**Safe Affordable Drinking Water Funding with Equity and Resilience**

By Andrew H. Sawyer[[1]](#footnote-1)\*

I. California Safe Drinking Water Act (Health & Saf. Code, § 116270 et seq.)

A. Regulates public water systems to protect public health. Public water systems include both publicly owned and privately owned systems providing drinking water to 15 or more service connection or that regularly provide drinking water to at least 25 people daily at least 60 days of the year. (Health & Saf. 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. (*Id.*, subd. (i)) Public water systems also serve transient and nontransient noncommunity water systems. (*Id.*, subd. (j), (k) & (o).)

B. Drinking Water Standards

1. The State Water Board adopts primary drinking water standards for contaminants in drinking water, which must be at least as stringent as national primary drinking water standards adopted by the United States Environmental Protection Agency (USEPA). (Health & Saf. 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).)

2. 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 & Saf. Code, § 116275, subd. (d), 116375.)

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

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

1. A public water system cannot operate without a permit from the State Water Board. (Health & Saf. 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 & Saf. Code, § 116540.)

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 & Saf. Code, § 116625.)

D. 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 & Saf. Code, § 116530.)

E. Public Notification (Health & Saf. 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 & Saf. Code, § 116450.)

2. A public water system must prepare an annual consumer confidence report and distribute it to customers. (Health & Saf. Code, § 116470.)

F. Enforcement. The California Safe Drinking Water Act includes substantial enforcement authority. (Health & Saf. 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 & Saf. Code, §§ 116650, subd. (c), 116655.)

2. The State Water Board may issue a citation assessing a civil penalty. (Health & Saf. 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 without a permit. (Health & Saf. Code, § 116725.)

G. The drinking water program was transferred to the State Water Board in 2014, along with related functions including the environmental laboratory accreditation program, operator certification, and funding for safe drinking water. (Health & Saf. Code, § 116271.)

H. The State Water Board’s administration of the Safe Drinking Water Act is supported by fees paid by public water systems. (Health & Saf. Code, § 116565.)

I. Legislation enacted in 2015 adds authority to require system consolidation or extension of service where a public water system or state small system (see Health & Saf. Code, § 116275, subd. (n) [at least five service connections]) serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water. (Health & Saf. Code, § 116681-116684.) Legislation enacted in 2016 adds authority to appoint an administrator to provide administrative and managerial services where consolidation or extension of services is infeasible or inappropriate. (Id., § 116686.)

J. Legislation enacted in 2016 is intended to avoid creation of new public public water systems that lack technical, managerial or financial capability and to avoid approval of new development lacking a reliable water supply. (Stats. 2016, ch. 843; see Health & Saf. Code, §§ 116527. 116540; Wat Code, § 106.4.)

II. Financial Assistance

A. Drinking Water State Revolving Fund (DWSRF) (Health & Saf. Code, § 116760 et seq.)

B. Bond Acts. (Pub. Resources Code, § 80140 (Proposition 68.); Wat. Code, § 79724 (Proposition 1.)

C. Cleanup and Abatement Account (Wat. Code, § 13440 et seq.)

D. Drinking Water for Schools (Health & Saf. Code, § 116276.)

III. Senate Bill 200 (Stats 2019, ch. 120.)

A. Establishes Safe and Affordable Drinking Water Fund (Health & Saf. Code, § 116766 et seq.; see generally London et al., *The Struggle for Water Justice in California’s San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities* (Feb. 2018) at pp. 43, 45 [most significant funding gap for drinking water needs of disadvantaged unincorporated communities is funding for operation and maintenance] <https://regionalchange.ucdavis.edu/publication/water-justice>.)

B. Requires development of policy for development of fund expenditure plan by July 1, 2020, and to adopt a fund expenditure plan annually. (Health & Saf. Code, § 116768 et seq.)

C. Requires State Water Board to develop a map of aquifers at high risk of containing contaminants exceeding safe drinking water standards. (Health & Saf. Code, § 116772.)

D. Expands administrator authority. (See also Stats. 2018, ch. 687, § 4)

IV. Relationship of the California Safe Drinking Water Act to federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.; (See generally Salzman, *The Past, Present and Future of the Safe Drinking Water Act* (2019) https://escholarship.org/uc/item/06b035kv)

 A. Regulation of Public Water Systems.

1. USEPA adopts national drinking water regulations, including primary drinking water standards (42 U.S.C. § 300g-1) and requirements for consumer confidence reports. (*Id*.§ 300g-3.)

2. Enforcement.

a. USEPA enforcement. (42 U.S.C. § 300g-3.)

 b. Citizen suits. (42. U.S.C. § 300j-8.)

B. State Primacy

1. Federal Safe Drinking Water Act authorizes states to apply for primary authority to enforce federal Safe Drinking Water Act requirements (primacy). (42 U.S.C. § 300g-2; see also *id.*, § 300j-11 [treatment of Indian Tribes as states.])

2. Public Water System Supervision grant program makes funding available to for states with primacy, covering some of the costs of administering the program. (42 U.S.C. § 300j-2; see also *id.*, § 300j-12(g)(B)(i).)

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

4. USEPA has approved California’s primacy. (State of California Primary Enforcement Responsibility, 43 Fed.Reg. 25180 (Jun. 9, 1978.)

C. Financial Assistance. The federal act provides grants to states to establish state revolving loan funds. (42 U.S.C. § 300j-12; 40 C.F.R. Part 35, Subpart L.

D. Other cooperative federalism features of the federal Safe Drinking Water Act.

1. State requirements are preserved from preemption. (42 U.S.C. § 300g-3(e).)

2. Federal facilities must comply with state requirements (42 U.S.C. § 300j-6)

3. Even where federal statutes are intended to promote cooperative federalism, there is a potential for excessive federal intervention or unwarranted deference to the states to undermine federal or state environmental protection programs. (See generally Kettl, *‘Jenga Federalism’: Trump’s Method for Undoing Obama’s Policies* (Dec. 2018) Governing https://www.governing.com/columns/washington-watch/gov-jenga-federalism-trump-obama.html. Up to this point that has not occurred with safe drinking water programs.

1. \* Assistant Chief Counsel, California State Water Resources Control Board (State Water Board). The views expressed in this article 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. [↑](#footnote-ref-1)