

# California

Water and wastewater utilities in California fall under several rate setting regulatory systems.

## Commission-Regulated Utilities

The **California Public Utilities Commission** (California PUC) regulates private water and wastewater companies. The California PUC gains its jurisdiction over such utilities from **article XII, § 3** of the California Constitution. It specifically gains jurisdiction over rate setting from **article XII, § 6** of the California Constitution.


The California PUC has unique explicit statutory authority to allow companies it regulates to have low-income customer assistance programs (CAPs). Specifically, **Cal. Pub. Util. Code § 739.8** provides that: “Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.”


The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals. In establishing the feasibility of rate relief and conservation incentives for low-income ratepayers, the commission may take into account variations in water needs caused by geography, climate and the ability of communities to support these programs.<sup>54</sup>

Thus, there is *express* statutory authorization for commission-regulated utilities to implement low-income CAPs funded by rate revenues. To implement these programs, commission-regulated utilities need approval from the California PUC to make changes to their rates. Currently, all large utilities, labeled “Class A” by the California PUC, have low-income CAPs.<sup>55</sup> One example is the California Water Service. It was the first commission-regulated utility to propose a CAP in

54. Collectively, these assistance programs are called California Alternative Rates for Water (CARW), which parallels the program California Alternative Rates for Energy (CARE). The California PUC is even advised on low-income customer assistance programs by an internal Low-Income Oversight Board, and it reports progress on program enrollment to the board. The California PUC provides a list of all the programs.

55. “Water Utilities Current Issues,” Water Affordability Low-Income Oversight Board, at 15.

Commission-regulated utilities 

Noncommission-regulated utilities 



<b>State Population (2016):</b>	39,250,017
<b>Median Annual Household Income (2015):</b>	\$61,818
<b>Poverty Rate (2015):</b>	16.3%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$855
California has 2,961 community water systems (CWS), of which 1,823 are privately owned and 2,532 serve populations of 10,000 or fewer people.	
California has 497 publicly owned treatment works facilities (POTWs), of which 275 treat 1 MGD or less.	
6,811,150 people are served by privately owned CWS; 34,391,629 are served by government-owned CWS; and 39,760,708 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$64.6 billion
<i>Sources: U.S. Census Bureau, 2016 Population Estimate &amp; 2011–2015 American Community Survey 5-Year Estimates; 2016 EFC Rates Survey; U.S. Environmental Protection Agency, 2016 Safe Drinking Water Information System, 2011 Drinking Water Infrastructure Needs Survey, and 2012 Clean Watersheds Needs Survey. See Appendix C for more details.</i>	

California, and it offers a **Low-Income Rate Assistance program**. Through this program, California Water Service provides a 50 percent bill discount to eligible low-income customers.<sup>56</sup>

## Noncommission-Regulated Utilities

In contrast, many believe that the same type of low-income water and wastewater utility CAPs that are en-

56. California American Water offers the **H2O Help to Others Program**. Under this program, customers can make payment arrangements if they cannot pay their bill. Assisted customers must pay at least 25 percent of the bill within 48 hours of contacting California American Water, paying the rest of the bill, including any applicable late payment charge, according to an agreed upon schedule, not to exceed 6 months, and paying all future bills as they become due. Furthermore, only customers who have not broken similar agreements in the past 12 months are eligible to make these payment arrangements. California American Water also offers bill discounts to qualifying low-income customers.

couraged and implemented by commission-regulated utilities are unlawful for government-owned utilities. In 1996, Proposition 218 added [article XIII C](#) and [article XIII D](#) to the California Constitution,<sup>57</sup> which have been interpreted to limit government-owned utilities from using rate revenues to subsidize low-income CAPs.<sup>58</sup> These articles have established a high bar in regards to using rate revenues from specific customer classes. Recent case law found that tiered rates that resulted in overcharging a class of customers and generating revenues were considered a cross subsidization.<sup>59</sup> Furthermore, Proposition 218 requires voter approval from property owners within a utility's service area for rate increases.<sup>60</sup>

Therefore, many noncommission-regulated utilities have determined that they should fund low-income CAPs with external funding or non-rate utility revenue to avoid the significant challenges under the current interpretation of Proposition 218. For example, East Bay Municipal Utility District offers a low-income CAP that is funded primarily through property tax revenue.

Of additional importance, in 2012 California passed the State Water Policy Act, which established that water is a human right.<sup>61</sup> California also passed the Low-Income Water Rate Assistance Program Act in 2015, which gave the State Water Resources Control Board the authority to develop a plan for funding and implementing low-income rate CAPs.<sup>62</sup> This plan must be in place no later than January 1, 2018. These laws do not require or expressly authorize government-owned

water utilities to bypass Proposition 218 to create low-income CAPs funded by rate revenues. However, they do leave the door open for the California legislature to make new laws that may do so in the near future.

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57. Specifically, [Cal. Const. art. XIII D, § 6\(b\)\(1\)–\(4\)](#), states:

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with [Section 4](#).

58. See Jon Coupel and Jack Cohen, “[Water Rates under Prop. 218](#),” Howard Jarvis Taxpayers Assoc. (providing an analysis from the proposition's drafters on the effect of Proposition 218 on water rates setting).

59. [Capistrano Taxpayers Assoc., Inc. v. City of San Juan Capistrano](#), 235 Cal. App. 4th 1493, 1515-17 (2015).

60. [Cal. Const. art. XIII D, § 6\(c\)](#).

61. [Cal. Assem. Bill No. 685 \(Cal. Reg. Sess. 2012\)](#); [Cal. Water Code § 106.3](#).

62. [Cal. Assem. Bill No. 401 \(Cal. Reg. Sess. 2015\)](#); [Cal. Water Code § 189.5](#).