
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1428
Author: Quirk
Version: 2/19/2021
Urgency: No
Consultant: Gabrielle Meindl

Hearing Date: 6/14/2021
Fiscal: Yes

SUBJECT: Safe Drinking Water Act: applicability

DIGEST: Removes the ability of certain water districts to self-certify that the water they provide achieves an equivalent level of public health protection as the protection provided by applicable drinking water regulations.

ANALYSIS:

Under Federal Law:

- 1) Requires states to have drinking water regulations which are no less stringent than the National Primary Drinking Water Regulations (NPDWRs) promulgated by the United States Environmental Protection Agency (US EPA) as a condition of primary enforcement responsibility. (40 Code of Federal Regulations § 142.10)
- 2) Defines a public water system and exempts irrigation districts from being regulated as public water systems if the districts were in existence prior to May 18, 1994; provide primarily agricultural service through a piped water system with only incidental residential use; and, the US EPA Administrator or a State exercising primary enforcement responsibility determines that the water provided achieves an equivalent level of public health protection or is treated to achieve an equivalent level of protection. (42 United States Code § 300f (4))

Under California Law:

- 3) Vests the State Water Resources Control Board (State Water Board) with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health (CDPH) and its predecessor to enforce the State Drinking Water Act (SDWA). (Health and Safety Code (HSC) § 116271)
- 4) Requires any person who owns a public water system to ensure that the system does all of the following:

- a) Complies with primary and secondary drinking water standards;
 - b) Will not be subject to backflow under normal operating conditions;
 - c) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water;
 - d) Employs or utilizes only water treatment operators or water treatment operators-in-training that have been certified by the State Water Board at the appropriate grade; and,
 - e) Complies with the operator certification program. (HSC § 116555 (a))
- 5) Defines a "public water system" as a system 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. (HSC § 116275)
- 6) Exempts water districts from being regulated as a public water system if the districts were in existence prior to May 18, 1994; primarily provide agricultural services and incidentally provide residential water; and, the systems self-certify that the water provided achieves the equivalent level of protection provided by primary drinking water regulations. (HSC § 116286 (a))

This bill:

- 1) Revokes the current authority agricultural water districts use to self-certify that the water they provide achieves an equivalent level of public health protection as provided by applicable drinking water standards.

Background

- 1) *Federal Safe Drinking Water Act (SDWA)*. The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards under the state SDWA. The US EPA enforces the federal SDWA at the national level. Most states, including California, have been granted primary enforcement responsibility or "primacy" by the US EPA, giving them the authority to implement and enforce the federal SDWA at the state level. In accordance with the federal SDWA, the US EPA provides funds to states for their drinking water loan programs, conducts an annual oversight review of each state's program, and issues an annual program evaluation report.
- 2) *California's drinking water program*. Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the drinking water

program from CDPH to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board and made other statutory changes to create efficiencies and adoption and administration of the drinking water program.

The State Water Board directly enforces the federal SDWA for all large water systems (those with 200 or more service connections), including those water systems regulated under the California Public Utilities Commission (CPUC), Division of Corporations (DOC), or Department of Housing and Community Development (DHCD). 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. Along with the regulation of drinking water, the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) are responsible for protecting the waters of the state, including drinking water sources, both surface water and groundwater supplies.

The State Water Board has adopted regulations for drinking water standards, monitoring requirements, cross-connections, design and operational standards, and operator certification. The implementation of the drinking water program involves: (1) establishment of drinking water standards, (2) certification of operators and point-of-use treatment devices, and (3) direct regulation of public water systems with the authority to delegate oversight responsibility of small water systems to local county health departments. The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures, (2) inspection of water systems, (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards, and (4) assuring notification is provided to consumers when standards are not being met.

- 3) *What is a public water system?* A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. According to the State Water Board, there are approximately 7,400 public water systems in the state. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned. There are three legal distinctions between the types of public water systems: community, non-transient non-community, and transient. The type of water system is based on how often people consume the water. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems

because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. The customers of non-community non-transient water systems have a regular opportunity to consume the water, but they do not reside there. Transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water. Most people that consume the water neither reside nor regularly spend time there.

Being a public water system means providing affordable, safe drinking water to customers 24 hours a day, 7 days a week, 365 day a year. This includes the associated legal, fiscal, and operational responsibilities, and future planning. Public water systems typically are run more efficiently when costs can be spread out over a large group of people to obtain good economies of scale. Small public water systems without a very high level of managerial, technical, and financial capacity tend to be unsustainable.

- 4) *Water districts exempt from regulation as public water systems.* Some water districts can be exempted from classification as public water systems if they meet certain requirements. For this purpose, a water district is defined as any district or other political subdivision (other than a city or county) that primarily functions to provide irrigation, reclamation, or drainage of land. According to the federal SDWA, these agricultural water districts can be exempted from regulation as public water systems if they existed prior to May 18, 1994; they primarily provide agricultural services and only incidentally provide drinking water; and, the US EPA Administrator or a state exercising primary enforcement responsibility determines that the water provided achieves an equivalent level of public health protection as that provided by primary drinking water regulations. Under the state SDWA, agricultural districts can be exempted from regulation as public water systems if the district self-certifies that the water provided would meet drinking water standards.
- 5) *US EPA review flags self-certification of water districts.* In March 2019, US EPA completed its review of several California regulations and found that this discrepancy between the federal and state SDWAs makes the state SDWA less stringent than the federal SDWA. Allowing agricultural water districts to self-certify that the water meets drinking water standards eliminates the state's role in confirming that the criteria for exemption of agricultural districts is met. Agricultural water districts could have a conflict of interest in self-certifying

the quality of the alternative water they provide because this certification allows them to avoid regulation.

If the state SDWA is not amended to reflect the more stringent language of the federal SDWA, the State Water Board could lose its approved primary enforcement responsibility to implement the federal SDWA in California. If this happens, public water systems in the state will be regulated both by the State Water Board under the California SDWA and the US EPA under the federal SDWA. This dual regulation could be inefficient and costly to public water systems.

- 6) *Impacts to water districts.* It is not clear how many agricultural water districts are exercising the self-certification authority to exempt themselves from regulation as public water systems. These agricultural water districts may still be able to obtain exemptions, but the State Water Board would need to certify that the water provided is equivalent to water that adheres to standards in primary drinking water regulations.
- 7) *This bill.* AB 1428 removes the ability of agricultural water districts to self-certify that the water they provide achieves a level of public health protection that is equivalent to the protection provided by drinking water that meets drinking water standards. This is necessary to align the state SDWA with the more stringent federal SDWA. Without this legislative correction, it is possible that the State Water Board could lose its primary enforcement responsibility of the federal SDWA, requiring public water systems to be regulated by both the State Water Board and US EPA.

Comments

- 1) *Purpose of Bill.* According to the author, "AB 1428 would amend the California Safe Drinking Water Act to preserve the State's primary enforcement responsibility (also known as "primacy") for public water systems in California. This bill would remove the option for agricultural water districts to self-certify that the drinking water they provide meets water quality standards. This self-certification allows agricultural water districts to exempt themselves from public water system classification without evaluation and confirmation by the State Water Resources Control Board. AB 1428 will ensure that the California Safe Drinking Water Act is at least as stringent as the requirements under the federal Safe Drinking Water Act, allowing for continued primary enforcement responsibility by the state and ensuring that residents served by agricultural water districts are being provided safe drinking

water."

Related/Prior Legislation

SB 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014). Transferred the drinking water program from CDPH to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board and made other statutory changes to create efficiencies and adoption and administration of the drinking water program.

SOURCE: State Water Resources Control Board

SUPPORT:

None received

OPPOSITION:

None received

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