of policies, regulations, etc. designed to implement the SAFER program
Legal Careers with the State Water Board

http://www.jobs.ca.gov

- Attorney I – V
- Graduate Legal Assistant
Legal Careers with the State Water Board

• Legal Externships: Currently full for Fall 2023, but we will be accepting applications for Spring and Summer 2024.

• Contact Lauren Marshall, Attorney: Lauren.Marshall@Waterboards.ca.gov
Thank you!

Please contact me with any questions:
Nicole.DiCamillo@waterboards.ca.gov
Drinking Water 101

George Croton

August 2, 2023
• EBMUD is a public entity created by voters in the East San Francisco Bay in 1923.

  “To manage the natural resources with which the District is entrusted; to provide reliable, high-quality water and wastewater services at fair and reasonable rates for the people of the East Bay; and to preserve and protect the environment for future generations.”

• Governed by a Board of Directors consisting of seven members publicly elected by geographical wards.

• EBMUD provides water to approximately 1.4 million customers in Alameda and Contra Costa Counties.
EBMUD’s Water Supply

- EBMUD captures snowmelt from 575 square miles of the Mokelumne River watershed and collects it at Pardee Reservoir, 90 miles east of the Bay Area.
  - Water rights for up to 325 million gallons daily from the Mokelumne River watershed.
  - Additional water (less than 10-percent of total supply) comes from local watersheds in Alameda and Contra Costa Counties.

- The District diverts a portion of this flow through an 82-mile-long aqueduct system to terminal reservoirs and water treatment plants located in the East Bay Area.
  - Upper San Leandro, Sobrante, Orinda, Lafayette, and Walnut Creek water treatment plants.

- EBMUD has a contract with the U.S. Bureau of Reclamation for up to 100 MGD from the Sacramento River in dry years.
EBMUD’s Water Supply
Supply and Quality

- EBMUD operates its reservoirs in accordance with water right permits and licenses issued by the State Water Resources Control Board and the Federal Energy Regulatory Commission (FERC). Those permits and licenses establish streamflow and diversion limitations.

- EBMUD must also meet federal and state drinking water standards set by the U.S. EPA and the State Water Resources Control Board.
Supply and Quality

Prior to the Safe Drinking Water Act (SDWA), regulation consisted of a patchwork of state- and local-level water regulations created to deal with providing adequate quantities of drinking water to growing communities.

- First major federal effort was the 1912 US Public Health Service Act, whereby Congress sought to prevent communicable diseases from being introduced into and transmitted via water by, for example, eradicating waterborne typhoid.

- Mounting concern during the 1960s over the environmental harms posed by industrial runoff and synthetic chemicals leaching into the water supply.

Safe Drinking Water Act

- Congress enacted the Safe Drinking Water Act (SDWA) in 1974 to establish uniform quality standards for the public water systems in the United States. The federal SDWA prohibits states from enacting drinking water laws less stringent than those established by the EPA.

- In 1976, the Legislature enacted California's SDWA, declaring water delivered by California's public water systems “should be at all times pure, wholesome and potable, and adopting procedures to be followed in an effort to accomplish this objective.” *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 703 (2005).
Safe Drinking Water Act

- EPA has established protective drinking water standards for more than 90 contaminants.

- EPA sets national standards for drinking water to protect against health risks, considering available technology and costs. These National Primary Drinking Water Regulations (NPDWRs) set enforceable maximum contaminant levels (MCLs) and required treatment methods.
  - As well as testing and public reporting requirements.
How are MCLs set?

- EPA looks to whether:
  - The contaminant may have an adverse effect on the health of persons
  - The contaminant is known to occur or there is a high chance that the contaminant will occur in public water systems at levels of public health concern
  - Regulation of the contaminant presents a meaningful opportunity for health risk reductions for persons served by public water systems

- EPA reviews health effects data and prepares a health risk reduction and cost analysis (HRRCA).
  - Cost of installing treatment technologies, monitoring and analysis, management and oversight costs
  - EPA may adjust the MCL to a level that "maximizes health risk reduction benefits at a cost that is justified by the benefits."
EBMUD Treatment Process

- All water delivered to customers is filtered through sand and anthracite. Each water treatment plant also provides disinfection, fluoridation and corrosion control.

- EBMUD conducts over 20,000 laboratory tests each year, testing for the presence of more than 100 substances including microorganisms, pesticides, herbicides, asbestos, lead, copper, petroleum products, and by-products of industrial and water treatment processes.
PFAS

• Per- and polyfluoroalkyl (PFAS) substances are chemical compounds that were historically used in a wide variety of manufacturing processes and consumer products.
  – Known as “forever chemicals” because they do not naturally degrade over time and are easily transmissible through a variety of media.
  – Shown to have harmful short- and long-term impacts on human health and wildlife.
• According to a recent study by the U.S. Geological Survey, at least 45% of the nation’s tap water is estimated to be contaminated with one or more types of PFAS.
  – As many as 97-98% of Americans may have PFAS in their bloodstreams, according to the Centers for Disease Control.
PFAS

- On March 14, 2023, EPA announced a proposed NPDWR to establish Maximum Contaminant Levels for six PFAS compounds.

- The proposed rule would require public water systems to:
  - Monitor for these PFAS;
  - Notify the public of the levels of these PFAS;
  - Reduce the levels of these PFAS in drinking water if they exceed the proposed standards.

- Expected to be finalized by end of 2023.
PFAS

- MCLs for PFAS in California have not yet been established, but are a priority for the Division of Drinking Water.
- The Division of Drinking Water has requested that the Office of Environmental Health and Hazard Assessment (OEHHA) develop Public Health Goals (PHGs) for several PFAS.
  - PHGs serve as the basis for the development of MCLs.
- California does have Notification Levels (NLS) and Response Levels (RLs) for PFAS.
  - NLS are nonregulatory, precautionary health-based measures. But if contaminant levels exceed an RL, the SWRCB requires that the water source in question be taken out of service or treated.
How is EBMUD’s water impacted?

- EBMUD's drinking water sources are well protected from human-made contaminants, including PFAS.

- EBMUD sampled its source waters and treated waters in 2020 and 2021 for PFAS.
  - All results were below California’s Notification Levels. Some low concentrations of some PFAS compounds were detected in local reservoirs, including PFOA and PFOS.
  - Some individual PFOA and PFOS results were slightly higher than the new standards proposed by EPA.
How is EBMUD responding?

• Litigation
  - PFAS AFFF Multi-District Litigation is currently home to over 2,500 cases and is being presided over by Judge Richard Gergel of the United States District Court of South Carolina.
  - $10-12 billion dollar settlement tentatively reached for public water systems.

• Treatment as required
  - Traditional drinking water treatment technologies are not able to remove PFAS.
  - Developing technologies include activated carbon adsorption, ion exchange resins, and high-pressure membranes.
  - GAC has been shown to effectively remove PFAS from drinking water when it is used in a flow through filter mode after particulates have already been removed.
WAYS TO GET INVOLVED

- Join CLA, ELS, NLS, or other Sections once you graduate and are admitted to the Bar
- Attend webinars, 101 Series, and in-person events (e.g., Yosemite Conference, Diversity Conference, Annual Meeting)
- Earn MCLE credit through online videos or self-study materials
- Submit an article for our eNews or other Section publications
- Watch NLS’s 10 Minute Mentor videos on YouTube
- Participate in Student Negotiation and Writing Competitions
- Join our Book Club, Mentorship Program, and Legislation Committee
- Apply for Summer Diversity & Inclusion Fellowships
- Check out our Job Board
QUESTIONS & DISCUSSION

THANK YOU!

• psamblanet@bhfs.com
• Nicole.dicamillo@waterboards.ca.gov
• George.croton@ebmud.com

• Environmental Law - California Lawyers Association (calawyers.org)
• New Lawyers - California Lawyers Association (calawyers.org)