Legislative Committee  
(Directors Farrington and Thomas)  
March 4, 2019  
3:30 p.m.  
12800 Ridge Rd  
Sutter Creek CA 95685

Public Notice: Members of the public will have the opportunity to directly address the Committee on any item listed on the Agenda below before or during consideration of that item

Please note there is a three minute time limit per person.

1. CALL TO ORDER

2. AWA WATER SYSTEMS

   A. Discussion regarding SB 669 and AWA’s potential support.
   B. Discussion regarding SB 474, potential impacts to AWA, and proposed position on the bill.

   C. Miscellaneous Updates

ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, then please contact Cris Thompson at (209) 223-3018 or (209) 257-5281 (fax). Requests must be made as early as possible, and at least two-full business days before the start of the meeting.
VIA FACSIMILE

[DATE]

The Honorable [FIRST NAME] [LAST NAME]
State Capitol
Sacramento, CA 95814

RE: SB 669 (Caballero): Safe Drinking Water Trust - SUPPORT

Dear [Senator/Assembly Member] [Last Name],

Amador Water Agency supports SB 669 (Caballero), which would create the Safe Drinking Water Trust (Trust) at the state Treasury. The purpose of the Trust would be to provide a durable funding source to help community water systems in disadvantaged communities provide their customers with access to safe drinking water. The trust is a better approach than a statewide water tax.

There currently exists a funding gap for operation and maintenance (O&M) costs for the treatment of drinking water by community water systems in disadvantaged communities. O&M costs generally cannot be financed with existing federal and state safe drinking water funding sources that are available for capital costs. In some situations, the consolidation of a failing community water system with one or more systems may be the most effective solution. The Safe Drinking Water Trust proposed in SB 669 would provide a durable funding source to provide financial assistance for replacement water as a short-term solution, consolidation and ongoing O&M costs.

The Trust would be funded with an infusion of General Fund dollars during a budget surplus year. With the record budget surplus for the 2019-20 Fiscal Year, this is the perfect year to create and fund the Trust. The state would invest the Trust’s principal, and the net income from the Trust would be transferred on an ongoing basis to a Safe Drinking Water Fund that would be administered by the State Water Resources Control Board.

The Trust is a better approach than a statewide water tax because it is not sound policy to tax a resource that is essential to life. Unlike a regressive water tax and the associated implementation costs at about 3,000 local water systems, the Trust would not drive up water costs and work against the state’s Human Right to Water policy of affordable water.

For the above reasons, Amador Water Agency respectfully asks you to vote “Aye” for SB 669,
Sincerely,

Gene Mancebo, General Manager

cc: The Honorable Anna Caballero
SB 669, as introduced, Caballero. Water quality: Safe 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 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 Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the state board. The bill would require the state board to administer the fund to assist community water systems in disadvantaged communities that are chronically noncompliant relative to the federal and state drinking water standards and do not have the financial capacity to pay for operation and maintenance costs to comply with those standards, as specified. The bill would authorize the state board to provide for the deposit into the fund of federal contributions, voluntary contributions, gifts, grants, and bequests, transfers by the Legislature from the General Fund and the Greenhouse Gas Reduction Fund, funding from authorized general obligation bond acts, and net revenue from the Safe Drinking Water Trust that this bill would create. The bill would require the state board to expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants. The bill by July 1, 2021, and by July 1 of each year thereafter, would require the state board to adopt, working with a multistakeholder advisory group, after a public workshop and a public hearing, an annual fund implementation plan. The bill would require the state board annually to prepare and make publicly available a report of expenditures of the fund and to adopt annually, after a public hearing, an annual update to a specified needs analysis. By creating a new continuously appropriated fund, this bill would make an appropriation.

(2) Existing law requires a trustee to administer a trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use, as specified. The existing
Uniform Prudent Investor Act requires a trustee to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.

This bill would create in the State Treasury the Safe Drinking Water Trust Fund, to hold the trust property of the Safe Drinking Water Trust. The bill would create the Safe Drinking Water Trust Commission, consisting of 3 members, to serve as the trustee of the trust and would require the trustee to abide by the act and have all of the fiduciary duties, responsibilities, and obligations consistent with serving as a trustee of a trust. The bill would require the trustee to transfer the net income from the trust fund to the Safe Drinking Water Fund for expenditure, as prescribed. The bill would authorize funding of the trust principal, subject to transfer by the Legislature. The bill would require the trustee to accept donations that shall be deemed trust property and increase the principal of the trust. The bill would require the trustee to meet, not less than quarterly, to review the investment of the trust principal and administer the trust. The bill would require the trustee to provide the state board annually with an accounting of the investments and a forecast of the projected income to be distributed from the funds in future fiscal years. The bill would require the trust to be deemed a charitable trust subject to the supervision of the Attorney General.

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

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

SECTION 1. 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 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 community 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) Some community water systems in disadvantaged communities that do not have access to safe drinking water do not have the technical, managerial, or financial capacity that is needed to comply with the federal and state drinking water standards on a routine and consistent basis.

(d) Some state or federal drinking water project funding sources prohibit the use of that funding for operation and maintenance costs. If a community water system does not have the financial capacity to fund operations and maintenance costs, the community water system may not be able to access funding for capital costs to comply with the federal and state drinking water standards on a routine and consistent basis.

(e) Hundreds of thousands of Californians, particularly those living in small disadvantaged communities, rely on unsafe drinking water from a chronically noncompliant community water system, which impacts human health, household costs, and community economic development.

(f) It is important that new permitted public water systems are sustainable.

(g) Chapter 843 of the Statutes of 2016 added Section 116527 to and amended Section 116540 of the Health and Safety Code and added Section 106.4 to the Water Code to authorize the State Water Resources Control Board to prevent the permitting of new, unsustainable public water systems.

(h) It is in the interest of the state to identify, help develop, and help implement solutions for those chronically noncompliant community water systems in disadvantaged communities that do not have the technical, managerial, or financial capacity to comply with the federal and state drinking water standards, and as a result, have ongoing violations.

(i) To assist chronically noncompliant community water systems in disadvantaged communities to come into compliance with the federal and state drinking water standards and become self-sufficient, the net revenue from a safe drinking water trust is a reasonable and sustainable way to provide state funding assistance for operation and maintenance costs and consolidation costs where financial assistance is needed.
(j) Funding of the trust with General Fund dollars during one or more years of state budget surplus is an appropriate priority for the state because the lack of access to safe drinking water in some disadvantaged communities is a social and public health issue for the state. Once the trust is funded, the revenue from the trust will be a long-term durable solution to assist chronically noncompliant community water systems in disadvantaged communities in becoming self-sufficient relative to safe drinking water.

**Article 2. Definitions**

116766. For the purposes of this chapter:

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

(e) "Eligible applicant" means a public agency, a local educational agency, a nonprofit organization, a public utility, a federally recognized Indian tribe, a state Indian tribe listed on the Native American Heritage Commission's California Tribal Consultation List, a mutual water company, and an administrator.

(f) "Fund" means the Safe Drinking Water Fund established pursuant to Section 116767.

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

(h) "Replacement water" means bottled water, vended water, or point-of-use or point-of-entry treatment units.

**Article 3. Safe Drinking Water Fund**

116767. The Safe 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 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. Moneys in the fund shall not be available for appropriation or borrowed for use for any purpose not established in this chapter unless that use of the moneys is authorized by statute that receives an affirmative vote of two-thirds of the membership in each house of the Legislature.

116768. (a) The board shall administer the fund to assist community water systems in disadvantaged communities that are chronically noncompliant relative to the federal and state drinking water standards and do not have the financial capacity to pay for operation and maintenance costs to comply with those standards by providing assistance for all of the following:

1. Operation and maintenance costs to both help bring the systems into compliance with those standards and help the systems become self-sufficient relative to safe drinking water.

2. Consolidation costs for the community water systems.

3. Replacement water to provide the systems with safe drinking water as a short-term solution.

4. The provision of administrative and managerial services under Section 116686 for purposes of helping the systems become self-sufficient in the long term.

(b) Consistent with subdivision (a), the board shall expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants.

(c) Consistent with subdivision (a), the goals for implementation of this fund are that community water systems benefitting from the funding both:

1. Will become compliant relative to the federal and state drinking water standards.

2. Will become self-sufficient and will need assistance for no longer than 10 years.

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

1. Provide for the deposit of all of the following moneys into the fund:

(A) Federal funding.
(B) Transfers by the Legislature from the General Fund.

(C) Net revenue from the Safe Drinking Water Trust.

(D) Funding from a general obligation bond act that authorizes the deposit of bond moneys into the fund.

(E) Transfers by the Legislature from the Greenhouse Gas Reduction Fund.

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

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

(3) 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.

(e) The board may expend moneys from the fund for reasonable costs associated with administration of the fund, including outreach regarding the availability of the funding. The board may expend no more than 5 percent of the annual revenue from the fund for reasonable costs associated with the administration of the fund.

(f) The board shall provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.

(g) At least every five years, the board, in consultation with the Legislative Analyst’s Office, shall conduct a public review and assessment of the fund that evaluates and reports on all of the following:

1. The effectiveness of expending moneys from the fund in terms of both helping bring chronically noncompliant community water systems in disadvantaged communities into compliance with the federal and state safe drinking water standards and helping chronically noncompliant community water systems in disadvantaged communities become self-sufficient.

2. The sources of funding and the amount of funding from each source that went into the fund during the time period that is being reviewed and assessed.

3. The community water systems for which self-sufficiency has been achieved and for which funding from the fund is no longer necessary.

4. The community water systems that have received funding for 10 years or more and for which self-sufficiency has not been achieved, the actions that have been taken, the reasons why self-sufficiency has not been achieved, and, where appropriate, the reasons why continued funding from the fund is necessary.

(h) The board shall make a report of the public review and assessment described in subdivision (g) available on the board’s internet website.

(i) The board, an employee of the board, or any authorized person shall not be deemed to have incurred or be required to incur any obligation to provide additional funding or undertake additional action solely as a result of having undertaken an action pursuant to this chapter.

116769. By July 1, 2021, and by July 1 of each year thereafter, the board shall do all of the following:

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

(b) Adopt, after a public hearing, an annual update to the needs analysis of drinking water systems first directed by the Legislature in Item 3940-002-0001 of Section 2.00 of the Budget Act of 2018.

(c) Work with a multistakeholder advisory group to obtain input regarding priorities for the fund that can reasonably be accomplished in the next year and development of the annual fund implementation plan.

(d) Adopt, after a public workshop and a public hearing, an annual fund implementation plan.

SEC. 2. Chapter 4.7 (commencing with Section 116771) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 4.7. Safe Drinking Water Trust Act of 2019

Article 1. Short Title

116771. This chapter shall be known, and may be cited, as the Safe Drinking Water Trust Act of 2019.
Article 2. Legislative Findings of Necessity and Cause for Action

116772. (a) Because Section 106.3 of the Water Code establishes 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, it is in the interest of the people of the state to enact this chapter to establish a trust fund for the governmental purpose of providing a perpetual source of funding to assist community water systems in disadvantaged communities that are chronically noncompliant relative to the federal and state drinking water standards and do not have the financial capability to pay for operation and maintenance costs to comply with those standards by providing funding assistance for all of the following:

(1) Operation and maintenance costs to both help bring the systems into compliance with those standards and help the systems to become self-sufficient.

(2) Consolidation costs for the systems.

(3) Replacement water to provide the systems with safe drinking water as a short-term solution.

(4) The provision of administrative and managerial services pursuant to Section 116686 for purposes of helping the systems become self-sufficient in the long term.

(b) The primary purpose of the Safe Drinking Water Trust, a charitable trust established pursuant to this chapter, shall be to provide a perpetual source of funding each year to the Safe Drinking Water Fund established pursuant to Section 116767 in furtherance of the trust fund purposes in subdivision (a).

(c) It is the intent of the Legislature that the funding for the trust be from General Fund dollars transferred to the trust by the Legislature during one or more years of state budget surplus.

Article 3. Safe Drinking Water Trust

116773. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

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

(b) "Beneficiary" means the people of the state, as represented by the board in its implementation of the provisions of Chapter 4.6 (commencing with Section 116765) and its administration of the Safe Drinking Water Fund established pursuant to Section 116767. The beneficiary’s interest in the trust shall only be to the net income generated from the trust principal.

(c) "Income" means the money, enhanced value, or other income the trust receives as current return from the investment of the trust principal.

(d) "Net income" means the trust income earned July 1 to June 30, inclusive, of the previous year minus all of the necessary and reasonable expenses incident to the administration of the trust during that same period.

(e) "Principal" means the trust property, inclusive of any increase designated as part of the trust principal by the trustee as a result of a higher than anticipated return on the investment pursuant to paragraph (2) of subdivision (b) of Section 116773.6 that is held in trust for the beneficiary and to accomplish the purposes described in Section 116772.

(f) "Trust" means the Safe Drinking Water Trust.

(g) "Trust fund" means the account established pursuant to subdivision (a) of Section 116773.2 to hold the trust property.

(h) "Trust property" means the money transferred to the trust fund pursuant to subdivision (d) of Section 116773.6 and any donation to the trust fund received and accepted by the trustee after January 1, 2020.

(i) "Trustee" means the Safe Drinking Water Trust Commission.

116773.2. (a) There is hereby created in the State Treasury the Safe Drinking Water Trust Fund for holding the trust property of the Safe Drinking Water Trust and for the purpose of implementing the public and governmental purposes of this chapter. Net income distributed by the trustee from the trust fund is hereby transferred to the board for deposit in and expenditure from the Safe Drinking Water Fund in accordance with Chapter 4.6 (commencing with Section 116765).

(b) Moneys in the trust fund, including the trust principal and trust income, shall not be available for appropriation or be borrowed for use for any purpose not established in this chapter.
(c) Funding of the trust principal is hereby authorized and is subject to transfer by the Legislature. All transfers to the trust are hereby irrevocably transferred from the General Fund during budget surplus years to the trustee for deposit in the Safe Drinking Water Trust Fund for investment to accomplish the purposes of this chapter and on the conditions prescribed in Section 116773.6.

(d) Notwithstanding any other law, moneys deposited into the Safe Drinking Water Trust Fund or to fund the trust shall not be transferred to the General Fund.

116773.4. (a) There is hereby created the Safe Drinking Water Trust Commission, consisting of three members, selected as follows:

(1) The Treasurer, or the Treasurer's designee.

(2) The Lieutenant Governor, or the Lieutenant Governor's designee.

(3) The Controller, or the Controller's designee.

(b) The Safe Drinking Water Trust Commission shall serve as the trustee of the trust having all of the fiduciary duties, responsibilities, and obligations consistent with serving as a trustee of a trust.

(c) The Treasurer shall serve as chairperson of the Safe Drinking Water Trust Commission. The commission shall annually elect from its members a vice chairperson and a secretary who shall hold office until December 31 and shall continue to serve until their respective successors are elected.

(d) The trustee shall do all of the following:

(1) Meet not less than quarterly to review the investment of the trust principal and administer the trust.

(2) Meet on the call of the chairperson, at the request of a majority of the members, or at the request of the Governor.

(3) Adopt bylaws or other governing documents it deems necessary for the regulation of its affairs and the conduct of its business.

(e) Notwithstanding Section 10231.5 of the Government Code, the Safe Drinking Water Trust Commission annually shall provide the board with an accounting of the investments and a forecast of the projected income to be distributed from the fund in future fiscal years. The board shall include the information in the fund implementation plan prepared by subdivision (c) of Section 116769.

116773.6. (a) The trustee of the Safe Drinking Water Trust shall hold the trust property for the primary benefit of the trust's beneficiary and shall hold, manage, and invest the trust principal with the obligation of providing a perpetual source of annual funding to the Safe Drinking Water Fund established in Section 116767. The trustee shall not invade the trust principal.

(b) The trustee shall collect, receive, and monetize, if prudent, the income from the trust, and shall transfer the trust's net income annually as follows:

(1) If the net income earned by the trust during the previous fiscal year is less than or equal to ______ dollars (_____), the trustee shall deposit the entire value of the net income into the Safe Drinking Water Fund for the benefit of the trust's beneficiary.

(2) If the net income earned by the trust during the previous fiscal year is greater than ______ dollars (_____), the trustee shall deposit at least ______ dollars (_____) into the Safe Drinking Water Fund for the benefit of the trust's beneficiary and shall determine if any additional portion of the net income should be deposited into the Safe Drinking Water Fund that year. Any portion of the net income not deposited in the Safe Drinking Water Fund shall be deemed a part of the trust principal by the trustee as a result of a higher than anticipated return on the investment on the trust principal in the previous fiscal year.

(3) Notwithstanding any other law, the trustee, and any employee or agent of the trustee, shall not sell, purchase, exchange, or otherwise deal with or dispose of all or any parts of the principal of the trust.

(c) The trustee shall exercise its administration of the trust as a fiduciary to the beneficiary. The trustee, in its administration of the trust, shall abide by the Uniform Prudent Investor Act (Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code). The trustee shall have the powers, obligations, and responsibilities of a trustee prescribed in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code that are not inconsistent with the purposes and provisions of this chapter.
(d) The trust shall have both of the following powers:

(1) To accept donations that shall be deemed trust property and increase the principal of the trust.

(2) Use no more than 1 percent of the trust income earned July 1 to June 30, inclusive, of each year to pay for the necessary and reasonable expenses incident to the administration of the trust during that same period.

(e) The trust shall be deemed a charitable trust subject to the supervision of the Attorney General.
SB 474, as introduced, Stern. Department of Water Resources: appropriations of water.

Under existing law, the Department of Water Resources is required to make and file with the State Water Resources Control Board applications for the appropriation of any water that, in the department’s judgment, is or may be required in the development and completion of all or part of a general or coordinated plan for the development, utilization, or conservation of the water resources of the state. Existing law gives those applications priority, as of the date of filing the application, over any subsequent application and exempts certain water rights diligence provisions from generally applying to the applications.

This bill would eliminate the exemption from the application of the diligence provisions as of January 1, 2021.

Vote: majority  Appropriation: no  Fiscal Committee: yes  Local Program: no

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

SECTION 1. Section 10500 of the Water Code is amended to read:

10500. (a) The department shall make and file applications for any water—

(b) Any application filed pursuant to this part shall be made and filed pursuant to Part 2 (commencing with Section 1200) of Division 2 of this code and the rules and regulations of the State Water Resources Control Board relating to the appropriation of water insofar as applicable thereto. 
(c) Applications filed pursuant to this part shall have priority, as of the date of filing, over any application made and filed subsequent thereto. The to that date.

(d) The statutory requirements of Part 2 (commencing at Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part, except as otherwise provided in Section 10504. This subdivision shall become inoperative January 1, 2021.