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**SB-623 Water quality: Safe and Affordable Drinking Water Fund.** (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

**SENATE BILL****No. 623**

Introduced by Senator Monning

(Principal coauthors: Senators De León and Hertzberg)

~~(Coauthors: Senators Stone and Hernandez)~~ (Coauthors: Senators Dodd, Hernandez, Stone, and Vidak)

(Coauthor: Assembly Member Bloom)

February 17, 2017

An act to ~~amend Section 116395 of, and~~ add Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of, to add Article 14.5 (commencing with Section 62215) to Chapter 2 of Part 3 of Division 21 of, and to repeal Sections 14616 and 62216 of, the Food and Agricultural Code, to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 ~~of, of~~ the Health and Safety Code, and to amend Section 13050 of, and to add Article 4.5 (commencing with Section 13278) ~~of to~~ Chapter 4 of Division 7 of, the Water Code, relating to water, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Water quality: Safe and Affordable Drinking Water Fund.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. ~~Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services. Existing law declares it to be 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.~~

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the ~~office.~~ *state board*. The bill would require the board to administer the fund to ~~assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards, as specified.~~ *secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.* The bill would authorize the *state* board to provide for the deposit *into the fund* of federal ~~contributions and contributions,~~ voluntary contributions, gifts, grants, ~~or bequests.~~ *bequests, and settlements from parties responsible for contamination of drinking water supplies.* The bill would require the *state* board to expend moneys in the fund for grants, loans, contracts, or services to assist ~~those communities and individual domestic well owners that rely on contaminated drinking water to have access to~~ *eligible applicants with projects relating to the provision of* safe and affordable drinking water consistent with a fund implementation plan adopted annually by the *state* board, as prescribed. The bill would require the *state* board annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an ~~assessment of funding needed to ensure all Californians have access to safe drinking water.~~ *assessment of funding need that estimates the anticipated funding needed for the next fiscal year to achieve the purposes of the fund. The bill would require, by January 1, 2019, the state board, in consultation with local health officers and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants. For purposes of the map, the bill would require local health officers and other relevant local agencies to provide all results of, and data associated with, water quality testing performed by certified laboratories to the board, as specified. By imposing additional duties on local health officers and local agencies, the bill would impose a state-mandated local program.* By creating a new continuously appropriated fund, this bill would make an appropriation.

~~The bill would state the intent of the Legislature to subsequently amend the bill to seek specific funding from agricultural operations to assist in providing emergency, interim, and long term assistance to community water systems and individual domestic well users whose wells are located in agricultural areas.~~

~~(2) The act provides for the operation of public water systems and imposes on the state board various duties and responsibilities for the regulation and control of drinking water in the state. The act generally does not apply to state small water systems, except that the act requires the board to adopt regulations specifying minimum requirements for operation of a state small water system, which are authorized to be less stringent than the requirements for public water systems, requires the enforcement of these requirements, and authorizes the reasonable costs of the local health officer to be recovered. The act, within 3 years after September 19, 1985, required the State Department of Public Health to, among other things, conduct training workshops to assist health officers in evaluation of small public water systems, as defined, for organic chemical contamination, and in sampling and testing procedures and required the local health officer, in consultation with the department, to conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals and to develop a sampling plan for each system within their jurisdiction. The act provided that these provisions were operative during any fiscal year only if the Legislature appropriated sufficient funds to pay for all state mandated costs to be incurred by local agencies during that year due to these provisions.~~

~~This bill would require the state board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The bill would require testing to be prioritized based on local water quality conditions and would require the state board to review these regulations at least every 5 years. The bill would exempt these provisions from the above-described inoperative provision.~~

~~(2) Existing law, the Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.~~

*This bill would impose, until July 1, 2020, a safe and affordable drinking water fee in specified amounts on each customer of a public water system, to be administered by the state board, in consultation with the California Department of Tax and Fee Administration, in accordance with the Fee Collection Procedures Law. The bill would exempt from the fee a customer that self-certifies under penalty of perjury the customer's satisfaction of specified criteria relating to income. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would require, beginning July 1, 2020, the state board to annually determine the amounts of the safe and affordable drinking water fee not to exceed the amounts imposed until July 1, 2020, and not to exceed the anticipated funding need in the most recent assessment of funding need adopted by the state board pursuant to the Safe and Affordable Drinking Water Fund provisions, as prescribed. The bill would require the state board, by July 1, 2020, to adopt regulations, in consultation with the Public Utilities Commission, relating to*

*an exemption from the fee for low-income households, as specified. The bill would require a public water system to collect the fee and to remit these moneys to the state board to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize a public water system to apply to the state board to use an alternative method to calculate the fee. By expanding the application of the Fee Collection Procedures Law that imposes criminal penalties for various acts, this bill would impose a state-mandated local program.*

*(3) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose of providing funding for research and education regarding the use of fertilizing materials. Existing law specifies that a violation of the fertilizing material laws or the regulations adopted pursuant to those laws is a misdemeanor.*

*This bill, until January 1, 2033, would require a licensee to pay to the secretary a fertilizer safe drinking water fee of \$0.005 per dollar of sale for all sales of fertilizing materials. The bill, on and after January 1, 2033, would reduce the fee to \$0.002 per dollar of sale and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to adopt regulations relating to the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.*

*(4) Existing law regulates the production, handling, and marketing of milk and dairy products and requires every milk handler subject to that regulatory scheme to pay specified assessments and fees to the Secretary of Food and Agriculture to cover the costs of regulating milk. Existing law governing milk defines "handler" as any person who, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling. Existing law defines "market milk" as milk conforming to specified standards and "manufacturing milk" as milk that does not conform to the requirements of market milk. Existing law provides that a violation of that regulatory scheme or a regulation adopted pursuant to that regulatory scheme is a misdemeanor.*

*This bill would require, beginning January 1, 2020, until January 1, 2035, each handler subject to that regulatory scheme to deduct from payments made to producers for market and manufacturing milk the sum of \$0.01355 per hundredweight of milk as a dairy safe drinking water fee. On and after January 1, 2035, the bill would reduce the fee to \$0.00678 per hundredweight of milk and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to take specified enforcement actions and would require the secretary to adopt regulations for the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.*

*(3)*

*(5) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. The act requires the state board to formulate and adopt state policies for water quality control and requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Under the act, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The act requires, upon the order of a regional board, a person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, to take other remedial action.*

This bill would prohibit the state board or a regional board, until January 1, 2028, from subjecting an agricultural operation, as defined, to specified enforcement for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrates in groundwater if that agricultural operation demonstrates that it has satisfied certain mitigation requirements, including, among other requirements, the timely payment of ~~any applicable fee, assessment, or charge~~ *the fertilizer safe drinking water fee or the dairy safe drinking water fee, as applicable*, into the fund. The bill would prohibit the state board or a regional board, beginning January 1, 2028, until January 1, 2033, from subjecting an agricultural operation to specified enforcement for creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if that agricultural operation demonstrates that it has satisfied the prescribed mitigation requirements. The bill would require the state board, by January 1, 2027, to conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control.

*(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: ~~majority~~2/3 Appropriation: yes Fiscal Committee: yes Local Program: ~~no~~yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 116395 of the Health and Safety Code is amended to read:~~

~~116395. (a) The Legislature finds and declares all of the following:~~

~~(1) The large water system testing program has discovered chemical contamination of the state's drinking water with increasing frequency.~~

~~(2) A significant number of California residents rely on the state's small water systems and individual domestic wells to provide their water.~~

~~(3) The small systems and individual domestic wells, because they tend to be located in outlying rural areas where pesticide use is prevalent, and because they draw their water from shallow aquifers, face a serious threat of contamination.~~

~~(4) Unchecked water sources that may be contaminated pose a potentially serious threat to the health of the citizens of California, particularly those living in outlying rural areas.~~

~~(5) It is in the interest of all Californians that a testing program for small public water systems and individual domestic wells be implemented and carried out as expeditiously as possible.~~

~~(6) Section 106.3 of the Water Code declares that every Californian has the right to sufficient clean, safe, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.~~

~~(7) To ensure that the right of every Californian to sufficient clean, safe, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes is met, it is in the interest of the State of California to identify water quality threats in the state's drinking water supply, to the extent feasible, whether those supplies serve a public water system, state small water system, or an individual domestic well.~~

~~(b)(1) For purposes of this section, "small public water system" means a system with 200 connections or less, and is one of the following:~~

~~(A) A community water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.~~

~~(B) A state small water system.~~

~~(C)A noncommunity water system such as a school, labor camp, institution, or place of employment, as designated by the state board.~~

~~(2)For the purposes of this section, "individual domestic well" means a groundwater well used to supply water for the domestic needs of an individual residence or systems of four or less service connections.~~

~~(c)The state board shall conduct training workshops to assist health officers in evaluation of small public water systems for organic chemical contamination, and in sampling and testing procedures. The state board shall, at a minimum, provide health officers with guidelines for evaluating systems and instructions for sampling.~~

~~(d)The state board shall develop a schedule for conduct of the programs by the local health officers. The schedule shall establish a program to address first those systems with the most serious potential for contamination. The state board shall enter into agreements with the local health agencies to conduct the necessary work to be performed pursuant to the schedule. The department shall begin the program no later than three months after September 19, 1985. All local health officers shall complete the evaluation, sampling, testing, review of sampling results, and notification to the public water systems within their jurisdiction in accordance with the agreements entered into with the state board and within the schedule established by the state board. All work required by this subdivision shall be completed within three years after September 19, 1985.~~

~~(e)By January 1, 2019, the state board shall promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The state board shall prioritize testing based on local water quality conditions. The state board shall review these regulations at least every five years.~~

~~(f)(1)Except as provided in paragraph (2), this section shall be operative during any fiscal year only if the Legislature appropriates sufficient funds to pay for all state mandated costs to be incurred by local agencies pursuant to this section during that year.~~

~~(2)Subdivisions (a), (b), (c), and (f) shall not become inoperative.~~

**SECTION 1.** Article 6.5 (commencing with Section 14615) is added to Chapter 5 of Division 7 of the Food and Agricultural Code, to read:

**Article 6.5. Fertilizer Safe Drinking Water Fee**

**14615.** (a) It is the intent of the Legislature to require licensees of bulk fertilizing materials, and to authorize licensees of packaged fertilizing materials, to pass the fertilizer safe drinking water fee on to the end user of the fertilizer.

(b) For purposes of this article, the following definitions apply:

(1) "Bulk fertilizing material" has the same meaning as applies to "bulk material" in Section 14517.

(2) "Fertilizing material" has the same meaning as defined in Section 14533.

(3) "Fund" means the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

(4) "Packaged" has the same meaning as defined in Section 14551.

**14616.** (a) In addition to the assessments provided in Section 14611, a licensee whose name appears on the label of bulk or packaged fertilizing materials shall pay to the secretary a fertilizer safe drinking water fee of five mills (\$0.005) per dollar of sales for all sales of fertilizing materials to be deposited into the fund.

(b) This section shall remain in effect only until January 1, 2033, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2033, deletes or extends that date.

**14616.** (a) In addition to the assessments provided in Section 14611, a licensee whose name appears on the label of bulk or packaged fertilizing materials shall pay to the secretary a fertilizer safe drinking water fee of two mills (\$0.002) per dollar of sales for all sales of fertilizing materials to be deposited into the fund.

(b) The secretary may reduce the fertilizer safe drinking water fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code. By October 1 of each year,

*the secretary shall notify all licensees of the amount of the fertilizer safe drinking water fee to be assessed in the following calendar year.*

*(c) This section shall become operative on January 1, 2033.*

*14617. (a) (1) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials shall charge an unlicensed purchaser the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser. This fee shall be included on the bill of sale as a separate line item.*

*(2) A licensee whose name appears on the label of packaged fertilizing materials may include the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.*

*(b) The secretary may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article.*

*(c) The secretary may retain up to 2 percent of the moneys collected pursuant to this article for reasonable costs associated with the implementation and enforcement of this article.*

**SEC. 2.** *Article 14.5 (commencing with Section 62215) is added to Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code, to read:*

**Article 14.5. Dairy Safe Drinking Water Fee**

**62215.** *(a) It is the intent of the Legislature that the dairy safe drinking water fee be paid for all milk purchased in the state, regardless of grade.*

*(b) For purposes of this article, the following definitions apply:*

*(1) "Fee" means the dairy safe drinking water fee.*

*(2) "Manufacturing milk" has the same meaning as defined in Section 32509.*

*(3) "Market milk" has the same meaning as defined in Section 32510.*

*(4) "Milk" includes market milk and manufacturing milk.*

**62216.** *(a) Beginning January 1, 2020, each handler, including a producer-handler, subject to the provisions of a stabilization and marketing plan shall deduct the sum of \$0.01355 per hundredweight of milk from payments made to producers for milk, including the handler's own production, as a dairy safe drinking water fee.*

*(b) The secretary shall adopt regulations necessary for the proper administration and enforcement of this section by January 1, 2020.*

*(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2035, deletes or extends that date.*

**62216.** *(a) Each handler, including a producer-handler, subject to the provisions of a stabilization and marketing plan shall deduct the sum of \$0.00678 per hundredweight of milk from payments made to producers for milk, including the handler's own production, as a dairy safe drinking water fee.*

*(b) The secretary may reduce the fee, and may adjust the fee reduction from time to time, as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the State Water Resources Control Board pursuant to subdivision (b) of Section 116769 of the Health and Safety Code.*

*(c) The secretary shall adopt regulations necessary for the proper administration and enforcement of this section.*

*(d) This section shall become operative on January 1, 2035.*

**62217.** *(a) A handler shall pay the dairy safe drinking water fee to the secretary on or before the 45th day following the last day of the month in which the milk was received.*

*(b) The secretary shall remit the moneys paid to him or her pursuant to this article to the State Water Resources Control Board for deposit into the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code. The secretary may retain up to 2 percent of the total amount that is paid to the secretary for the purposes of covering administrative costs borne by the secretary for implementing this section.*

*(c) The secretary may require handlers, including cooperative associations acting as handlers, to make reports at any intervals and in any detail that he or she finds necessary for the accurate collection of the fee.*

*(d) For the purposes of enforcing this article, the secretary, through his or her duly authorized representatives and agents, shall have access to the records of every producer and handler. The secretary shall have at all times free and unimpeded access to any building, yard, warehouse, store, manufacturing facility, or transportation facility in which any milk or milk product is produced, bought, sold, stored, bottled, handled, or manufactured.*

*(e) Any books, papers, records, documents, or reports made to, acquired by, prepared by, or maintained by the secretary pursuant to this article that would disclose any information about finances, financial status, financial worth, composition, market share, or business operations of any producer or handler, excluding information that solely reflects transfers of production base and pool quota among producers, is confidential and shall not be disclosed to any person other than the person from whom the information was received, except pursuant to the final order of a court with jurisdiction, or as necessary for the proper determination of any proceeding before the secretary.*

**SEC. 2. SEC. 3.** Chapter 4.6 (commencing with Section 116765) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

**CHAPTER 4.6. Safe and Affordable Drinking Water**  
**Article 1. Legislative Findings and Declarations**

**116765.** *The Legislature finds and declares all of the following:*

*(a) Section 106.3 of the Water Code declares that it is the 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.*

*(b) For all public water systems, the operation and maintenance costs to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis may be significant.*

*(c) All public water systems are currently required to set, establish, and charge a schedule of rates and fees that are sufficient to recover the operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis.*

*(d) Hundreds of public water systems in the state cannot charge rates and fees that are affordable and sufficient to recover the full operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis due to a combination of low income levels of customers, high treatment costs for contaminated water sources, and a lack of economies of scale that result in high unit costs for water service. Many schools that serve as their own regulated public water systems and have contaminated water sources cannot afford the full operation and maintenance costs required to provide water that meets federal and state drinking water standards.*

*(e) Nearly all state or federal drinking water project funding sources prohibit the use of that funding for operation and maintenance costs, and as a result, those systems that cannot afford required operation and maintenance costs are unable to access funding for capital projects to meet federal and state drinking water standards.*

*(f) As a result, hundreds of thousands of Californians, particularly those living in small disadvantaged communities, may be exposed to unsafe drinking water in their homes and schools, which impacts human health, household costs, and community economic development.*

*(g) A significant number of California residents rely on state small water systems and domestic wells to provide their drinking water.*

*(h) State small water systems and domestic wells are not currently subject to any comprehensive federal or state requirements for chemical water quality monitoring. Many local agencies do not require any monitoring*

*beyond what is required by state law, and there are wide discrepancies among local jurisdictions in well monitoring programs.*

*(i) The state small water systems and individual domestic wells face a serious threat of contamination because they often draw their water from shallow groundwater sources and have fewer or no chemical monitoring requirements.*

*(j) To ensure that the right of every Californian to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes is protected, it is in the interest of the State of California to identify where Californians are at high risk of lacking reliable access to safe drinking water or are known to lack reliable access to safe drinking water, whether they rely on a public water system, state small water system, or domestic well for their potable water supply.*

*(k) Long-term sustainability of drinking water infrastructure and service provision is necessary to secure safe drinking water for all Californians and therefore it is in the interest of the state to discourage the proliferation of new, unsustainable public water systems and state small water systems, to prevent waste, and to encourage consolidation and service extension when feasible.*

*(l) It is in the interest of all Californians to establish a fund with a stable source of revenue to provide financial support, particularly for operation and maintenance, necessary to secure access to safe drinking water for all Californians, while also ensuring the long term sustainability of drinking water service and infrastructure.*

## **Article 2. Definitions**

~~116765.~~ **116766.** For the purposes of this chapter:

~~(a) "Agricultural operations" has the same meaning as defined in Section 13050 of the Water Code.~~

*(a) "Administrator" has the same meaning as defined in Section 116686.*

*(b) "Board" means the State Water Resources Control Board.*

*(c) "Community water system" has the same meaning as defined in Section 116275.*

*(d) "Customer" has the same meaning as defined in Section 10612 of the Water Code.*

~~(d)~~

*(e) "Disadvantaged community" has the same meaning as defined in Section 116275.*

*(f) "Domestic well" means a groundwater well used to supply water for the domestic needs of an individual residence or water systems with no more than four service connections.*

~~(e)~~

*(g) "Fund" means the Safe and Affordable Drinking Water Fund established pursuant to Section ~~116766.~~ 116767.*

*(h) "Fund implementation plan" means the fund implementation plan adopted pursuant to Section 116769.*

~~(f)~~

*(i) "Nontransient noncommunity water system" has the same meaning as defined in Section 116275.*

~~(g)~~

*(j) "Public water system" has the same meaning as defined in Section 116275.*

~~(h)~~

*(k) "Replacement water" includes, but is not limited to, bottled water, point-of-use, or point-of-entry treatment units.*

~~(i) "Safe Drinking Water Plan" means the plan prepared pursuant to Section 116355.~~

*(l) "Safe drinking water" has the same meaning as defined in Section 116681.*

*(m) "Service connection" has the same meaning as defined in Section 116275.*



(n) "Small community water system" has the same meaning as defined in Section 116275.

(o) "State small water system" has the same meaning as defined in Section 116275.

### Article 3. *Safe and Affordable Drinking Water Fund*

~~116766-116767.~~ The Safe and Affordable Drinking Water Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to ~~the Office of Sustainable Water Solutions within~~ the board without regard to fiscal years, in accordance with this chapter. Moneys in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the General Fund.

~~116767.~~ **116768.** (a) The board shall administer the fund for the purposes of this chapter to provide a stable source of funding to ~~assist communities and individual domestic well users to address contaminants in drinking water that exceed secure access to~~ safe drinking water ~~standards, the treatment of which would otherwise make the cost of water service unaffordable. for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure.~~ The board shall prioritize the use of this funding to assist ~~low-income disadvantaged~~ communities and low-income individual domestic well users. ~~In addition, order to maximize the use of other funding sources for capital construction projects when available, the board shall prioritize the use of this funding for costs other than those related to capital construction costs. An 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. Beginning January 1, 2019, an~~ expenditure from the fund shall be consistent with the annual fund implementation ~~plan developed pursuant to Section 116769. On and after January 1, 2020, the total unencumbered amount in the fund shall not exceed the board's total estimated need for moneys in the fund over a two-year period.~~ *plan.*

(b) In accordance with subdivision (a), the board shall expend moneys in the fund for grants, loans, contracts, or services to assist ~~those communities and individual domestic well owners that rely on contaminated drinking water to have access to safe and affordable drinking water~~ *eligible applicants* with any of the following:

(1) The provision of replacement water, as needed, to ensure immediate protection of health and safety as a short-term solution.

(2) The development, implementation, and sustainability of long-term solutions, including, but not limited to, *technical assistance*, planning, construction, and operation and maintenance costs associated with replacing, blending, or treating contaminated ~~wells and drinking water sources~~, consolidating water ~~systems~~, *systems, or extending drinking water services to other public water systems, domestic wells, or state small water systems. Technical assistance and planning costs may include, but are not limited to, analyses to identify, and efforts to further, opportunities to reduce the unit cost of providing drinking water through organizational and operational efficiency improvements, system consolidation and service extension, implementation of new technology, and other options and approaches to reduce costs.*

(3) Identifying *and providing outreach to* Californians ~~without access to safe drinking water~~ who are eligible to receive assistance from the ~~fund and providing outreach to them.~~ *fund.*

(4) Testing the drinking water quality of ~~individual~~ domestic wells serving ~~low-income households.~~ *households with an income equal to or less than 200 percent of the federal poverty level in high risk areas identified pursuant to Article 4 (commencing with Section 116770).*

(c) Eligible applicants for funding include *public water systems*; public agencies, *including, but not limited to, local educational agencies*; nonprofit ~~organizations, public utilities, organizations~~; federally recognized Indian ~~tribes, tribes~~; state Indian tribes listed on the Native American Heritage Commission's California ~~tribal consultation list, Tribal Consultation List; administrators; and~~ groundwater sustainability ~~agencies, and mutual water companies.~~ *agencies.*

(d) The *board may expend moneys from the fund for reasonable costs associated with administration of the fund. Beginning July 1, 2020, the board may expend up to no more than* 5 percent of the annual expenditures from the fund for reasonable costs associated with administration of the fund.

(e) The board may undertake any of the following actions to implement the fund:

(1) Provide for the deposit of any of the following available and necessary moneys into the fund:

(A) Federal contributions.

(B) Voluntary contributions, gifts, grants, or bequests.

*(C) Settlements from parties responsible for contamination of drinking water supplies.*

(2) Enter into agreements for contributions to the fund from the federal government, local or state agencies, and private corporations or nonprofit organizations.

(3) Provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.

*(4) Direct portions of the fund to a subset of eligible applicants as required or appropriate based on funding source and consistent with the annual fund implementation plan.*

~~(4)~~

(5) Take additional incidental action as may be appropriate for adequate administration and operation of the fund.

*(f) In administering the fund, the board shall make reasonable efforts to ensure all of the following:*

*(1) That parties responsible for contamination of drinking water supplies affecting an eligible applicant can be directly or easily identified by the board to pay or reimburse costs associated with contamination.*

*(2) That funds are used to secure the long-term sustainability of drinking water service and infrastructure, including, but not limited to, requiring adequate technical, managerial, and financial capacity of eligible applicants as part of funding agreement outcomes. Funding shall be prioritized to implement consolidations and service extensions when feasible, and administrative and managerial contracts entered into pursuant to Section 116686 where applicable. Funds shall not be used to delay, prevent, or avoid the consolidation or extension of service to public water systems where it is feasible and the least-cost alternative. The board may set appropriate requirements as a condition of funding, including, but not limited to, a system technical, managerial, or financial capacity audit, improvements to reduce costs and increase efficiencies, an evaluation of alternative treatment technologies, and a consolidation or service extension feasibility study. As a condition of funding, the board may require a domestic well with nitrate contamination where ongoing septic system failure may be causing or contributing to contamination of a drinking water source to conduct an investigation and project to address the septic system failure if adequate funding sources are identified and accessible.*

*(3) That funds are not used to subsidize large-scale nonpotable use, to the extent feasible.*

*(g) At least once every 10 years, the board shall conduct a public review and assessment of the Safe and Affordable Drinking Water Fund, including, but not limited to, the effectiveness of the fund, the appropriateness of fees deposited into the fund, and any actions needed to carry out the purposes of this chapter. The board shall post the information it gathers on its Internet Web site and shall submit the information to the Legislature in compliance with Section 9795 of the Government Code.*

~~116768. It is the intent of the Legislature to subsequently amend this section to seek specific funding from agricultural operations to assist in providing emergency, interim, and long term assistance to community water systems and individual domestic well users whose wells have been impacted by nitrate contamination and whose wells are located in agricultural areas.~~

~~116769.~~ **116769.** ~~Annually,~~ *By July 1 of each year,* the board shall do all of the following:

(a) Prepare and make available a report of expenditures from the fund.

~~(b) Adopt, after a public hearing, an assessment of funding needed to ensure all Californians have access to safe drinking water. This annual assessment shall incorporate information contained in the Safe Drinking Water Plan and include a list of community water systems and nontransient noncommunity water systems without access to safe drinking water, as well as identification of small communities and rural populations not served by public water systems that do not have access to safe drinking water.~~ *need, based on available data, that includes all of the following:*

*(1) Identification of systems and populations potentially in need of assistance, including all of the following:*

(A) A list of systems that consistently fail to provide an adequate supply of safe drinking water. The list shall include, but is not limited to, all of the following:

(i) Any public water system that consistently fails to provide an adequate supply of safe drinking water.

(ii) Any community water system that serves a disadvantaged community that must charge fees that exceed the affordability threshold established in the Clean Water State Revolving Fund Intended Use Plan in order to supply, treat, and distribute potable water that complies with federal and state drinking water standards.

(iii) Any state small water system that consistently fails to provide an adequate supply of safe drinking water.

(B) A list of programs that assist, or that will assist, households supplied by a domestic well that consistently fails to provide an adequate supply of safe drinking water. This list shall include the number and approximate location of households served by each program without identifying exact addresses or other personal information.

(C) A list of public water systems and state small water systems that may be at risk of failing to provide an adequate supply of safe drinking water.

(D) An estimate of the number of households that are served by domestic wells or state small water systems in high risk areas identified pursuant to Article 4 (commencing with Section 116770). The estimate shall identify approximate locations of households, without identifying exact addresses or other personal information, in order to identify potential target areas for outreach and assistance programs.

(2) An analysis of anticipated funding needed for known projects, services, or programs by eligible applicants, consistent with the fund implementation plan, including any funding needed for existing long-term funding commitments from the fund. The board shall identify and consider other existing funding sources able to support any projects, services, or programs identified, including, but not limited to, local funding capacity, state or federal funding sources for capital projects, funding from responsible parties, and specialized funding sources contributing to the fund.

(3) An estimate of the funding needed for the next fiscal year based on the amount available in the fund, anticipated funding needs, other existing funding sources, and other relevant data and information.

(c) (1) Adopt, after a public hearing, a fund implementation plan with priorities and guidelines for expenditures of the fund. ~~The~~

(2) ~~The~~ board shall work with a multistakeholder advisory group that shall be open to participation by representatives of entities paying into the fund, public water systems, technical assistance providers, local agencies, ~~affected persons,~~ nongovernmental organizations, *residents served by community water systems in disadvantaged communities, state small water systems, domestic wells,* and the public, to establish priorities for the plan.

~~(2) The fund implementation plan shall prioritize eligibility for expenditures of the fund based on the following:~~

~~(A) A water system's current or projected water rates needed to ensure safe drinking water exceed or will exceed 1.5 percent of the median household income for that water system and the water system qualifies as a disadvantaged community.~~

~~(B) The costs for providing potable water for an individual domestic well exceed or will exceed 1.5 percent of the household's income and the household's income is less than 80 percent of the statewide household median income.~~

#### Article 4. Information on High Risk Areas

**116770.** (a) (1) By January 1, 2019, the board, in consultation with local health officers and other relevant stakeholders, shall use available data to make available a map of aquifers that are at high risk of containing contaminants and that exceed primary federal and state drinking water standards that are used or likely to be used as a source of drinking water for a state small water system or a domestic well. The board shall update the map at least annually based on any newly available data.

(2) The board shall make the map of high risk areas, as well as the data used to make the map, publicly accessible on its Internet Web site in a manner that does not identify exact addresses or other personal information and that complies with the Information Practices Act of 1977 (Chapter 1 (commencing with Section

1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board shall notify local health officers and county planning agencies of high risk areas within their jurisdictions.

(b) (1) A local health officer or other relevant local agency shall provide all results of, and data associated with, water quality testing performed by certified laboratories for a state small water system or domestic well that is in the possession of the local health officer or other relevant local agency in an electronic format to the board by January 1, 2019.

(2) On and after January 1, 2019, a local health officer or other relevant local agency shall require all results of, and data associated with, water quality testing performed by a certified laboratory for a state small water system or domestic well that is submitted to the local health officer or other relevant local agency to also be submitted directly to the board in electronic format.

#### **Article 5. Safe and Affordable Drinking Water Fee**

**116771.** (a) (1) Until July 1, 2020, there is hereby imposed a safe and affordable drinking water fee on each person or entity that purchases water from a public water system, as follows:

(A) For a customer with a water meter that is less than or equal to one inch in size, the fee shall be ninety-five cents (\$0.95) per month.

(B) For a customer with a water meter that is greater than one inch and less than or equal to two inches in size, the fee shall be four dollars (\$4) per month.

(C) For a customer with a water meter that is greater than two inches and less than or equal to four inches in size, the fee shall be six dollars (\$6) per month.

(D) For a customer with a water meter that is greater than four inches in size, the fee shall be ten dollars (\$10) per month.

(E) For a customer without a water meter, the fee shall be ninety-five cents (\$0.95) per month.

(2) A customer that self-certifies under penalty of perjury to the public water system collecting the fee that he or she meets either of the following criteria shall be exempt from the payment of the fee:

(i) The customer's household income is equal to or less than 200 percent of the federal poverty level.

(ii) The customer operates a deed-restricted multifamily housing development that is required to provide housing exclusively to tenants with household incomes equal to or less than 200 percent of the federal poverty level.

(3) (A) A customer that is already enrolled in a program offered by a public water system that is designed specifically to reduce the cost of water service incurred by customers who meet established income guidelines is exempt from the payment of the fee.

(B) A connection or meter that is used exclusively for fire flow or uses nonpotable water, including, but not limited to, recycled water, is exempt from the fee.

(4) A customer that has multiple connections or meters serving a single address shall only pay a single monthly fee based on the customer's largest metered connection.

(b) (1) (A) Beginning July 1, 2020, each person or entity that purchases water from a public water system shall be assessed a fee according to a fee schedule established by the board for the purposes of the Safe and Affordable Drinking Water Fund.

(B) The fee schedule shall not exceed the amounts established in paragraph (1) of subdivision (a).

(C) The board shall review and revise the fee schedule each fiscal year as necessary to not exceed the anticipated funding need in the most recent assessment of funding need.

(D) The fee schedule shall establish that a customer that has multiple connections or meters serving a single address shall only pay a single monthly fee pursuant to this section, based on its largest metered connection.

(E) (i) The fee schedule shall exempt any connection or meter that is used exclusively for fire flow or utilizes nonpotable water, including, but not limited to, recycled water.

*(ii) By July 1, 2020, the board, in consultation with the Public Utilities Commission, shall adopt regulations to exempt households with incomes equal to or less than 200 percent of the federal poverty level from the fee established in the fee schedule pursuant to this subdivision. The Public Utilities Commission shall provide consultation, as well as relevant data, from the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1 of the Public Utilities Code and from the water utility low-income rate payer assistance programs developed pursuant to Section 739.8 of the Public Utilities Code to the board to aid in development and implementation of the regulations for exemption pursuant to this clause.*

*(2) (A) Beginning July 1, 2022, the fee schedule shall be set at an amount that does not result in the total uncommitted amount in the fund exceeding two times the anticipated funding need in the most recent assessment of funding need.*

*(B) For purposes of this paragraph, "total uncommitted amount in the fund" does not include moneys in the fund from the fertilizer safe drinking water fee established by Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code until January 1, 2033, and does not include moneys in the fund from the dairy safe drinking water fee established by Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code until January 1, 2035.*

*(c) A public water system shall collect the fee from each of its customers and may retain an amount, as approved by the board, as reimbursement for the reasonable costs incurred by the public water system associated with the collection of the fee. For small community water systems, reasonable public water system administrative cost reimbursement shall not exceed five hundred dollars (\$500) or 2 percent of the total revenue collected, whichever is greater. For all other public water systems, reasonable public water system administrative cost reimbursement shall not exceed 1 percent of the total revenue from the fees collected. The public water system shall remit the remainder to the board on an annual schedule.*

*(d) The board may approve an exemption for a community water system and its customers from the requirements of this section if the board finds that the amount that would be required to be remitted to the board pursuant to this section would be de minimis.*

*(e) Notwithstanding any other provision of this article, a fee shall not be imposed pursuant to this article on a person or entity that is itself a public water system if that public water system is only purchasing water from a public water system to supply its own customers that are themselves being assessed the fee.*

*(f) All moneys remitted to the board under this article shall be deposited in the Safe and Affordable Drinking Water Fund. The moneys remitted to the board under this article shall not be available for appropriation or borrowed for use for any purpose not established in this chapter unless that use of the moneys receives an affirmative vote of two-thirds of the membership in each house of the Legislature.*

**116772.** *(a) A public water system may apply to the board to authorize the public water system to use an alternative method to calculate the amount owed by each customer for the charge imposed by Section 116771 by submitting an application, in a form prescribed by the board, that demonstrates both of the following:*

*(1) That the method required by statute, regulation, or fee schedule adopted by the board would be impractical for the public water system to collect.*

*(2) That the method proposed by the public water system would provide an approximately equivalent level of total revenue and is consistent with the fee restrictions in this article, including, but not limited to, amount maximums and exemptions.*

*(b) The board shall review any application submitted pursuant to subdivision (a) to determine whether the justifications demonstrated pursuant to paragraphs (1) and (2) of subparagraph (a) are valid. If the board denies the application, that denial shall be in writing and shall not be reviewable. If the board approves the application, the public water system may use the alternative method for an amount of time prescribed by the board, not to exceed five years.*

*(c) There is not a limit on the number of applications the board is authorized to approve pursuant to this section to establish or renew an alternative method of fee calculation.*

**116773.** *(a) The board, in consultation with the California Department of Tax and Fee Administration, shall administer and collect the fees imposed by this article in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).*

*(b) For purposes of administration of the fee imposed by this article, the following references in the Fee Collection Procedures Law shall have the following meanings:*

*(1) "Board" or "State Board of Equalization" means the State Water Resources Control Board.*

*(2) "Fee" means the safe and affordable drinking water fee imposed pursuant to this article.*

*(3) "Feepayer" means a customer liable to pay the fee.*

*(c) The board, in consultation with the California Department of Tax and Fee Administration, may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article, including, but not limited to, collections, reporting, refunds, and appeals.*

*(d) The initial regulations adopted by the board to implement this article shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not rely on the statutory declaration of emergency in subdivision (e).*

*(e) Except as provided in subdivision (d), the regulations adopted pursuant to this section, any amendment to those regulations, or subsequent adjustments to the annual fees or adoption of fee schedule, shall be adopted by the board as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Any emergency regulations adopted by the board, or adjustments to the annual fees made by the board pursuant to this section, shall remain in effect until revised by the board.*

**SEC. 3. SEC. 4.** Section 13050 of the Water Code is amended to read:

**13050.** As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, ~~agricultural~~ *agricultural*, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.

(2) Water quality objectives.

(3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(l) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p) (1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) (1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and

overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

(s) (1) "Agricultural operation" means either of the following:

(A) A discharger that satisfies both of the following conditions:

(i) The discharger is an owner, operator, or both, of land that is irrigated to produce crops or pasture for commercial purposes or a nursery.

(ii) The discharger is enrolled or named in an irrigated lands regulatory program order adopted by the state board or a regional board pursuant to Section 13263 or 13269.

(B) A discharger that satisfies both of the following conditions:

(i) The discharger is an owner, operator, or both of a facility that is used for the raising or harvesting of livestock.

(ii) The discharger is enrolled or named in an order adopted by the state board or a regional board pursuant to Section 13263 or 13269 that regulates the discharges of waste from a facility identified in clause (i) to protect ground and surface water.

(2) "Agricultural operation" does not include any of the following:

(A) An off-farm facility that processes crops or livestock.

(B) An off-farm facility that manufacturers, synthesizes, stores, or processes fertilizer.

(C) Any portions of land or activities occurring on those portions of land that are not covered by an order adopted by the state board or a regional board identified in clause (ii) of subparagraph (A) or clause (ii) of subparagraph (B) of paragraph (1).

**SEC. 4. SEC. 5.** Article 4.5 (commencing with Section 13278) is added to Chapter 4 of Division 7 of the Water Code, to read:

**Article 4.5. Discharges of Nitrate to Groundwater from Agricultural Operations**

**13278.** (a) For the purposes of this article, the Legislature finds all of the following:

(1) Implementation of currently known best management practices for some crops can reduce but not always completely prevent nitrogen in organic and synthetic fertilizers that transform to nitrates from reaching groundwater at concentrations above the water quality objectives established pursuant to this division.

(2) It is acknowledged that discharges of nitrate from agricultural operations could reach groundwater and could cause or contribute to exceedances of drinking water standards for ~~nitrate, and~~ *nitrate, and* could cause conditions of pollution of or nuisance in those waters as defined and applied in accordance with this division, or both.

(3) Nitrate contamination of groundwater impacts drinking water sources for hundreds of thousands of Californians and it is necessary to protect current and future drinking water users from the impacts of nitrate contamination.

(4) Despite progress in controlling discharges of nitrogen that lead to nitrate formation, some groundwater sources of drinking water will continue to be adversely impacted by nitrates and it is important to have in place a program for mitigating these impacts.

(5) The regional boards will continue to regulate discharges to reduce nitrogen loading and protect beneficial uses of water and groundwater basins; the state board, regional boards, and courts will ensure compliance with



those orders; and dischargers will pay for mitigation of pollution by funding replacement water for affected communities.

(b) The Legislature declares its intent in establishing this article ~~to do both of the following:~~

~~(1) To subsequently amend this article to establish an agricultural assessment to be paid by agricultural operations for a period of 15 years to provide funding, as a portion of the Safe and Affordable Drinking Water Fund, to make available alternative supplies of safe drinking water to persons affected by discharges of nitrogen from agricultural operations that may occur in amounts that may cause or contribute to an exceedance of a water quality objective or cause conditions of pollution or nuisance.~~

~~(2) To limit to limit~~ enforcement actions that a regional board or the state board could otherwise initiate during that 15-year period against an agricultural operation paying the agricultural assessment, while maintaining the overall framework of this division to protect beneficial uses, implement water quality objectives in waters of the state, and regulate activities and factors that affect water quality to attain the highest water quality that is reasonable.

**13278.1.** (a) An agricultural operation shall not be subject to enforcement undertaken or initiated by the state board or a regional board under Chapter 5 (commencing with Section 13330) for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrates in groundwater if an agricultural operation that discharges or threatens to discharge, or has discharged or previously threatened to discharge, nitrate to groundwater demonstrates that it has satisfied all of the following mitigation requirements:

(1) The agricultural operation has timely paid any applicable ~~fee, assessment, or charge~~ *fertilizer safe drinking water fee established by Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code or dairy safe drinking water fee established by Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code* into the Safe and Affordable Drinking Water Fund ~~or an applicable agricultural assessment is providing funding into the Safe and Affordable Drinking Water Fund, established by Section 116767 of the Health and Safety Code.~~ For the purposes of this paragraph, "timely paid" means that an agricultural operation has paid all applicable fees, assessments, or charges, no later than 90 days after their respective due dates, since the application of the fee, assessment, or charge to the agricultural operation.

(2) Except as provided in subdivision (b), the agricultural operation is in compliance with all applicable provisions prescribed by a regional board or the state board in an order adopted pursuant to Section 13263 or 13269, including, but not limited to, the following:

(A) Requirements to implement best practicable treatment or control.

(B) Best efforts, monitoring, and reporting requirements.

(C) Timelines.

(3) The agricultural operation is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that is part of an applicable water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(b) (1) The mitigation requirement contained in paragraph (2) of subdivision (a) does not include any generalized prohibition contained in an order adopted under Section 13263 or 13269 on causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(2) (A) An agricultural operation is not in compliance with the mitigation requirement in paragraph (2) of subdivision (a) if the agricultural operation has been subject to an enforcement action under Chapter 5 (commencing with Section 13330) within the preceding 12 months for any violation of an order adopted under Section 13263 or 13269 authorizing discharges from agricultural operations.

(B) Subparagraph (A) does not apply to an enforcement action commenced after January 1, 2016, and before January 1, 2018, inclusive, alleging that a discharge from an agricultural operation caused or contributed, or threatened to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater, conditions of pollution or nuisance for nitrate in groundwater, or both.

(3) An agricultural operation does not qualify for the enforcement exemption set forth in this subdivision if the operation fails to continue to make applicable payments into the Safe and Affordable Drinking Water Fund to the extent that the agricultural operation maintains a continuance of farming operation.

(c) Both of the following apply to a discharge of nitrogen by an agricultural operation that occurs when the discharger is in full compliance with the mitigation requirements:

(1) The discharge shall not be admissible in a future enforcement action against the agricultural operation by the state board or a regional board pursuant to Chapter 5 (commencing with Section 13300) to support a claim that the agricultural operation is causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(2) The discharge shall not be considered by the state board or a regional board to apportion responsibility and shall not be used by any person to diminish responsibility in any enforcement action initiated pursuant to Chapter 5 (commencing with Section 13300) with respect to discharges of nitrogen, regardless of source, that did not occur in compliance with the mitigation requirements.

(d) Nothing in this section alters the state board's or a regional board's authority to require or conduct investigations, to require reports on or to establish other requirements for best practicable treatment or control, or to require monitoring and reporting requirements to protect water quality.

(e) This section shall not be deemed to change or alter a water quality objective that is part of a water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(f) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

**13278.2.** (a) An agricultural operation shall not be subject to enforcement undertaken or initiated by the state board or a regional board under Section 13304 for creating or threatening to create a condition of pollution or nuisance for nitrates in groundwater if an agricultural operation that discharges or threatens to discharge, or has discharged or previously threatened to discharge, nitrate to groundwater demonstrates that it has satisfied all of the following mitigation requirements:

(1) The agricultural operation has timely paid any applicable ~~fee, assessment, or charge~~ *fertilizer safe drinking water fee established by Article 6.5 (commencing with Section 14615) of Chapter 5 of Division 7 of the Food and Agricultural Code or dairy safe drinking water fee established by Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code* into the Safe and Affordable Drinking Water Fund ~~or an applicable agricultural assessment is providing funding into the Safe and Affordable Drinking Water Fund, established by Section 116767 of the Health and Safety Code.~~ For the purposes of this paragraph, "timely paid" means that an agricultural operation has paid all applicable fees, assessments, or charges, no later than 90 days after their respective due dates, since the application of the fee, assessment, or charge to the agricultural operation.

(2) Except as provided in subdivision (b), the agricultural operation is in compliance with all applicable provisions prescribed by a regional board or the state board in an order adopted pursuant to Section 13263 or 13269, including, but not limited to, the following:

(A) Requirements to implement best practicable treatment or control.

(B) Best efforts, monitoring, and reporting requirements.

(C) Timelines.

(3) The agricultural operation is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that is part of an applicable water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(b) (1) The mitigation requirement contained in paragraph (2) of subdivision (a) does not include any generalized prohibition contained in an order adopted under Section 13263 or 13269 on causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(2) An agricultural operation is not in compliance with the mitigation requirement in paragraph (2) of subdivision (a) if the agricultural operation has been subject to an enforcement action under Chapter 5 (commencing with Section 13330) within the preceding 12 months for any violation of an order adopted under Section 13263 or 13269 authorizing discharges from agricultural operations.

(3) An agricultural operation does not qualify for the enforcement exemption set forth in this subdivision if the operation fails to continue to make applicable payments into the Safe and Affordable Drinking Water Fund to the extent that the agricultural operation maintains a continuance of farming operation.

(c) Both of the following apply to a discharge of nitrogen by an agricultural operation that occurs when the discharger is in full compliance with the mitigation requirements:

(1) The discharge shall not be admissible in a future enforcement action against the agricultural operation by the state board or a regional board pursuant to Chapter 5 (commencing with Section 13300) to support a claim that the agricultural operation is causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

(2) The discharge shall not be considered by the state board or a regional board to apportion responsibility and shall not be used by any person to diminish responsibility in any enforcement action initiated pursuant to Chapter 5 (commencing with Section 13300) with respect to discharges of nitrogen, regardless of source, that did not occur in compliance with the mitigation requirements.

(d) Nothing in this section alters the state board's or a regional board's authority to require or conduct investigations, to require reports on or to establish other requirements for best practicable treatment or control, or to require monitoring and reporting requirements to protect water quality.

(e) This section shall not be deemed to change or alter a water quality objective that is part of a water quality control plan adopted by the state board or a regional board pursuant to Article 3 (commencing with Section 13240).

(f) (1) This section shall become operative on January 1, 2028.

(2) This section shall remain in effect only until January 1, 2033, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2033, deletes or extends that date.

**13278.3.** By January 1, 2027, the state board shall conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control.

**13278.4.** Nothing in this article limits the liability of a discharger under any other law, including, but not limited to, Part 3 (commencing with Section 3479) of Division 4 of the Civil Code.

**SEC. 6.** *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

*However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*