



Bringing
Water
Together

March 25, 2019

The Honorable Bill Quirk
Chair, Assembly Environmental Safety and
Toxic Materials Committee
State Capitol, Room 2163
Sacramento, CA 95814

Re: AB 217 (E. Garcia): Safe Drinking Water Funding/Water Tax

Position: OPPOSE UNLESS AMENDED (March 19, 2019 Version)

Dear Chair Quirk,

The Association of California Water Agencies (ACWA) appreciates that Assembly Member Eduardo Garcia, after months of discussion since the 2017-'18 Legislative Session, is proposing legislation to address the funding gap for safe drinking water funding. ACWA agrees with that intent. The lack of access to safe drinking water in certain disadvantaged communities is a public health issue and a social issue that the State needs to address. We appreciate that Assembly Member Garcia has been open to suggestions for different types of funding mechanisms, including the creation of a trust. However, as explained below, ACWA must oppose AB 217 as amended on March 19 unless it is significantly amended, most notably to delete the proposal for a water tax.

1. AB 217 Proposes a Water Tax

ACWA's biggest concern with AB 217 is that it proposes a water tax. At Page 19, AB 217 would require the State Water Resources Control Board (State Water Board) to adopt by regulation an annual schedule for a Safe and Affordable Drinking Water "Fee." Despite the use of the word "fee" in AB 217, the proposed funding mechanism would be a "tax" under the California Constitution.

AB 217 does not propose who would pay this water tax. (The Governor's budget trailer bill language would have the water tax paid by residential and business customers of community water systems.) Under the March 19 version of AB 217, the people (and/or entities) that would pay the water tax would be decided by the State Water Board.

A. Problems with a Water Tax

Problems with a water tax include:

- 1) State law sets forth a policy of a human right to water for human consumption that is safe, clean, **affordable** and accessible. **It is not sound policy to tax a resource that is a human right;**

- 2) It is not sound policy to tax a resource that is essential to life;
- 3) If community water systems or their customers would be required to pay it, **adding a state water tax would work against keeping water affordable for Californians;**
- 4) The costs for implementation can work against keeping water affordable. It is unclear how the water tax under AB 217 would be collected. The bill at Page 19, Line 33 would authorize the State Water Board to include in the implementing regulations “provisions concerning (...) collection of the ‘fees’.” If this language resulted in collection via local water bills (as proposed in the Governor’s budget trailer bill language), the implementation costs (e.g., for an additional staff person or more than one staff person and for billing system changes) skyrocket when implemented by about 3,000 local water agencies; and
- 5) The water tax proposal in the bill would be the precedent for a statewide water tax in state law.

2. The Safe Drinking Water Trust should *replace* – not add to – the proposal for a statewide water tax.

ACWA and the California Municipal Utilities Association (CMUA) are sponsoring SB 669 (Caballero), which would create the Safe Drinking Water Trust. ACWA greatly appreciates that Assembly Member Garcia included a proposal for a trust in AB 217. However, the SB 669 proposal for a trust is a legitimate funding mechanism that was intended to **replace** proposals for a water tax – not add to them, as proposed in AB 217. Also, ACWA encourages further consideration of the language in SB 669 as it is more detailed than the language in AB 217.

3. Other aspects of AB 217 are problematic.

Other aspects of AB 217 are problematic. Following are examples based on a preliminary review (not a complete list):

A) Uses Truncated Emergency Regulation Process: After the initial State Water Board’s adoption of the initial regulation, AB 217 proposes that subsequent amendments to or adjustments to the annual schedule be adopted through the emergency regulation process. The emergency regulation process would greatly reduce the afforded due process, including the time afforded to stakeholders to comment. The emergency regulation language in AB 217 at Pages 19 and 20 should be deleted along with the proposed water tax.

B) Proposes Previously-Rejected State/Regional Funding Split: The March 19 version of AB 217 would authorize the State Water Board to distribute less than or equal to twenty percent of the annual expenditures through its regional drinking water offices to implement region-specific programs. Our understanding is that the Author is including this language due to the concerns with the budget trailer bill language that most local water customers would be paying the water tax and not obtaining any benefit. While well-intended, the regional program concept is problematic. It is inefficient to send money to Sacramento to have twenty percent (or other percentages) come back for a related use in the regions. This proposal is similar to a proposal that was floated as the Water Resources Investment Fund in the past and was rejected. A tax on water would add to the cost of water for Californians. The better approach is to use a percentage of the State’s record budget surplus to fund the Safe Drinking Water Trust as proposed in SB 669 (Caballero).

C) Limits uses of O&M Funding: AB 217 proposes that the use of the fund for operation and maintenance (O&M) costs would be limited to O&M costs associated with “consolidated water systems, extended drinking water services, or reliance on a substituted drinking water source.” (See Page 13 at Line 38.) An existing public water system in a disadvantaged community that needed O&M funding assistance for it to comply with the standards but did not meet one of those three tests would apparently not be eligible. This seems counter to the discussions that triggered legislation in this area.

D) Would Unnecessarily Fund Capital: AB 217 would make the fund available for capital costs for which existing federal and state funding sources are available. (See Page 13, Line 12.) This is unnecessary. The bill should instead focus on where there are funding gaps (e.g., O&M costs for drinking water treatment at community water systems, in disadvantaged communities, that chronically violate the federal and/or state safe drinking water standards).

E) Duplicates State’s Water Affordability Efforts: AB 217 (at Page 17, Line 14) would make community water systems *that have safe drinking water* eligible for funding if the systems must charge fees that exceed the affordability threshold in the State Water Board’s Safe Drinking Water State Revolving Fund Intended Use Plan. Pursuant to AB 401 (Dodd, 2015), the State Water Board is working to issue a draft plan this year for a low-income water rate assistance program. The Safe and Affordable Drinking Water Fund in AB 217 should not duplicate that program. Rather, AB 217 should be targeted at community water systems in disadvantaged communities that are chronically violating federal and/or state drinking water standards.

F) Includes Funding for Wastewater Treatment: The bill would make funding available for wastewater treatment plant O&M costs to treat water pollution that originates outside the state. (See Page 14 at Line 19.) The proposed fund should be for drinking water solutions – not wastewater treatment solutions.

G) Limits Solutions with Prioritization Mandate: The bill would prioritize funding for consolidation and service extensions. (See Page 15 at Line 12.) Such solutions may be the best solution in many instances, but the prioritization language could keep funding from solving a problem where consolidation or service extension is not needed.

H) Jumps Ahead of Pending State Needs Assessment: AB 217 would make funding available for private domestic wells and state small systems (with five to fourteen connections). There currently is no state needs assessment for private wells and small systems because they are regulated at the county level. A state funding program for county-regulated systems may need to look different than O&M assistance, for example. The most recent state needs assessment addresses systems with 15 or more connections, because those are the systems that the State Water Board regulates. In some cases, the solutions for the private domestic wells and small systems will be a form of consolidation. In 2018, the Legislature included \$3 million in the 2018-’19 State Budget for a State Water Board needs analysis of “water systems.” The State Water Board is currently determining how to assess the needs for the private wells and small systems.

As discussed above, ACWA opposes AB 217 unless it is amended, including in particular to delete the proposed water tax. The trust proposed in SB 669 (Caballero) is a better approach to the funding mechanism issue.

If you have questions, please contact me at (916) 441-4545 or at cindyt@acwa.com.

A handwritten signature in black ink that reads "Cindy Tuck". The script is cursive and fluid, with the first name "Cindy" and last name "Tuck" clearly legible.

Cindy Tuck
Deputy Executive Director for
Government Relations

cc: The Honorable Eduardo Garcia
Honorable Members, Assembly Environmental Safety and Toxic Materials (AESTM) Committee
Mr. Carlos Gonzalez, Chief of Staff, Assembly Member Eduardo Garcia's Office
Mr. Josh Tooker, Chief Consultant, AESTM Committee
Ms. Catherine Freeman, Chief Consultant, Assembly Water, Parks and Wildlife Committee
Mr. Greg Melkonian, Consultant, Assembly Republican Caucus
Mr. Calvin Rusch, Consultant, Assembly Republican Caucus