



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901



December 15, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

We appreciate the opportunity to provide comments on the draft October 6, 2014 Safe Drinking Water Plan for California (Plan) presented by the State Water Resources Control Board (Board). We commend the State in this effort to evaluate the current state of affairs regarding drinking water and we appreciate the outreach efforts undertaken to garner stakeholder input and public interest in the draft plan.

Safe drinking water is central to our livelihood and vital to maintaining healthy communities. Since the passage of the Safe Drinking Water Act 40 years ago, EPA has made much progress in improving the safety of drinking water. We also recognize that there remains many continuing and emerging challenges in maintaining the level of safety we have come to expect.

Small public water systems make up 97% of the systems nationwide. These systems are uniquely challenged by workforce shortages, aging infrastructure, increasing fixed costs and declining rate bases. Other challenges facing both large and small systems include climate change, population growth and emerging contaminants.

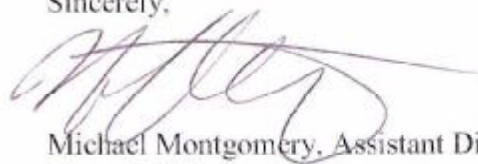
The Plan supports key elements of EPA's Clean Water and Drinking Water Infrastructure Sustainability Policy which emphasizes the need to build on existing efforts to promote sustainable water infrastructure. It encourages robust, comprehensive, and collaborative planning processes that result in projects that are cost effective over their life cycle, resource efficient, and consistent with community sustainability goals. It further encourages effective utility management practices which build and maintain the level of technical, financial, and managerial capacity necessary to ensure long-term sustainability.

As the State moves toward implementation of specific recommendations we suggest further analysis of the existing limitations and barriers to providing safe drinking water could better support the recommendations presented in Chapter 10.

EPA also recommends that the Plan more fully develop activities that are capable of overcoming the impediments to making improvements in drinking water quality. In this context, the Plan should identify and prioritize those efforts that could be undertaken administratively. Our detailed more specific comments and suggestions are provided in Attachment A.

Again we appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Montgomery", written over a horizontal line.

Michael Montgomery, Assistant Director
Water Division

Attachment A

EPA Comments on draft California Safe Drinking Water Plan

General Comments

The Plan provides a substantive overview of the state of drinking water in the State of California, the technical, managerial and financial challenges faced by small communities, and acknowledges that efforts to provide safe drinking to all residents of California will require a multi-agency effort at both the state and local level. The Plan does not, however, provide a strategic vision for how to attain this goal. There are several areas where the Plan could identify measurable targets that can be achieved in the next five years, define strategic partnerships within and between agencies, universities, and non-governmental organizations, evaluate policy to determine the fullest extent that state agencies can leverage existing authorities, and illuminate other opportunities for the Board and other stakeholder agencies to take leadership in addressing concerns that are otherwise deferred to future legislation. For example, the Board could commit to Plan update by a specified date that will, among other things, address the proposed legislative actions and track progress with commitments and other measurable goals set forth in the current plan.

In construct, the Plan could benefit from some consistency in detail between sections and some realignment. There are several Chapter topics, sections, and paragraphs that appear to be redundant. For example, the Chapter 2 section on CA PUC has elements better used in other chapters to describe strategies the Board could employ to leverage authorities. Additionally, there seems to be three streams of discussion with respect to finance that spans multiple chapters throughout the report: 1) finances administered by the State (overhead and implementation); 2) private financing to PWSs outside of State management; and 3) finances related to rate-payers.

Specific Comments

CHAPTER 2. CURRENT REGULATION OF DRINKING WATER

This chapter provides useful discussion about the respective spheres of influence of various stakeholder agencies involved in drinking water management in California. The Plan could benefit from additional discussion about how the agencies coordinate between each other as well as how they coordinate internally with respect to drinking water quality, customers and purveyors. For example, Section 2.1.1.1 describes the Operator Certification Program as under the purview of both the DDW and DFA; however, the plan does not clarify how the program affects each Division, how responsibilities for the program are divided between the Divisions, and how the Divisions will coordinate on their respective responsibilities and outcomes, such as enforcement. It is essential to, both, ensure that operators meet certification standards, and to ensure that all systems have certified operators who are responsible for effective operations and compliance.

Chapter 2 does not provide details about how the DWSRF is administered (e.g. elements to complete application packages, how projects are prioritized, etc.). Chapter 8, Section 8.9.1.1

does provide greater detail about the program. Portions of Section 8.9.1.1 should be moved to augment Chapter 2 as it relates to the State's administration of the DWSRF. Other Sections (i.e. 8.9.1.2-8.9.2) have direct bearing on the finances that are administered by the State and should be considered for inclusion in Chapter 2. Based on discussion of financial vehicles, the Plan should further discuss opportunities and/or challenges with funding infrastructure improvements to small PWS as it relates to recommendation 2-7.

Capacity Development Program. The Plan provides no discussion of the state drinking water Capacity Development Program, a program intended to improve the technical, managerial and financial capacity of water systems to provide safe water and meet SDWA requirements. It is first introduced in the implementation plan. The body of the Plan should discuss the nature and intent of the program as well as how it aligns with the new organization within the Board.

Waste Disposal. Concerns by the water supply industry related to waste disposal issues, especially for arsenic, uranium and chromium pose significant burdens to efforts to meet primary drinking water standards. This problem, and possible approaches and recommendations to address this problem, merit expanded discussion.

Section 2.1.1.1

Operator Certification for Reuse. We recommend the Board commit to an operator certification program review focusing on opportunities to address new technologies and applications such as potable reuse.

Section 2.2.1.2

PWS Permits. The Plan states that the State issues new permits to new systems and permit modifications when a new source or new treatment is installed. PWS permits could be used to more fully address system performance shortfalls and align with Plan objectives. One such example could be to ensure "e-Annual Report" submissions. The plan should identify the scope of issues that can be included under the PWS permits and if that scope varies based on the permitting authority.

Section 2.2.1.6

Division Coordination. Please clarify the type and level of support, as well as, coordination channels between DDW and DFA. It appears that the Plan attempts to discuss the internal workings of the Board; however, no detail is provided. This section could discuss strategic coordination within the Board and between the Divisions, particularly for shared responsibilities such as the operator certification and capacity development programs and use of DW-SRF set-aside funding.

Section 2.2.2

Oversight of Local Primacy Agencies. The Plan does not address how the Board oversees the Local Primacy Agencies (LPA). The Plan could identify the level of oversight that is currently conducted.

Section 2.3

DWSRF Needs Survey. The Plan states that there has been variable participation by PWSs in the “Drinking Water State Revolving Fund Needs Survey” which directly affects California’s DWSRF grant allocation. The Plan should identify measures the Board will take to ensure full participation by the PWSs.

DWSRF Fee Structure. The Plan does not identify the authority to determine the fee structure that supports the regulatory program. The Plan should identify a strategy to address problems associated with the fee structure as it relates to overall program funding. The Plan could commit to analyze the feasibility of preferable funding mechanisms as they become known to the Board either independently or as part of current or future studies.

State Proposition 1. With the passage of State Proposition 1, revisions will need to be made to Section 2.3 and added discussion regarding funding opportunities through Proposition 1 should be provided.

Section 2.4

Funding for the program necessarily comes from a variety of sources. The State should evaluate and consider charging a fee on SDWSRF loans. Fee income could support additional funding for program activities associated with the SDWSRF set-asides and in support of the DW program.

Below are some examples of fee earnings that could be generated by the California SDWSRF program based on different fee structures. These calculations assume that recent capitalization grant levels of \$84M continue over the next ten years, that 37% of projects are assessed a 1.6% interest rate, 33% of projects are assessed a 0% interest rate, and 30% of projects are assessed a 0% interest rate with 100% principal forgiveness. The fee balances generated by 2024 are shown in Figure 9:

Figure 9: Fee Balances Generated by 2024		
Fee Amount	Fee structure	Balance of Fee Account (2024) (millions of dollars)
0.5%	Assessed on Loan Debt Service (P&I) Paid	\$3.87
0.5%	Assessed on Loan Amount at Closing	\$5.71
0.5%	Assessed on Loan Disbursements	\$5.99
0.5%	Assessed on Loan Principal Repaid	\$3.31
0.5%	Assessed on Loan Balance	\$42.23

Recommendation 2-6

The Plan does not adequately identify the limitations to program funding that justify a request to enact or revise legislation.

CHAPTER 3. QUALITY OF CALIFORNIA’S DRINKING WATER

The Plan could identify the number of ground water and surface water sources that presently exist and could further state how many are meeting drinking water standards, as well as how many sources require treatment. It may be further useful to discuss long-term trends in the quality of raw source water.

Section 3.2.1 and 3.2.2

There seems to be redundancy between these two sections. Consider consolidating these two sections.

Section 3.2.2.7

Impacts to Ground Water Sources. This section could be bolstered by additional discussion of potential impacts to ground water supply such as drought and competing water rights.

Section 3.2.2.8.1

Source Water Program. The changing landscape of water availability in California and the need to assure the reliability of high quality sources for drinking water supply are of growing concern. While source water assessments are required for permitting, there is no ongoing source water protection program statewide. A comprehensive source water program would incorporate traditional assessments as well as the inclusion of assessing reliability of drinking water sources and identification of alternatives if and when these sources fail. EPA recommends the Board use the Safe Drinking Water Plan to re-establish a strategy for source water protection (SWP) in California that includes updates, integration, and implementation.

Update. Renew source water assessments to account for land use changes during the past ten years since original assessments were conducted. For example, consider using USEPA source water geographic information system, DW MAPS, to incorporate potential contaminating activity (PCA) changes in SWP areas. Reestablish SWP strategy and priorities to prevent contamination from most threatening PCAs and protect most vulnerable public water systems.

Integrate. Coordinate with related efforts (e.g., Clean Water Act programs) to target priority PCAs and public water systems. For example, coordinate with the Irrigated Lands Regulatory Program to ensure waste discharge requirements or conditional waivers issued in small system source water protection areas contain measures to protect drinking water wells. Incorporate other vulnerabilities (e.g., reuse, drought, contingency planning, etc.) and coordinate with other PCA programs (e.g., underground storage tanks, spill prevention, emergency preparedness, etc.).

Implement. Establish long term funding and resources for source water protection. For example, use the Drinking Water State Revolving Fund 15% Set-Aside to achieve source water protection objectives and conduct source water protection projects. Leverage with other funding programs such as the Nonpoint Source Program to find and fund projects that protect drinking water sources.

Section 3.4

This section includes discussion of “Distribution Systems” and “Funding to Address Water Quality”, however, there does not appear to be a clear link between these topics and regulatory compliance. Consider either expanding upon how these topics are significant to regulatory compliance or realign with more relevant discussion elsewhere in the report.

Section 3.5

The solution to these problems may be multi-faceted and may require coordination across several State agencies. EPA suggests that the State consider the following approaches that may be appropriate and may assist in particular situations.

EPA agrees that many small disadvantaged water systems do not have a system operator or have an operator that is lacking the technical expertise to properly carry out the required operations and maintenance (O&M) for the technology that has been implemented. These systems cannot afford O&M costs associated with new treatment and are frequently operating on limited budgets where they cannot afford to take on a DWSRF loan. Possible solutions:

Use SDWSRF Set-Aside Funds to Establish a Regional O&M Provider. Use set-aside money to work with third party providers to develop a regional O&M provider. This has been an effective mechanism in Maine and other New England states where the Maine DWSRF program has partnered with Maine Rural Water to create New England Utility Management Enterprises, or NEUME (<http://www.neumecorp.com/services.html>). This program is basically a subsidiary corporation comprised of a consortium of O&M providers who offer their services to eligible SDAS at a reduced fee. They have both full time and part time certified operators on payroll serving various areas of the New England region. Not only do they provide O&M services and SDAS training, but they also provide asset management and financial analysis services, as well as rate analysis and income surveys.

Introduce a Small Disadvantaged System (SDAS) Cooperative Fund. This concept would allow larger utilities who wish to participate in the SDAS Cooperative Fund to receive a reduced interest rate and/or a higher priority score for DWSRF assistance in exchange for making a financial contribution to a separate state-wide SDAS funding pool. These funds would then be used to subsidize a number of options. Good examples for activities that could be paid for using this type of program include, but are not limited to, providing routine O&M services, monitoring and reporting, conducting water rate studies, financial and asset management services, training and education, as well as providing seed money for a consortium of SDAS to establish a Regional O&M provider network in their area. These also represent good options and activities that would be well-suited for District Office engineers to participate in and help to coordinate.

Understandably, there may be concerns about the Board's ability to create a funding mechanism that is specifically targeted toward funding O&M activities. So long as this fund is held outside of the SDWSRF program and no state or federal SRF dollars are used to capitalize the fund, then this mechanism should not conflict with any of the requirements of DWSRF regulations. It is important to also note that compliance with California Government Code Section 53502 – 53506 specifically states that any funds generated by the issuance of General Obligation (GO) Bond funds by the State of California, or by local agencies, must be used to fund capital improvement projects only. Section 53503 precludes the use of GO bond proceeds for O&M activities. Again, so long as the funds that utilities pay into the SDAS Cooperative Fund are not generated by GO bond proceeds, then uses of such funds to pay for O&M related activities should not be disallowed. The Board should seek a formal legal opinion to ensure compliance with state laws and regulations.

CHAPTER 4. WATER QUALITY ISSUES AFFECTING PWS SERVING FEWER THAN 10,000 SERVICE CONNECTIONS

The analysis provided in this chapter describes two years, 2011 and 2012. Since many aspects of the drinking water program such as minimum monitoring requirements and capacity development focus on three-year cycles, consider expanding the analysis to a minimum of three years. Since the Plan has not been updated in 20 years, a longer-term analysis could be useful.

Section 4.5.1

The Plan would be much enhanced with tables detailing financing, and financing issues of smaller systems relative to larger ones. Acknowledging that there are significant variables between system needs, consider including some specific examples which may illustrate the range of costs. The theme and recommendation that legislation provide a better programmatic funding mechanism would be bolstered with more facts and figures. Also, issues around funding problems, especially those for small and/or disadvantaged systems, should be brought together into one place.

Compliance cost estimates. CA compliance cost estimates, especially for contaminant treatment, have been controversial in standard setting. Both lack of transparency and limited considerations for the full range of costs associated with treatment have been cited. Because the Plan emphasizes the compliance cost issues for small and disadvantaged communities, it is critical that full costs be considered, including long-term operations and maintenance. Additionally, ability to pay, and the use of median household income in that determination, should be reconsidered. Within any community, but especially in lower-income or disadvantaged communities, those in the lower income groups pay substantially more as a percentage of income. We recommend that California use the legislative guidance provided for this in setting standards.