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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** SB 403  
**Author:** Gonzalez  
**Version:** 2/12/2021  
**Urgency:** No  
**Consultant:** Gabrielle Meindl

**Hearing Date:** 3/15/2021  
**Fiscal:** Yes

**SUBJECT:** Drinking water: consolidation

**DIGEST:** Authorizes the State Water Resources Control Board (State Water Board) to order consolidation between a receiving water system and an at-risk water system under specified circumstances.

**ANALYSIS:**

Existing law:

- 1) Authorizes the United States Environmental Protection Agency (US EPA), pursuant to the federal Safe Drinking Water Act (SDWA), to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)
- 2) Requires, pursuant to the California SDWA, the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)
- 3) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 4) Authorizes the State Water Board, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water or where a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water, to order consolidation, either physical or operational, with a receiving water system. (HSC § 116682 (a)(1))
- 5) Requires the State Water Board, no later than July 1, 2020, to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the State Water Board to consider ordering consolidation. (HSC § 116682 (a)(2))

- 6) Requires the State Water Board, before ordering consolidation or extension of service, to make seven findings, including that the potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water; that all reasonable efforts to negotiate consolidation or extension of service were made; and, that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. (HSC §116682 (d))
- 7) Prohibits, in the case of an ordered consolidation, the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit. Provides that, in the case of an ordered consolidation, fees or charges imposed on a customer of a subsumed water system shall not exceed the cost of the service. (HSC § 116682 (g)(1)(A) - (B))
- 8) Prohibits the receiving water system from charging any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system. (HSC § 116682 (g)(1)(C))

This bill:

- 1) Authorizes the State Water Board to additionally order consolidation where a water system serving a disadvantaged community is at risk of failing to provide an adequate supply of safe drinking water or where a disadvantaged community is substantially reliant on domestic wells that are at risk of failing to provide an adequate supply of safe drinking water.
- 2) Requires the State Water Board to conduct outreach to ratepayers and residents served by an at-risk water system and to consider any specified petitions submitted by members of a disadvantaged community served by the at-risk water system before ordering the consolidation of the at-risk water system, as prescribed.

## **Background**

- 1) *Federal, State, and Local Entities Regulate Drinking Water.* The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards.

The US EPA enforces the federal SDWA at the national level. However, most states, including California, have been granted “primacy” by the US EPA, giving them authority to implement and enforce the federal SDWA at the state level.

Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

The California State Water Board’s Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A “service connection” is usually the point of access between a water system’s service pipe and a user’s piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee them. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the DDW or LPAs share water quality regulatory authority with CPUC.

The DDW regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

- 2) *Multiple Causes of Unsafe Drinking Water.* The causes of unsafe drinking water can generally be separated into two categories (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

Three of the most commonly detected pollutants in contaminated water are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes

applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

- 3) *Unsafe Drinking Water a Statewide Problem.* The State Water Board has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by the State Water Board. Of the 331 systems identified by the State Water Board, 68 have violations associated with nitrates (and in some cases, additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address the problem. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low income of the customers, and the small number of customers across whom the costs would need to be spread.
- 4) *Consolidation of Public Water Systems.* SB 88 (Budget Committee, Chapter 27 Statutes of 2015) authorizes State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water. SB 552 (Wolk, Chapter 773, Statutes of 2016) authorizes the State Water Board to identify public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water and, once funding is available, to then contract with a competent administrator to provide managerial and technical expertise to that system.

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

The State Water Board currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Currently, more than 60 consolidations are being funded by State Water Board. Sixteen mandatory consolidations are currently proceeding, although 5 of those

have decided to pursue voluntary consolidation. One mandatory consolidation has been completed so far, and a second is in construction and anticipated to be finished in April 2020. From 2017-19, there were 130 voluntary physical consolidations and 8 voluntary managerial consolidations. Physical consolidations are for systems that are close enough to be connected by new pipelines. In managerial or operational consolidation, the systems remain physically separate, but are managed by the same entity.

- 5) *Replacement Water Costs and Opportunity Savings.* Consolidating a system before it fails could save the state money overall. The moment a system begins to provide unsafe drinking water means it will start to impact the available resources like the Safe and Affordable Drinking Water Fund and the State Revolving Fund. Avoiding a situation where the State has to spend millions trucking in bottled water to a disadvantaged community with a failed system could help preserve the very limited financial resources for drinking water programs.

Allowing the State Water Board to consolidate an at-risk system also allows consolidation planning to take a regional approach that will save the State drinking water funds in the long run. If funds are being used to bring safe drinking water to a failed system, and there are neighboring “at-risk” systems that will likely fail in the future, the state could save precious resources by taking a regional approach to consolidating both failed and soon-to-fail systems at the same time.

- 6) *Number of Impacted Systems.* The State Water Board is currently completing a needs assessment and estimates that 1,241 water systems in the state with fewer than 500 connections are at risk of failure. Not all of these systems serve disadvantaged communities, and some are isolated and not good consolidation candidates. This number also does not include an evaluation of the more than 1,300 state small water systems in the state. However, it is important to note that this bill merely allows the State Water Board to consider consolidation of at-risk water systems.

## Comments

- 1) *Purpose of Bill.* According to the author, “Many disadvantaged communities throughout California are saddled with a legacy of environmental justice challenges, including hundreds of communities that lack reliable access to safe, clean, and affordable drinking water. Whether it be manganese and lead in the drinking water of the communities of South East Los Angeles, or the arsenic, nitrates, and chromium-6 that plague the taps of communities in the Central

Valley, these Californians deserve to have the human right to safe drinking water finally realized.

“Consolidation of water systems can be an important and effective tool for these communities to use to improve access to safe and affordable water, because larger consolidated systems are generally more reliable, safe, and efficient. State water authorities, however, are restricted to using consolidation as a tool only after a water system has already failed and is providing unsafe drinking water to its residents.

“SB 403 provides a proactive and preventative solution that will allow the State Water Board to pursue consolidation for a water system that serves a disadvantaged system and that is at-risk of failing. The bill would additionally require the water board to seek and consider community input before ordering consolidation, and to consider whether the residents served by the at-risk water system have filed a petition for mandatory consolidation. SB 403 is especially important in light of the ongoing COVID-19 pandemic, as far too many Californians continue to struggle with unsafe tap water while sheltering in place.”

- 2) *Another Tool in the Tool Box.* SB 403 gives the State Water Board another tool to address under-performing water systems in small disadvantaged communities. Allowing the State Water Board to consider a mandatory consolidation of small water systems at risk of failing could help avoid public health crises caused by a water system failure. In addition to avoiding the risk of water system failure, consolidation can have significant co-benefits, including lower water rates for customers of the subsumed system and consolidation cost savings due to economies of scale (i.e., considering nearby water systems at risk of failure when the State Water Board is conducting a consolidation of a failed system).

As noted above, 90 percent of drinking water violations in California occur in water systems with less than 500 service connections. This bill is aimed at harm prevention in that universe of water systems. SB 403 is appropriately narrow in scope and closely aligns with existing consolidation requirements.

### **DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Governance and Finance Committee.

**Related/Prior Legislation**

SB 1280 (Monning, 2020) would have authorized the State Water Board to order consolidation between a receiving water system and an at-risk water system under specified circumstances. SB 1280 was held in the Human Services Committee.

AB 508 (Chu, Chapter 352, Statutes of 2020) makes changes to statute related to the State Water Board's authority to order the consolidation of drinking water systems, including setting a deadline of July 1, 2020, as the date by which the State Water Board must develop a policy that provides a process for members of a disadvantaged community to petition for consolidation; and requiring the State Water Board, before ordering consolidation or extension of service, to notify owners and occupants of dwelling units that are reliant on a domestic well with unsafe drinking water about the adequacy and safety of the unit's drinking water.

SB 200 (Monning, Chapter 120, Statutes of 2019) established the Safe and Affordable Drinking Water Fund (SADWF) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long term. Beginning in fiscal year 2020-21 and until June 30, 2030, it annually transfers to the Safe and Affordable Drinking Water Fund five percent of the proceeds of the Greenhouse Gas Reduction Fund (GGRF) up to \$130 million. It further requires the State Water Board to adopt a fund implementation plan and requires expenditures of the fund to be consistent with the plan.

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

SB 623 (Monning, 2017) would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. SB 623 was held in the Assembly Rules Committee.

SB 778 (Hertzberg, 2017) would have required the State Water Board to report on public water system consolidations to date, and their success or failure. SB 778 was held in the Assembly Appropriations Committee.

SB 552 (Wolk, Chapter 773, Statutes of 2016) authorized the State Water Board to contract with an administrator to provide administrative and managerial services to a designated public water system to assist with the provision of an adequate and affordable supply of safe drinking water.

SB 1263 (Wieckowski, Chapter 843, Statutes of 2016) authorized the State Water Board to deny a permit for a new public water system if it determines that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water.

SB 88 (Budget and Fiscal Review Committee, Chapter 27, Statutes of 2015) authorized the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with, or receive service from, public water systems with safe, reliable, and adequate drinking water.

AB 685 (Eng, Chapter 524, Statutes of 2012) declared that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and that relevant state agencies, including the Department of Water Resources, the State Water Board, and the State Department of Public Health shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

**SOURCE:** Leadership Council for Justice and Sustainability, Clean Water Action, Community Water Center

**SUPPORT:**

Alliance of Nurses for Healthy Environments  
American Rivers  
California Coastkeeper Alliance  
California League of Conservation Voters  
Carbon Cycle Institute  
Ceres  
Clean Water Action  
Community Water Center  
Environmental Law Foundation  
Environmental Working Group  
Friends Committee on Legislation of California  
Leadership Counsel for Justice and Accountability  
Martin Luther King Jr. Freedom Center



Natural Resources Defense Council  
Physicians for Social Responsibility - San Francisco Bay Area Chapter  
Pueblo Unido CDC  
Sierra Club California  
Western Center on Law & Poverty

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to Leadership Counsel for Justice & Accountability, “SB 403 builds on SB 88 (2015) by authorizing the State Water Board to mandate consolidation where a water system is at risk of failure. Current law does not allow the State Water Board to act proactively to prevent water systems from failing. The bill would allow the State Water Board to act to prevent public health emergencies and inefficient emergency use of public resources.

“By extending the State Water Board’s authority to mandate and facilitate consolidation of at risk systems serving disadvantaged communities, the bill would improve water system sustainability, drinking water quality, and affordability. Water system consolidation is an important and effective tool to improve access to safe and affordable water because larger consolidated systems are generally more reliable, safe, and efficient. Small water systems are far more likely to have water quality violations and higher water rates than larger systems.”

**-- END --**