

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
AUGUST 16, 2016**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING GUIDELINES TO ADMINISTER EMERGENCY DRINKING WATER FUNDING AUTHORIZED BY RESOLUTION NO. 2016-0039

DISCUSSION

Extremely dry conditions have persisted in the State of California (State) since 2012 and are likely to continue through 2016. Current drought conditions may exacerbate the contamination of drinking water sources in communities across the State and may leave other communities with no access to safe drinking water.

On January 17, 2014, the Governor issued a “Proclamation of a State of Emergency” due to drought conditions in the State and a “Proclamation of a Continued State of Emergency” on April 25, 2014, and subsequently issued Executive Orders B-26-14, B-28-14, B-26-15, B-29-15, B-36-15, and B-37-16. In 2014, Senate Bill (SB) 103 (Stats. 2014, ch. 2) provided \$15 million in general funds to the California Department of Public Health (CDPH) for assistance to public water systems addressing drought-related drinking water emergencies or threatened emergencies. Under the resulting Public Water System Drought Emergency Response program, which began at CDPH and was continued by the State Water Resources Control Board (State Water Board) following the transfer of the Drinking Water Program, approximately \$14.9 million in funds were committed to eighty-nine projects under this funding source by the end of the encumbrance deadline of June 30, 2016.

SB 103 also appropriated \$4 million from the State Water Pollution Cleanup and Abatement Account (CAA) to the State Water Board to “provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions.” Approximately \$3.6 million in funds were committed to fourteen projects under this funding source by the end of the encumbrance deadline of June 30, 2015.

In 2015, Assembly Bill (AB) 91 (Stats. 2015, ch. 1) added Item 3940-101-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$15 million from the CAA to the State Water Board to “address drought-related drinking water emergencies or threatened emergencies, without regard to whether the need for emergency drinking water is as a result of the discharge of waste.” AB 91 also added Item 3940-102-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$4 million from the CAA to the State Water Board to “provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions.” In total, \$19 million was appropriated from the CAA under AB 91 for projects that address drinking water emergencies. Approximately \$13 million in funds was committed to fifty-five projects under this funding source by the end of the encumbrance deadline of June 30, 2016.

In addition, AB 92 (Stats. 2015, ch. 2) amended section 13442 of the Water Code, which addresses eligibility requirements for CAA funds. Eligible entities include public agencies, as well as tribal governments, not-for-profit organizations, and community water systems serving disadvantaged communities. Amendments to section 13442 also: (1) allow funds to be spent from the CAA on urgent drinking water needs, even if the need is not related to a discharge of waste; (2) exempt eligible entities from state contracting and procurement requirements to the extent necessary to take immediate action to protect public health and safety; and (3) allow the State Water Board to develop guidelines that are exempt from the California Administrative Procedure Act's requirements for administrative regulations and rulemaking (Gov. Code, tit. 2, div. 3, pt. 1, ch. 3.5 [§ 11340 et seq.]).

On May 19, 2015, in [Resolution No. 2015-0035](#), the State Water Board adopted funding guidelines and delegated authority for administering the AB 91 funding. The resolution also directed the Executive Director, Deputy Director of the Division of Financial Assistance (Division), or designee to periodically report back to the State Water Board regarding activities undertaken pursuant to the resolution, including, but not limited to, identification of projects funded and any non-substantive changes made to the funding guidelines.

The 2016 Budget Act, SB 826, appropriated \$15 million from the CAA to continue addressing drought-related drinking water emergencies and threatened emergencies within the State. The funding guidelines adopted in Resolution No. 2015-0035 do not address the funding appropriated by SB 826.

On July 19, 2016, by [Resolution No. 2016-0039](#), the State Water Board approved the allocation of up to \$4 million from the CAA to provide interim emergency drinking water to disadvantaged communities with a contaminated water supply, and delegated authority to administer this CAA allocation and the SB 826 drought-related appropriation consistent with the procedures and criteria prescribed in the funding guidelines approved in Resolution No. 2015-0035. The Division now proposes separate Emergency Drinking Water Funding Guidelines (Guidelines) for administering the funds authorized by the State Water Board in Resolution No. 2016-0039 with the following substantive changes from past administration of emergency drinking water funding: (1) public agencies applying for funding must serve disadvantaged communities, unless the Executive Director, at his or her discretion, and on a case by case basis, deems the public agency eligible for funding in order to assist a community that is not disadvantaged but that is experiencing a drought-related emergency, (2) if an emergency oral agreement is approved and at a later date it is determined that the recipient and/or the funded project are not eligible under the proposed Guidelines, the recipient must repay the full amount of the grant funding to the State Water Board, and (3) prior to granting funds to private entities, the State Water Board will require that the entity demonstrate, if applicable, that its owners and investors will not be able to profit through the receipt of funding administered under the proposed Guidelines.

The Division will continue to coordinate with the Regional Water Quality Control Boards (Regional Water Boards), the Division of Drinking Water district offices, the Office of Emergency Services (OES), and other stakeholders (e.g., environmental justice groups, community assistance groups, etc.) to identify those communities that are most at-risk and would benefit from financial assistance. The Division will also coordinate resources and assistance efforts with other State and Federal entities that provide funding for emergency drinking water supplies.

POLICY ISSUE

Should the State Water Board:

1. Approve the Guidelines in [Attachment A](#) and authorize the Deputy Director of the Division to make non-substantive changes to the Guidelines? This approval of the Guidelines shall supersede only Resolved No. 5 of Resolution No. 2016-0039 approved by the State Water Board on July 19, 2016?
2. Direct the Executive Director, Deputy Director of the Division, or designee to periodically report back to the State Water Board regarding activities undertaken pursuant to this resolution, including, but not limited to, identification of projects funded and any non-substantive changes made to the Guidelines?

FISCAL IMPACT

The fiscal impact of the funding that will be administered under the Guidelines is described in Resolution No. 2016-0039 approved by the State Water Board on July 19, 2016.

Adoption of these Guidelines will result in no additional impact.

REGIONAL BOARD IMPACT

Yes. The Division of Drinking Water and Regional Water Boards will assist in coordinating with impacted communities that are potentially eligible for emergency drinking water funding under the Guidelines.

HUMAN RIGHT TO WATER

The actions proposed under this item are consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes (human right to water; Water Code section 106.3). The proposed actions are also consistent with [Resolution 2016-0010](#), in which the State Water Board adopted the human right to water as a core value and top priority. As directed by the State Water Board in Resolution 2016-0010, staff has determined that the proposed actions support the human right to water by continuing to provide financial assistance to disadvantaged communities dealing with drought related emergencies or threatened emergencies or contaminated water supplies.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

ADOPTING GUIDELINES TO ADMINISTER EMERGENCY DRINKING WATER FUNDING AUTHORIZED BY RESOLUTION NO. 2016-0039

WHEREAS:

1. Due to severe and persistent drought conditions in the State of California (State), the Governor issued a “Proclamation of a State of Emergency” on January 17, 2014; a “Proclamation of a Continued State of Emergency” on April 25, 2014; and Executive Orders B-26-14, B-28-14, B-26-15, B-29-15, B-36-15, and B-37-16;
2. In Executive Order B-26-14, the Governor directed the State Water Resources Control Board (State Water Board), among other agencies, to assist local agencies in identifying and addressing acute drinking water shortages in domestic water supplies;
3. Current drought conditions have exacerbated the impacts of drinking water source contamination and have reduced California communities’ access to safe, reliable, and affordable drinking water;
4. Communities that are in greatest need of State funds on an emergency basis are those with limited or no access to alternative sources of safe, reliable, and affordable drinking water and no or limited funds to implement solutions that would provide access to safe, reliable, and affordable drinking water;
5. In 2014, Senate Bill (SB) 103 (Stats. 2014, ch. 2) provided \$15 million in general funds to the California Department of Public Health (CDPH) for assistance to public water systems addressing drought-related drinking water emergencies or threatened emergencies. Upon transfer of the Drinking Water Program from CDPH to the State Water Board on July 1, 2014, the State Water Board’s Division of Financial Assistance (Division) has administered these funds under the Public Water System Drought Emergency Response Program;
6. SB 103 also appropriated \$4 million from the State Water Pollution Cleanup and Abatement Account (CAA) to the State Water Board to “provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions”;
7. Assembly Bill (AB) 91 (Stats. 2015, ch. 1) added Item 3940-101-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$15 million from the CAA to the State Water Board to “address drought-related drinking water emergencies or threatened emergencies, without regard to whether the need for emergency drinking water is as a result of the discharge of waste”;

DRAFT

8. AB 91 also added Item 3940-102-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$4 million from the CAA to the State Water Board to “provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions”;
9. On May 19, 2015, the State Water Board adopted [Resolution No. 2015-0035](#), which delegated authority and adopted guidelines for administering the emergency drinking water funding appropriated by AB 91;
10. SB 826 (Stats. 2016, ch. 23), the Budget Act of 2016, appropriated \$15 million from the CAA to continue addressing drought-related drinking water emergencies or threatened emergencies within the State (Sec. 2.00, Item 3940-101-0679);
11. Funding for disadvantaged communities that are experiencing contamination-related, but not drought-related, drinking water emergencies is not included in the Budget Act of 2016;
12. On July 19, 2016, by [Resolution No. 2016-0039](#), the State Water Board approved the allocation of up to \$4 million from the CAA to provide interim emergency drinking water to disadvantaged communities with a contaminated water supply, and delegated authority to administer this CAA allocation and the SB 826 drought-related appropriation consistent with the procedures and criteria prescribed in the funding guidelines approved in Resolution No. 2015-0035;
13. It is desirable to adopt new Emergency Drinking Water Funding Guidelines (Guidelines) for administering the funding authorized in Resolution No. 2016-0039 to effect certain substantive changes from the funding guidelines approved in Resolution No. 2015-0035;
14. It is the intent of the State Water Board to continue to provide interim emergency drinking water to affected disadvantaged communities and to address drought-related drinking water emergencies and threatened emergencies in an expedient manner;
15. As required by State Water Board [Resolution No. 2016-0029](#), staff will condition funding upon compliance with emergency water conservation regulations, to the extent feasible; and
16. It is the intent of the State Water Board to provide the Emergency Drinking Water funding only to those qualifying recipients and projects that have no other funding options to address the emergency (e.g., available reserves, other State grants or loans).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the Guidelines in [Attachment A](#) and authorizes the Deputy Director of the Division to make non-substantive changes to the Guidelines, as necessary. This approval of the Guidelines shall supersede only Resolved No. 5 of Resolution No. 2016-0039 approved by the State Water Board on July 19, 2016; and

D R A F T

2. Directs the Executive Director, Deputy Director of the Division, or designee to periodically report back to the State Water Board regarding activities undertaken pursuant to this resolution, including, but not limited to, identification of projects funded and any non-substantive changes made to the Guidelines.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on August 16, 2016.

Jeanine Townsend
Clerk to the Board