

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 508 (Chu) – As Amended April 11, 2019

SUBJECT: Drinking water: consolidation and extension of service: domestic wells.

SUMMARY: Makes a number of changes to the State Water Resources Control Board's (Water Board) authority to order the consolidation of certain drinking water systems. Specifically, **this bill:**

- 1) Establishes a deadline of no later than July 1, 2020, for the Water Board to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the Water Board to consider ordering a consolidation.
- 2) Specifies that if a dwelling unit is reliant on a domestic well within the service area that does not provide an adequate supply of safe drinking water, the Water Board shall inform the owner of the dwelling unit and, if different, the owner of the domestic well, that the dwelling unit is supplied water by a domestic well that does not provide an adequate supply of safe drinking water.
- 3) Deletes the requirement that the Water Board obtain a domestic well owner's consent prior to ordering a consolidation or extension of service.
- 4) Requires, that if the owner of the dwelling unit or, if applicable, the domestic well does not provide written consent, upon request, for consolidation or extension of service to serve the dwelling unit, both of the following to occur:
 - a) The owner of the dwelling unit shall be ineligible, until the owner provides written consent, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency; and,
 - b) The Water Board shall promptly take all reasonable steps to provide the occupants of the dwelling unit a written statement, including the following information:
 - i) That the domestic well supplying water to the dwelling unit does not provide an adequate supply of safe drinking water;
 - ii) All likely health risks associated with all of the dwelling unit's specific known and likely water supply and water quality issues;
 - iii) That the owner of the dwelling unit has been informed that the domestic well does not provide an adequate supply of safe drinking water and, despite being informed, has refused to consent to the consolidation or extension of service; and,
 - iv) That the dwelling unit owner's failure to consent to consolidation or extension of service or to provide an alternate adequate supply of safe drinking water evidences a failure to provide an adequate supply of safe drinking water to the dwelling unit.

- 5) Specifies that in making the finding that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible, the Water Board shall consider how many owners of dwelling units served by domestic wells in the service area have provided, or are likely to provide, written consent to extension of service.
- 6) Provides that the Water Board need not find that any specific percentage of the owners of dwelling units served by domestic wells in the service area are likely to consent to the consolidation or extension of service to serve their dwelling unit.
- 7) Specifies that the receiving water system shall not charge any fees to mitigate or compensate for increased ground water use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service.

EXISTING LAW:

- 1) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- 2) Requires, pursuant to the California Safe Drinking Water Act (SDWA), the Water Board to regulate drinking water and to enforce the federal SDWA and other regulations.
- 3) Requires the Water Board, in administering SDWA programs to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities; and, to prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system.
- 4) Authorizes the Water Board, where 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 where a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water, to order consolidation, either physical or operational, with a receiving water system.
- 5) Requires the Water Board to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the Water Board to consider ordering consolidation.
- 6) Requires the Water Board, before ordering consolidation or extension of service, to perform a series of activities, including, encouraging voluntary consolidation or extension of service; considering other enforcement remedies; consulting with the relevant local agency formation commission (LAFCO); and, notifying the potentially receiving water system and the potentially subsumed water systems.
- 7) Provides that any domestic well owner within the consolidation or extended service area who does not provide written consent shall be ineligible, until the consent is provided, for any

future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency.

- 8) Requires the Water Board, before ordering consolidation or extension of service, to make seven findings, including that the potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water; that all reasonable efforts to negotiate consolidation or extension of service were made; and, that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible.
- 9) Prohibits, in the case of an ordered consolidation, the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service, unless the customers receive a corresponding benefit. Provides that, in the case of an ordered consolidation, fees or charges imposed on a customer of a subsumed water system shall not exceed the cost of the service.
- 10) Prohibits the receiving water system from charging any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system.
- 11) Authorizes the Water Board, in order to provide an adequate supply of affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to, if sufficient funding is available, contract with, or provide a grant to, an administrator to provide administrative, technical, operational, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water.
- 12) Authorizes the Water Board to order the designated water system to accept administrative, technical, operational, or managerial services from an administrator appointed by the Water Board for full oversight of construction or development projects related to a consolidation or extension of service, including, but not limited to, accepting loans and grants and entering into contracts on behalf of the designated water system.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **California's Drinking Water Program.** SB 861 (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2014, transferred the Drinking Water Program from the Department of Public Health (DPH) to the Water Board effective July 1, 2014, creating the new Division of Drinking Water within the Water Board, and made other statutory changes to create efficiencies and adoption and administration of the Drinking Water Program.

The Water Board directly enforces the SDWA for all large water systems (those with 200 or more service connections). For small water systems (those with less than 200 connections), local health departments can be delegated to have regulatory authority as the local primacy agency.

- 2) **Human Right to Water.** In 2012, California became the first state to enact a Human Right to Water law [AB 685 (Eng), Chapter 524, Statutes of 2012]. Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.
- 3) **Addressing Service Deficiencies.** LAFCOs, along with the planning agencies of cities and counties, are tasked with ensuring that services are effectively and efficiently delivered to all communities throughout the state. Nevertheless, some communities continue to lack adequate public services, including safe drinking water and functioning wastewater systems, often due to their low income status. In some cases, these disadvantaged communities are contained within a city but lack adequate water and wastewater services. In other cases, these communities are located in unincorporated areas. These DUCs can be remote and far from other communities with better public services, but at other times they are adjacent to a city, special district, or county service area that provides water or wastewater services.

In recent years, the Legislature has taken several steps to try to address some of the service problems experienced by disadvantaged unincorporated communities. SB 244 (Wolk), Chapter 513, Statutes of 2011, aimed to prevent cities from carving out disadvantaged unincorporated communities by generally prohibiting annexations of small areas to a city if a disadvantaged unincorporated community is contiguous with that area. SB 244 also required LAFCOs to include in the MSR a description of the location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence and to consider the water, sewer, or fire protection needs of disadvantaged unincorporated communities within the sphere when considering updates. Finally, SB 244 required cities and counties to review the water and fire service needs of disadvantaged unincorporated communities in their general plans. SB 244 made it easier for LAFCOs to identify boundary changes and governmental reorganizations necessary to fix water and sewer service problems faced by disadvantaged communities.

- 4) **Consolidations.** Subsequent legislation, SB 88 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2015, took this effort a step further by authorizing the Water Board to order a consolidation of neighboring drinking water systems where it is economically feasible in order to address public health threats. SB 88 established an elaborate process for consolidating water systems that requires multiple public hearings, as well as consultations with affected entities, such as the water system being subsumed, the receiving water system, domestic well owners, and the local government with land use authority over the area, and the LAFCO.

Before ordering consolidation or extension of service, the Water Board must also encourage voluntary consolidations or extension of service, consider other enforcement remedies, obtain written consent from any domestic well owner, and provide technical assistance to both systems. The Water Board must also make a series of findings, including that:

- a) Consolidation or extension of service is the most effective and cost-effective means to provide an adequate supply of safe drinking water; and,

- b) The capacity of the proposed interconnection needed to accomplish the consolidation is limited to serving the current customers of the subsumed water system.

Under SB 88, the Water Board must pay the full cost of the new capacity, including replacing any capacity lost as a result of the consolidation or extension of service, providing additional capacity needed as a result of the consolidation or extension of service, and legal fees. The Water Board must also pay the LAFCO's costs and fees, adequately compensate the owners of any privately owned subsumed water system, and coordinate with the appropriate LAFCO and other relevant local agencies to facilitate the change of organization or reorganization. SB 88 also prohibited the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service, unless the customers receive a corresponding benefit. Cleanup legislation the following year added a few additional requirements to the SB 88 process, including prohibiting fees or charges on a customer of a subsumed water system from exceeding the cost of consolidating the water system with a receiving system or the extension of service to the area [SB 552 (Wolk), Chapter 773, Statutes of 2016].

- 5) **How Does Consolidation of a Public Water System Work?** Consolidating public water systems and extending service from existing public water systems to communities and areas, which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents.

Public water systems experiencing chronic water quality failures or unreliable supplies are first provided technical assistance to analyze the problem and recommend a course of action. Enforcement may also be necessary to achieve compliance with SDWA requirements. Lacking progress, the Water Board may initiate discussions with the system and neighboring/adjacent public water systems regarding consolidation. Consolidation may involve the actual physical consolidation of the participating water systems (physical consolidation), just the management of the participating water system (managerial consolidation), or both. If voluntary consolidation cannot be negotiated in a reasonable time period, the Water Board may commence proceedings for direct mandatory consolidation or a mandatory extension of service. In this case, consolidation letters will be sent to the consistently failing water system (subsumed system) and to the receiving system notifying them that they have six months to develop a plan for voluntarily consolidation. If the two systems have not developed a plan for consolidation within six months of the letters being issued, the Water Board may then order the two systems to consolidate.

The Water Board will provide funding as necessary and appropriate from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1, 2014), the Drinking Water State Revolving Fund (DWSRF), and monies made available from the emergency drought relief package, for consolidation or extension of service, including infrastructure improvements. SB 88 added a provision to the law limiting the liability of water systems, wholesalers, or any other agencies that deliver water to consolidated water systems. This liability relief is available regardless of whether the consolidation occurs through the mandatory consolidation process or through a voluntary act. These new liability relief

provisions will protect water systems involved in consolidations and remove a barrier that previously limited voluntary consolidations.

- 6) **Progress on Providing Clean Drinking Water.** The Water Board currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Under the Water Board's authority, three mandatory consolidations have been ordered, and there have been more than 100 voluntary consolidations in that time period. Within those, the Water Board has had varying levels of participation. Some were consolidations the Water Board helped to fund, some to which the Water Board provided guidance, and others for which the Water Board just issued a permit.
- 7) **Other Related and Prior Legislation.** SB 778 (Hertzberg) from 2017 would have required the Water Board to report on public water system consolidations to date, and their success or failure. This bill was held in the Assembly Appropriations Committee.

SB 1215 (Hertzberg) Chapter 982, Statutes of 2018, authorizes the Water Board to order the provision of sewer service by a special district, city, or county to a disadvantaged community, as defined, under specified circumstances, and requires the Water Board to take certain actions before ordering the provision of sewer service that are similar to those required for the consolidation or extension of water systems.

AB 2501 (Chu), Chapter 871, Statutes of 2018, authorizes the Water Board to order consolidation with a receiving water system when a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water; prohibits, for an ordered consolidation, the receiving water system from charging specified fees or imposing specified conditions on customers of the subsumed water system that it would not otherwise charge or impose; and, makes other changes to ordered consolidation law.

- 8) **Bill Summary.** This bill requires the Water Board to develop and adopt a policy that provides a process in which residents of a disadvantaged community can petition the Water Board to consider ordering consolidation by July 1, 2020. This bill removes the requirement that the Water Board obtain written consent from a well owner before a consolidation or extension of service to an area is approved. Consent is still required from an owner of a well or dwelling unit to participate in the consolidation or extension of service. This bill specifies that, if a dwelling unit does not provide an adequate supply of safe drinking water, the Water Board shall notify the owner of the well and the owner of the dwelling unit. This bill provides that if the owner of the dwelling unit and, if different, the owner of the well does not give written consent for consolidation or extension of service, the Water Board shall promptly notify the occupants of the dwelling unit that the unit is not provided an adequate supply of water. This bill specifies that a receiving water system shall not charge any fees to mitigate increased groundwater use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service. The Leadership Counsel for Justice and Accountability is the sponsor of this bill.
- 9) **Author's Statement.** According to the author, "Last year, the State made great progress in ensuring access to clean drinking water for small disadvantaged communities by passing AB 2501. However, our state still has a long way to go, with over 1 million Californians still

without this basic right. AB 508 builds on progress made by AB 2501 by reducing existing barriers between these communities and safe drinking water.”

- 10) **Policy Consideration.** Local agencies must comply with Proposition 218's (1996) restrictions on the use of property-related fees and charges, including the measure's calculation requirements. Specifically, local governments must make sure that no property owner's fee is greater than the proportionate cost to provide the property-related service to a parcel. Essentially, this means a local agency cannot subsidize the fees of one ratepayer with the fees of another.

This bill specifies that a receiving water system shall not charge any fees to mitigate increased groundwater use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service. The meaning of this provision is unclear as existing law already says fees or charges imposed on a customer shall not exceed the cost of the service. There is extensive case law on the establishment of fees and charges. While there are likely incidents where water providers charge more than they should, these cases are certainly challengeable in court. The Committee may wish to consider if this provision adds confusion to how charges and fees are calculated when water providers are ordered to consolidate or extend services by the Water Board.

- 11) **Committee Amendment.** In response to the policy consideration above, the Committee may wish to remove the following provision:

Health and Safety Code Section 116682 (g)(1)(D):

~~(D) The receiving water system shall not charge any fees to mitigate or compensate for increased groundwater use if the subsumed water system was reliant on groundwater immediately before the consolidation or extension of service.~~

- 12) **Arguments in Support.** The sponsor argues that the provisions in this bill “will remove existing barriers to mandatory consolidation and extension of drinking water service, while ensuring that residents are informed about relevant health risks associated with the drinking water problems and available solutions.”

- 13) **Arguments in Opposition.** None on file.

- 14) **Double-Referral.** This bill was heard in the Environmental Safety and Toxic Materials Committee on April 9, 2019, and passed with a 6-3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Leadership Counsel for Justice and Accountability [SPONSOR]
 Alliance of Californians for Community Empowerment
 Audubon California
 California Coastkeeper Alliance
 California Environmental Justice Alliance
 California Institute for Rural Studies
 California League of Conservation Voters

Support (continued)

Center for Community Action and Environmental Justice
Center for Sustainable Neighborhoods
Central California Environmental Justice Network
Clean Water Action
Community Water Center
Courage Campaign
Ella Baker Center for Human Rights
Lutheran Office of Public Policy
Planning and Conservation League
Policy Link
Pueblo Unido CDC
Social Justice Ministry, Diocese of Fresno
Trust for Public Land
Western Center on Law and Poverty

Opposition

None on file

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