

January 18, 2017

Sent via email to: Kathy.Frevert@waterboards.ca.gov

The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Clerk to the Board – State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

**Subject: Public Comments on Development of Low-Income Rate Assistance Program
(AB 401 Implementation)**

Dear Chair Marcus and Members of the Board:

The UC Berkeley Environmental Law Clinic would like to thank the State Water Resources Control Board (the Board) for the opportunity to provide public comments on the future outlines of the State's Low-Income Water Rate Assistance Program, as envisioned in AB 401. The following document provides an overview of our research into the necessary components of this program as well as our preliminary recommendations. It is our hope to continue to engage with the Board as it continues its vital work in this area.

Scope of Research

The UC Berkeley Environmental Law Clinic engages law students in environmental law and policy practice under the supervision of experienced attorneys. One of the Clinic's main goals is to promote the implementation of the human right to water in California. Towards this end, we have conducted extensive legal and factual research into the potential components of a statewide water rate assistance program under AB 401 on behalf of our client, the Environmental Justice Coalition for Water (EJCW), with pro bono support from Shute, Mihaly & Weinberger, as well as students from UC Davis.

In the course of our research, we have spoken with leaders from low-income communities struggling with water affordability, legal and policy advocates with expertise in this area, and financial administrators from water utilities to facilitate a deeper understanding of the considerations such a program might need to take into account. This document provides an initial overview of our findings and preliminary recommendations.

We hope that the Board will take these recommendations under consideration and advise us as to which areas of our work will be most useful as we continue our research in the spring.



Fulfilling the Human Right to Water Through a Statewide Water Rate Assistance Program

We agree with the Board's interpretation of AB 401 as one component of the state's implementation of the human right to water, and approached our research and recommendations in accordance with this framework. We also followed the text of AB 401 to consider complementary mechanisms to achieve water affordability in a way that is tailored to the diverse needs of California's low-income households.

Specifically, we have taken up AB 401's call for "a discussion of any constitutional restrictions on public water agency ratesetting," and requirement that the Board's proposal include "a set of recommendations and best practices of cost-savings measures to ensure water utilities are demonstrating whether and how they are keeping rates low." Likewise, we have followed AB 401's instruction to consider "other cost-effective methods of offering assistance to low-income water customers besides rate assistance, including billing alternatives, installation of water conservation devices, and leak repair." A key challenge in implementing the low-income rate assistance program is ensuring that bill discounts do not inadvertently subsidize overly expensive water rates, water waste as a result of leaking or inefficient infrastructure, or pollution caused by third parties. Accordingly, the recommendations in part (i) are strategies to lower costs for households that cannot afford their water because a specific set of circumstances such as earning a low income or having high basic water needs. The recommendations in parts (ii) and (iii) are strategies to lower water rates system-wide. With these additional components in mind, we have developed preliminary recommendations that include:

- i. Proposed Water Rate Assistance Program Features**
 - a. Flexible, broad eligibility criteria and accessible enrollment procedures
 - b. Protections to assure access to minimum amount of water for human needs
 - c. Household level conservation measures and leak repair to minimize waste
 - d. Complementary mechanisms to reach otherwise excluded populations

- ii. Restrictions on and Opportunities for Utilities Under Proposition 218 Related to Tiered Pricing and Conservation**

- iii. Program Sustainability and Cost-Saving Measures Through Contamination Prevention and Mitigation**

Summary of Recommendations

The Program Should Adopt Flexible and Inclusive Eligibility Requirements and Enrollment Procedures

1. Like the CARE program, the administering entity should presume all applicants to be eligible unless there is evidence to the contrary
2. Automatic enrollment for people enrolled in similar public assistance programs
3. Flexible needs assessment through a variety of income verification documents

The Program Should Assure Access to Water for Basic Needs

4. Assure access to a minimum amount of water for basic personal and household needs consistent with the human right to water (AB 685)
5. Protection against water shutoffs for program enrollees
6. Required household-level conservation measures and leak repair assistance

The Program Should Encourage Utilities to Support Affordability by Adopting Tiered Rates

7. State support for tiered pricing as compatible with Proposition 218
8. Support utilities' implementation of tiered pricing through technical assistance
9. State promotion of case studies of various utilities successfully implementing tiered rates

To Curb Rising Costs, the Program Should Include Contamination Prevention and Mitigation

10. Recognition that pollution prevention measures would make a significant contribution to the financial sustainability of any statewide water rate assistance program
11. Polluter-pays-principle fertilizer fee to reduce groundwater contamination
12. State support for operation and maintenance costs (SB 552) in tandem with affordability programming

Detailed Recommendations:

Proposed Water Rate Assistance Program Features

A statewide water rate assistance program that comports with the human right to water will have flexible eligibility criteria; easy enrollment procedures and flexibility for changed circumstances; and shutoff protections and measures to assure access to a sufficient amount of water for daily human use. Even an inclusive program will not cover everyone without additional mechanisms to reach private well owners, small rural systems dealing with contamination issues, homeless populations, and others. In this letter, we do not make a recommendation on a specific metric for determining eligibility for the program. We recognize that there are a number of reasonable, inclusive approaches, such as an income threshold adjusted by regional cost-of-living, eligibility for other assistance programs such as CalFresh or California Alternative Rates for Energy (CARE), or cost of water as a percentage of household income. Rather than advocating for a particular criteria for determining eligibility, we lay out some broad principles that should be met regardless of the exact metric used. This section provides an overview of our approach to these program elements and additional mechanisms.

1. The Board Should Prioritize Flexible Eligibility Requirements

- To be consistent with the human right to water, eligibility requirements need to be broad, flexible, and targeted to the most vulnerable.
- Overly rigid eligibility requirements exclude those who do not meet the criteria but still need assistance (e.g. income above threshold but household struggling due to significant medical bills and high water usage for kidney dialysis).
- Good, flexible eligibility requirements account for the household's level of need based on other necessary bills, medical conditions, and other vulnerabilities, such as young children, the elderly, or persons with disabilities.
- We suggest that the program allow for a needs-based variance and provide a qualitative, write-in section on the application form.

2. Ease of Enrollment Facilitates Access and Lowers Administrative Burdens

- Easy enrollment procedures maximize program accessibility, which is important because those most in need are often the least able to navigate administrative processes. Simple procedures also minimize the state's administrative burden of reviewing complex application documentation.
- We suggest that the program:
 - i. Provide community groups, utilities, and other government agencies with easy-to-understand enrollment forms;
 - ii. Create a simple online platform; and

- iii. Make all materials available in multiple languages.
- We also suggest that the program follow the CARE program model by allowing automatic enrollment of applicants already participating in other state or federal assistance programs with similar income requirements. Like the CARE program, the application form could include a checkbox to indicate an applicant's participation in such programs, and applicants who check this box would be automatically enrolled.
- Additionally, we suggest that the program follow CARE in applying a presumption of eligibility to all applicants and employing selective audits to confirm eligibility.

3. *Households in Arrears Should Be Screened for Program Eligibility*

- To ensure the program reaches those who most need assistance, we suggest that the program coordinate with utilities to proactively invite those who fall behind on their water bill to be screened for program eligibility.

4. *The Program Should Allow Flexibility for Changed Household Circumstances*

- Household needs change all the time. To account for changing household needs, the program should make it easy for enrollees to update their status.
- We suggest that the program allow flexibility for changed circumstances, both to give enrollees the opportunity to report that they no longer need the subsidy or to request an increased subsidy. For instance, a household enrolled in the program that suddenly experienced a job loss would be able to apply for an increased subsidy.

5. *The Program Should Protect Applicant Confidentiality*

- Otherwise eligible households may not enroll in the program if they fear being reported for overcrowding or the immigration status of the people in the household. For example, low-income families often temporarily share one apartment, exceeding occupant limits, because each individual family cannot afford housing.
- To properly support these individuals and encourage them to participate in the program, we suggest that the administering agency be prohibited from reporting these families to their landlord, homeowner's association, or any government agency when the report would be based on overcrowding or the immigration status of the people in the household.

6. *The Program Should Provide Retroactive Enrollment and, Where Necessary, Debt Forgiveness*

- Needy households may not become aware of the water-rate assistance program until they have already accumulated debt from unpaid water bills, risking service disconnection and placing financial strain on the water utility. Retroactive enrollment would reduce the household's water debt to what it would be if the household had enrolled in the program when it first became eligible, with the program compensating the utility for the difference. Retroactive enrollment thereby prevents those who should be receiving assistance from losing water service, while reducing the financial strain utilities face when water bills go unpaid. Any credit that results from retroactive enrollment could be applied to the household's future water bills.
- We suggest that the program additionally provide some form of debt forgiveness for households eligible for rate assistance in situations where retroactive enrollment is by itself insufficient to fully relieve water bill debt.

7. *The Program Subsidy Amount Should Assure Access to a Minimum Amount of Water for Basic Household Use and Be Proportional to Need*

- The human right to water requires that every person have access to safe, affordable water for basic household needs, including human consumption, cooking, and sanitary purposes. A successful program will assure the affordability of at least this minimum amount of water.
- Because not every household will need the same level of assistance to achieve affordability, we suggest that the program provide a subsidy that is proportional to the household's needs. Given the diversity of circumstances faced by low-income households across the state, a uniform dollar amount subsidy would be unlikely to fulfill the program's purpose.
 - i. Our team will conduct further research on appropriate affordability measures and levels of subsidy in early 2017, including updated United Nations guidance to operationalize the definition of affordability under the human right to water.
- Likewise, because different households will have different and changing needs, each household will likely have different and changing basic water needs. Accordingly, setting a universal basic volume service level is unlikely to be appropriate; basic water volume should be calculated in a way that is more tailored to individual household needs.
- In cases where a household cannot afford even a reduced water bill, we suggest that the program allow the household to temporarily pay a

nominal fee until they can afford their subsidized bill again. This program feature may be necessary to assure affordability and access to a minimum amount of water in situations of unexpected unemployment, medical emergencies, or other crises.

8. *Shutoff Protections Are Necessary to Protect the Human Right to Water*

- Water service shutoffs place the life and health of the household at risk, and may pose particular hazards for vulnerable groups, such as children, the elderly, or the sick. Likewise, water shutoffs for inability to pay are likely incompatible with the human right to water.
- To avoid these consequences and assure access to a basic amount of water, we suggest that the program protect enrollees from shutoffs. We recommend that the program require utilities to apply a minimum set of procedural protections for households facing shutoffs and intervene on behalf of enrollees.
 - i. For households struggling to pay their subsidized bill, the first step would be to increase the subsidy (until the payment is only a nominal fee).
 - ii. If a subsidy that steep is not feasible, the program could consider working with water utilities to restrict water flow to a baseline amount of water to cover essential needs while coordinating with appropriate state and local agencies to help household members tap into other resources. Our initial research indicates that technology that could make this feasible may be available.

9. *To Reduce Program Costs and Water Waste, Conservation Measures Are a Key Program Component*

- If the program is subsidizing a number of houses with leaky pipes, it will face both political feasibility issues (“I’m not paying for some guy to waste water”) and financial sustainability issues as it may be unable to ensure affordable water to meet basic needs for households losing water to leaks. Household conservation measures and leak repair for enrollees will help the state lower the overall cost of operating a statewide rate assistance program by lowering the water bills of those who receive assistance.
- We suggest that the Board consider making household-level conservation measures part of program enrollment and partner with local non-profits and agencies to conduct leak and conservation audits of enrolled households and fix or replace leaky or inefficient pipes and fixtures. The audit could also include assistance to replace lawns with drought-resistant landscaping.

- Such assistance would ideally be provided to the household at little or no cost. These measures would prevent water waste and thereby fiscal waste while overcoming the barriers low-income families face to implement such improvements without assistance.
- Conservation audits would be helpful to tenants who are forced to pay a higher water bill due to a landlord's refusal to fix leaky pipes or replace aging fixtures; under these circumstances, the program may be able to recoup audit and repair or replacement costs from the landlord.

The Program Needs to Incorporate Additional Measures to Reach Excluded Populations

Even the most inclusive water rate assistance program will fail to reach certain vulnerable groups who do not receive a traditional water bill. To comport with the human right to water, the program should include complementary mechanisms designed to reach these groups. The program should also take into account critical differences between the needs of rural and urban communities. This section addresses some of the groups most likely to be excluded and makes some preliminary recommendations for additional program features designed to reach them.

1. People with Private Wells or Small Community Wells

- Private well owners do not receive a water bill, but they may still struggle to afford safe drinking water, particularly under conditions where agricultural contamination and aquifer overdraft restrict access. Assisting these individuals will likely require a combination of strategies, including contamination prevention or mitigation (explored below), as well as cooperation with community agencies that can help identify these individuals and their need.
- Assistance tailored to private well owners may include a subsidy directed towards a portion of the household's electric bill if the household uses electricity to operate the well, or assistance purchasing alternative safe sources of water.
- Rural communities dependent on private wells or small community wells face challenges in accessing safe, affordable water that differ significantly from those faced by their urban counterparts. We encourage the program to incorporate additional measures designed to address these challenges.

2. Homeless Populations

- Homeless individuals often have limited access to water with heartbreaking consequences. Because they do not receive a water bill, they

are another group that is highly likely both to need assistance and to be excluded from the program absent additional measures.

- We suggest that the program reach out to shelters and homeless communities to determine how they can ensure access to water, hygiene, and sanitation facilities. At a minimum, the program should subsidize drinking water, hygiene, and sanitation facilities for shelters and other providers of services to the homeless.
- Our team will conduct further research in this area in early 2017.

3. Renters

- Because many low-income families rent units in multifamily properties, renters are likely to need program assistance. However, many multifamily properties in California do not have individual meters for each unit, which means that renters living in such properties do not receive a water bill and may instead be either paying for water as a portion of their rent or dividing the building's water bill with other tenants.
- We suggest that the program incorporate measures to assure access to individuals living in market-rate rental housing and public housing, as well as employer-provided housing for farmworkers.
- We suggest that the program reach out to housing advocates to gather recommendations on the best way to reach tenants. In addition, the Board can promote actions to rapidly complete the conversion of all master-metered multifamily properties to individual meters as wherever possible.
- We also suggest that the Board give special consideration to the unique circumstances of Section 8 recipients, who receive a subsidy on their rent that typically does not cover water bills. Such tenants may face eviction for failure to pay their water bill, which can cause the loss not only of housing but of the Section 8 subsidy, placing such families at risk of homelessness.

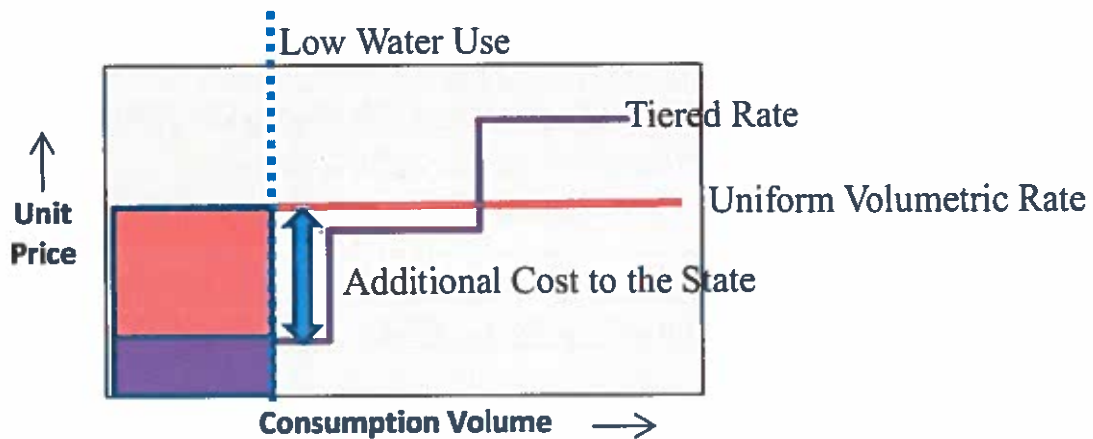
4. Ratepayers Who Also Purchase Bottled Water to Avoid Contamination

- As the Board is well aware, many Californians living with contaminated water pay a water bill for water they cannot drink and purchase alternative safe sources of water (e.g. bottled water). The costs of replacement water push many families past the affordability threshold.
- Although we oppose long-term reliance on bottled water as unsustainable, we suggest that the program take these costs into account when determining eligibility and provide assistance to households in this situation as an interim measure until the underlying contamination problems are resolved.

Tiered Rate Structuring at the Utility Level Would Allow Utilities and the State to Significantly Reduce Program Cost and Increase Affordability

In line with AB 401's call for the Board to include recommendations on ways for water utilities to keep rates low and to reduce program costs, we suggest that the Board encourage utilities to adopt a tiered rate structure to complement the affordability program. Our research indicates that tiered pricing is compatible with Proposition 218, keeps water affordable for most low-income users, encourages conservation, and would reduce the cost of rate assistance to the state, as indicated in the graphic below. The state can lower the overall cost of operating a statewide water rate assistance program by working with utilities to lower water bills for low-income customers.

Potential Cost Savings Achieved by Tiered Rates



1. Proposition 218 Does Not Preclude Tiered Rates and Likely Requires Them

- Proposition 218 is an impediment to certain types of tiered rate structures, and water utilities' efforts to address affordability at the local level. But Proposition 218 does not preclude utilities from charging tiered rates.
- Utilities may justify tiered rates based on: 1) the cost of different sources of water; 2) the cost of designing a larger capacity system or water treatment facility to account for peak load; and 3) water conservation or efficiency programs targeted to the highest water users.
- In fact, case law makes clear that Proposition 218 likely requires utilities to charge tiered rates. This is because uniform volumetric water rates and flat rates subsidize the highest water users who disproportionately burden the water system, which likely violates Proposition 218.

2. *The State Can Encourage Utilities to Structure Tiered Rates*

- In interviews with a number of water utilities, it became clear that utilities want to have rate assistance programs.
- Proposition 218 is a huge obstacle to their efforts. First, it prevents subsidizing low-income consumers with any funding generated by water rates. Second, it limits how utilities can tier rates, and utilities fear being sued under Proposition 218 even where they could justify a tiered rate structure based on cost of service.
- The best option would be to eliminate or amend Proposition 218, although this is unlikely at present.
- In the absence of modification or repeal, we suggest that the state provide utilities with support in adopting tiered pricing that is compatible with Proposition 218. Such support could help allay utilities' fear of lawsuits under Proposition 218 and promote the use of tiered rate structures.
- Specifically, we suggest that the state:
 - i. Offer technical assistance to utilities to design Proposition 218-compliant tiered rate structures, and
 - ii. Publish and endorse case studies of utilities that have successfully implemented Proposition 218-compliant tiered pricing, with recognition that each utility must retain the flexibility to adapt these best practices to its own unique circumstances.

Comprehensive Pollution Prevention Is Critical to Keeping Water Affordable Now and in the Future

The Board may want to consider incorporating pollution prevention measures to ensure the economic sustainability of any proposed statewide water affordability program. Groundwater and surface water pollution contribute significantly to drinking water costs, in particular for rural communities and those with private wells. Absent comprehensive pollution prevention, these costs will continue to rise even with operations and maintenance support from the state (SB 552). This will increase the expense of drinking water both to individuals and to the state.

1. *Pollution Makes Water Unaffordable*

- Some contaminated water is unusable. For salvageable water, mitigation projects (i.e. drilling a new well; installing filters; wheeling water from additional sources) are multi-million dollar investments. Ratepayers and the state typically shoulder these costs, and the state's proportion will increase under any water rate assistance program.
- Ongoing contamination undermines mitigation investments, as new and deeper wells get exposed. Many communities in rural California are

already on their third or fourth well, and some, like San Jerardo in the Salinas Valley, are now forced to pump water from over 2 miles away—at great expense.

- People also spend time and money avoiding contaminated water. Those unable to avoid the contaminated water or unaware of its existence suffer from negative health impacts. To the extent the program subsidizes replacement water or provides deeper subsidies to those whose health problems require greater water use, these consequences of contamination will further increase program costs.

2. Pollution Prevention is Far Cheaper Than Remediation or Mitigation

Given the incredibly high costs of mitigation projects and the health and monetary impacts on those burdened with contaminated water, pollution prevention is a cheaper and more equitable solution. It also properly allocates the cost of contamination to the polluter. Moreover, without pollution prevention in place, the costs to the state of a rate assistance program will keep increasing as more and more water sources are contaminated.





3. The State Should Consider a Fertilizer Fee to Curb Groundwater Contamination

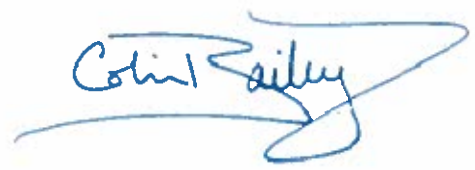
Those that create the pollution must bear the costs of managing it to prevent contamination damaging human health or the environment, or undermining water affordability for low-income customers. A fertilizer fee would decrease fertilizer application, one of the leading anthropogenic sources of groundwater contamination, as well as help fund mitigation projects. Although a fertilizer fee would not necessarily fund a statewide affordability program, by reducing drinking water contamination it would lower the cost of water for low-income customers and thereby the state's program costs as well.

Conclusion

We greatly appreciate the opportunity to submit these comments to inform the Board’s ongoing efforts to develop a comprehensive proposal for a water affordability program that will help fulfill California’s commitment to the human right to water. Together with the undersigned organizations, we hope to work with the Board over the coming year to design a program that meets the needs of California’s low-income individuals and communities.

Best regards,

			
Caitlin Brown Student Clinician	Martha Camarillo Student Clinician	Ana Vohryzek Supervising Attorney	Britton Schwartz Supervising Attorney



Colin Bailey
Executive Director
Environmental Justice Coalition for Water

CC: Claudia Polsky, Director, Environmental Law Clinic

Supporting Organizations

Public Health Advocates
California Food Policy Advocates
Food & Water Watch
Pacific Institute