



**CMUA**  
CALIFORNIA MUNICIPAL UTILITIES  
ASSOCIATION

February 3, 2020

Submitted via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

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

Dear Ms. Townsend:

The Association of California Water Agencies (ACWA) and California Municipal Utilities Association (CMUA) appreciate the opportunity to provide comments on the State Water Resource Control Board's (State Water Board) *Draft Policy for Developing the Fund Expenditure Plan* (Draft Policy) for the Safe and Affordable Drinking Water Fund (Fund). ACWA represents over 450 public water agencies that deliver over 90% of the water used for residential, commercial and agricultural purposes in California. CMUA represents 49 water agencies that deliver water to over 75% of Californians.

**Comment 1: ACWA and CMUA support the alignment of the Drinking Water Needs Assessment with the Fund expenditure plan to drive a solution-oriented process.**

ACWA and CMUA recognize that the development of a statewide Drinking Water Needs Assessment is foundational to prioritizing funding to address the safe drinking water needs of communities in California. We appreciate the State Water Board staff for presenting the Drinking Water Needs Assessment in the Draft Policy as a fundamental element in the Fund Expenditure Plan development. We see a path forward in identifying needs and presenting solutions to help move water systems toward sustainable operations.

ACWA and CMUA recommend that the State Water Board continue to focus on moving water systems toward a path of long-term sustainability, as suggested by stakeholders at the January 13, 2020 Advisory Group Meeting. The Fund is an eligible source for funding operations and maintenance (O&M) costs, which should be used to help water systems reach a sustainable solution. We recommend the following amendments to the language on Page 3 of the Draft Policy to clarify that the purpose of the Fund should focus on solutions:

*"The Fund will assist water systems in providing a safe, adequate and affordable supply of drinking water to communities in both the near and long terms by **providing short-term operation and maintenance support as a bridge until long-term sustainable solutions are in place, providing long-term operation and maintenance support when necessary, accelerating implementation of short and long-term solutions, and moving water systems to***

*more efficient modes of operation., and providing operation and maintenance support once solutions are in place.”*

**Comment 2: Funding should be prioritized to help solve as many known safe drinking water issues as possible. Therefore, public water systems that consistently fail to meet federal and state primary drinking water standards must be prioritized and funding must be directed to solve these known needs.**

The Drinking Water Needs Assessment and Fund should focus on solving the known water quality violations of federal and state drinking water standards. The first element of the Drinking Water Needs Assessment Conceptual Plan that will be published in 2020 is related to public water systems that are in violation of federal and state drinking water standards. Prioritization of need should generally focus on immediate health risks, areas where replacement water is required, and where there are consistent violations of primary maximum contaminant level (MCLs) drinking water standards. When administering funding, the State Water Board should consider the following to prioritize funds for public water systems that consistently fail to meet safe drinking water standards: **immediate risks and exposure to drinking water that does not comply with primary MCLs and project or activity readiness to meet the long-term solution.**

On Page 12 under Section C. Identification of Water Systems Needing Solutions, the reference to public water systems that fail “*to provide a pure and wholesome water supply*” should be removed, since public water systems are considered either in-compliance or in violation of primary or secondary drinking water standards. Providing a pure and wholesome water supply is not a separate measure of compliance and is included in the definition of a secondary drinking water standard, as defined under Health and Safety Code § 116275(d). We recommend the Draft Policy focus on systems that consistently fail to provide safe drinking water, focusing first on primary drinking water standards and then subsequently on secondary drinking water standards. As such, we recommend the following changes on Page 12 of the Draft Policy:

*“C. Identification of Water Systems Needing Solutions*

*Water systems needing solutions to provide safe and affordable drinking water will be identified in the fund expenditure plan by utilizing the following:*

*i. Public water systems identified as being currently **and consistently** in violation of one or more federal or state primary drinking water standards with an enforcement action taken.*

*ii. **Public water systems that consistently fail to meet secondary drinking water standards.** ; ~~or that fails to provide a pure and wholesome water supply. These systems consistently fail to deliver safe and affordable drinking water.~~”*

**Comment 3: The Draft Policy should recognize that each system will have different needs, facts, and data that drive the solutions.**

ACWA and CMUA recognize that there is not a “one-size-fits-all” solution for systems facing safe drinking water issues. It would be beneficial to include a statement in the Draft Policy that solutions will differ depending on system need. By recognizing this in the Draft Policy, the State Water Board will be able to direct and track what type of funding (e.g., O&M) is being spent and what type of funding is most needed. **Each system’s needs should be evaluated in how they will reach the long-term solution or goal, even if there are earlier actions that may need to be taken to address immediate health risks.**

We recommend that the Draft Policy include a broad reference to the types of activities that can be funded, including technical assistance, planning activities, and projects.

We proposed the following text be included on page 14 in the Draft Policy –

*“F. The Safe and Affordable Drinking Water Fund Solution List  
A wide range of projects and activities are eligible for funding through the Fund. Each identified system should be evaluated based on its needs, facts, and data to identify the operation and maintenance costs, technical assistance, planning activities or projects needed to reach a long-term solution and sustainable operations and management of the system. The fund expenditure plan will further identify eligible projects, activities and costs as well as ineligible costs.”*

We recommend the State Water Board include in the Fund expenditure plan three general categories that form funding tracks. The three tracks should include technical assistance, planning efforts, and implementation or project activities. Within these tracks, a portion of funding should also be made available to compliant water systems that may be considering, or are in the process of, consolidating, extending service or providing water to non-compliant systems and communities. Technical, managerial and financial (TMF) capacity should be assessed for each system to ensure long-term solutions can be met. This will help the State Water Board and the public in understanding and tracking the Fund’s expenditure activities.

**Comment 4: The Draft Policy should include the statutory requirements associated with the Fund, including the annual funding amount and the timeframe for the Fund.**

Currently, the Draft Policy simply references the statutory basis for the Fund and does not include the annual funding amount and the timeframe for the Fund. These are important statutory requirements as stated in Health and Safety Code sections 39719(b)(3)(A) and 116766(g) that should be included in the Draft Policy. The following should be added to the Introduction Section on Page 2:

The Fund was established to help water systems provide safe and affordable short- and long-term drinking water supplies for all Californians using continuously appropriated state funds, **up to \$130 million annually**, from the Greenhouse Gas Reduction Fund (GGRF) and the General Fund **until June 30, 2030**.

**Comment 5: The Draft Policy should clearly identify all of the Fund purposes, as is defined in statute.**

The Draft Policy includes references to several, but not all, of the Fund purposes in the Introduction. Per statute, the Fund should be used to help water systems provide adequate and affordable safe drinking water supplies in both the near and long terms (Health and Safety Code § 116766). The Fund purposes listed in the Draft Policy currently combine the purposes that are described for the Fund expenditure plan. We recommend the following paragraph in the Introduction Section on Page 2 be revised to reflect all of the statutory purposes for the Fund as described Health and Safety Code § 116766:

The **purpose of the Fund** ~~may be used for various types of assistance for disadvantaged communities, voluntary participants, and Public is to help~~ Water Systems (PWS) ~~with demonstrated failure or risk of failure, including but not limited to projects that provide~~

an adequate and affordable supply of safe drinking water in both the near and long term:

- (1) ~~provide interim access to safe water sources~~ the provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution;
- (2) ~~contract or provide a grant to an~~ the provision of administrator services (under Section 116686) for the purpose of helping the systems become self-sufficient in the long term ~~administrator to address or prevent failure to provide safe and affordable drinking water;~~
- (3) the development, implementation, and sustainability of long-term drinking water solutions ~~improve water delivery infrastructure;~~
- (4) ~~provide technical assistance to disadvantaged communities;~~
- (5) consolidat~~ing~~ water systems or extending drinking water services to other public water systems, domestic wells, and state small water systems; and
- (5~~6~~) fund operation and maintenance to help deliver an adequate supply of safe drinking water in both the near and long term; ~~for disadvantaged and low-income communities.~~
- (6) Board costs associated with the implementation and administration of programs, not to exceed 5 percent of the annual deposits in the Fund.

Further, the Fund purpose should be clarified in the Purposes and Objective Section of the Draft Policy on Page 3, to fit into the larger Safe and Affordable Fund for Equity and Resiliency (SAFER) Drinking Water Program that the State Water Board is developing to show how the Program aligns with the Fund purpose:

*“The primary purpose of the SAFER Drinking Water Program is to help to bring true environmental justice to California and to help ~~to~~ address the continuing disproportionate environmental burdens in the state ~~by creating a fund by meeting the goal of provide~~ing safe drinking water for every Californian. The Fund, established under Health and Safety Code Section 116766, is one element of the SAFER Drinking Water Program that will assist water systems in providing a safe, adequate and affordable supply of drinking water...”*

**Comment 6: ACWA and CMUA appreciate that the State Water Board has identified that other funding sources can be leveraged with the money that is available in the Fund.**

ACWA and CMUA appreciate the statement on Page 2 of the Draft Policy that *“the Fund complements the State Water Board’s existing suite of financial assistance programs, which are generally limited to addressing capital infrastructure.”* The money in the Fund, as set forth in the Fund expenditure plan must prioritize *“funding costs other than those related to capital construction costs, except for capital construction costs associated with consolidation and service extension...”* (Health and Safety Code § 116769(c)(3)). The State Water Board should also work with the California Department of Water Resources to leverage other state funding sources to support the development of long-term solutions. ACWA and CMUA recognize that money spent on planning costs are important in leveraging other funding sources (including state, federal, private and public sources) that can support shovel-ready, capital projects. Importantly, the development of strong planning efforts fully supported by a foundation of sustainable TMF principles is a necessary part of a struggling water system’s future and should be included in any long-term solution. Many local and regional entities are working with systems to improve safe drinking water and their current efforts should be built upon by leveraging state

funding. For example, the Mojave Water Agency (MWA), through its Integrated Regional Water Management (IRWM) planning efforts, have developed an assistance program with the California Rural Water Association (CRWA) for more than 40 small water systems in their region. Education of and training in TMF principles and subsequent planning allows disadvantaged systems, with assistance, to develop a *funding portfolio* approach to needed capital improvements that can be managed and maintained properly moving forward. The State Water Board should continue to work with the IRWM regions to build on the model that MWA and CRWA have established and should leverage funding to support the immediate risks and chronically non-compliant system needs and also consider planning as an integral part of the long term solution(s). Working with established IRWMs, in collaboration with capable nonprofits such as CRWA and others, this effort will help water systems and such regional efforts unlock additional federal and state funds themselves.

**Comment 7: ACWA and CMUA recommend the inclusion of the required prioritization for the funding expenditure plan, consistent with statute.**

Health and Safety Code § 116769(c) provides the required prioritization for the Fund expenditure plan, which is critical information as drinking water needs are identified and funding is then to be administered and prioritized. On Page 11 in the Draft Policy under XI. Fund Expenditure Plan Development, a new Section B should include the following:

*“B. Fund Expenditure Plan Priorities*

*In addition to building on the drinking water needs assessment, consistent with Health and Safety Code 116769(b), the fund expenditure plan must prioritize funding for all of the following:*

- (1) Assisting disadvantaged communities served by a public water system, and low-income households served by a state small water system or a domestic well.*
- (2) The consolidation or extension of service, when feasible, and administrative and managerial contracts or grants entered into for administrators (pursuant to Section 116686) where applicable.*
- (3) Funding costs other than those related to capital construction costs, except for capital construction costs associated with consolidation and service extension to reduce the ongoing unit cost of service and to increase sustainability of drinking water infrastructure and service delivery.”*

This addition provides the clear statutory prioritization of the fund expenditure plan for further development. The current Section B and all other sub-subsequent sections under XI. Fund Expenditure Plan Development should be re-numbered (e.g., the next section would be C. Drinking Water Needs Analysis).

**Comment 8: On Page 3 in the Purposes and Objectives Section of the Draft Policy, clarify the context of “linking smaller systems to larger ones”.**

It is currently unclear what “linking smaller systems to larger ones” means, and it should be rephrased if it indeed relates to consolidation or the extension of services from one system to another. As defined in Health and Safety Code § 116681(e), consolidation “means joining two or more public water systems, state small water systems, or affected residences into a single public water system”. This is important to clarify because the size of a system does not necessarily indicate that they are out-of-compliance or in need of consolidation or extension of services.

**Comment 9: ACWA and CMUA request the following changes to the Draft Policy related to the affordability threshold.**

Health and Safety Code § 116769(a)(2) provides that the Fund expenditure plan must include “a list of systems that consistently fail to provide an adequate supply of safe drinking water.” One component of that list is “any community water system that serves a disadvantaged community that must charge fees that exceeds the affordability threshold established by the board in order to supply, treat, and distribute potable water that complies with federal and state drinking water standards.”

SB 200 authorizes the use of this threshold for the § 116769(a)(2) list only. The Draft Policy should be consistent with the statute in that regard and note that the threshold in this Draft Policy is for this listing purpose. The State Water Board should continue to hold robust diverse stakeholder processes over the next several months to gather broad and diverse stakeholder agreement when establishing an affordability threshold for the listing purpose in the Fund expenditure plan.

As the State Water Board is aware, water affordability is a complicated issue. As of this writing, there are ongoing processes, such as the State Water Board’s AB 401 Low Income Water Rate Assistance Report, the Office of Environmental Health Hazard Assessment Human Right to Water Framework and Tool, and the California Public Utilities Commission proceeding on the affordability of the utilities it regulates.

Rate-setting is a complex undertaking with numerous factors that is determined at the local system level. Many factors contribute to the cost of providing a safe and reliable water supply, including, but not limited to, management, treatment, distribution and infrastructure maintenance to convey and make water accessible.

Since the affordability threshold in SB 200 narrowly applies to the development of a list of community water systems that consistently fail to provide safe drinking water and serve a disadvantaged community that must charge fees that exceed the affordability threshold, the affordability threshold should not be as broadly applied as is currently proposed in the Draft Policy. The affordability threshold is referenced three times in the Draft Policy, and we strongly recommend the following changes to ensure that the Draft Policy is consistent with **the narrow use of this threshold that is authorized by the new law** (SB 200, Monning, 2019):

- 1) On Page 10, under IX. Funding Terms and Conditions Section:

*“...The State Water Board, with input from stakeholders, may also consider funding those solutions that it determines to be the most sustainable, where a water system has the ability to obtain and maintain technical, managerial, and financial capacity to compliantly operate their system sustainably. ~~and consistent with maintaining an affordability threshold.~~”*

- 2) On Page 12, under XI. Fund Expenditure Plan Development, under C. Identification of Water Systems Needing Solutions:

*“...viii. Community ~~W~~water systems serving DACs that must charge rates above the affordability threshold established by the State Water Board in order to supply, treat, and distribute potable water that complies with federal and state drinking water standards.”*

- 3) On Page 14, under F. The Safe and Affordable Drinking Water Fund Solution List Section, the following sentence should be removed:

~~“The Fund Solution List will be developed in connection with the Drinking Water State Revolving Fund (DWSRF) Program annual Intended Use Plan (IUP)...DACs that can meet DWSRF credit thresholds by raising rates will be expected to do so, except where raising rates would exceed the affordability threshold.”~~

On Page 30, the 2019-20 Annual Intended Use Plan for the Drinking Water State Revolving Fund Program specifically states that “...the State Water Board can offer water-related technical assistance to SDACs and DACs in areas such as evaluating project alternatives, financial management, rate setting, and operation and maintenance.” The State Water Board should not be setting an “expectation” that water systems serving DACs should raise rates to be eligible for additional funding. Local government rate-setting must be done consistent with Article XIII D of the California Constitution. Rather, the State Water Board should remove this sentence from the Draft Policy, but encourage sustainable water systems to come forward and work with the state in a technical assistance role to assist the development of long-term solutions.

The public water agencies that provide drinking water that ACWA and CMUA represent have excellent TMF expertise in operating water systems. Ensuring a safe drinking water supply by complying with all relevant state and federal drinking water standards is the highest priority of these agencies. ACWA and CMUA will continue to engage with the State Water Board in the implementation of the Fund, representing the water community at large. We encourage the engagement of public water agencies that can provide TMF expertise in this important work.

We would like to thank the Board for consideration of these comments. Should you have any questions regarding this letter, please contact Melissa Sparks-Kranz at [melissas@acwa.com](mailto:melissas@acwa.com) or (916) 441-4545 or Jonathan Young at [jyoung@cmua.org](mailto:jyoung@cmua.org) or 916-326-5806. We look forward to engaging with the State Water Board on the development of the Draft Policy, development of the Fund expenditure plan, and Fund implementation efforts.

Sincerely,



Melissa Sparks-Kranz  
Regulatory Advocate  
Association of California Water Agencies



Jonathan Young  
Regulatory Advocate  
California Municipal Utilities Association

cc: The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board  
The Honorable Dorene D’Adamo, Vice Chair, State Water Resources Control Board  
The Honorable Tam Dudoc, State Water Resources Control Board  
The Honorable Laurel Firestone, State Water Resources Control Board  
The Honorable Sean Maguire, State Water Resources Control Board  
Ms. Eileen Sobeck, Executive Director, State Water Resources Control Board  
Mr. Darrin Polhemus, Deputy Director, Division of Drinking Water, State Water Resources Control Board