

Working Together
Achieving Results



VIA ELECTRONIC MAIL

May 19, 2018
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

commentletters@waterboards.ca.gov

Re: **Comment Letter – FFY 2018 DWSRF IUP**

Dear Ms. Townsend:

On behalf of the California Water Association ("CWA"), I am writing to offer comments on the Draft Federal Fiscal Year ("FFY") 2018 Drinking Water State Revolving Fund ("DWSRF") Intended Use Plan ("IUP") for State Fiscal Year ("SFY") 2018-19, and the revised guidelines for Proposition 1 – Chapter 5, Section 79724 ("Prop 1 Drinking Water"), issued by the State Water Resources Control Board ("State Water Board") on April 19, 2018, for public review and comment. CWA represents nearly 100 drinking water utilities subject to regulation by the California Public Utilities Commission ("CPUC"). Its members provide safe, reliable, and high-quality water to approximately 6 million Californians – 15 percent of the state's population – including a significant number living in disadvantaged communities or eligible for low-income rate assistance ("LIRA") programs.

As public utilities defined as such under Section 216 of the Public Utilities Code, and public water suppliers defined as such under Section 116275 (h) of the Health and Safety Code, CWA's members look forward to applying for loans and grants under the DWSRF/Prop 1 Program. CWA periodically meets with the staff of the Division of Financial Assistance and appreciates the input and response by staff to its suggestions and input.

I. **Inclusion of CPUC-Regulated Water Utilities**

As noted above, CWA's member utilities are gratified that the CPUC-regulated water utilities are eligible for loans and grants under the DWSRF/Prop 1 Drinking Water Program. This eligibility is imperative because numerous small water utilities serve disadvantaged communities and some of them have a critical need for capital investment assistance in order to sustain quality service for their customers.

Accordingly, CWA appreciates that the IUP states on page 5 that if Proposition 68 is approved by the voters on June 5, 2018, the State Water Board will administer the drinking water funds from that Proposition consistent with the Prop 1 Drinking Water guidelines. CWA's members will apply for these funds, and CWA will look to the State Water Board for guidance on the various DWSRF funding sources that can be used for our members' projects.



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Likewise, under the second broad goal on page 9, “Ensuring the Perpetuity of the DWSRF Through Responsible Management,” the second short-term goal states:

Prepare a DWSRF Policy amendment for the State Water Board's consideration to further align the administration of CWSRF and DWSRF programs including, clarification of credit application, eligibility and funding requirements; the establishment of annual repayable billing; and other clarifying technical eligibilities.

As the staff prepares this policy amendment, CWA respectfully requests that the eligibility gains that CPUC-regulated public utilities have achieved in recent years in both the DWSRF and the CWSRF remain intact as this amendment moves forward.

II. Extended Financing Constraints for CPUC-Regulated Utilities

CWA notes on Page 8 that under the broad goal of “Prioritizing DWSRF Funds for Public Health Benefits,” the third long-term goal is to “Improve Affordability and Sustainability.” While the emphasis properly remains on small disadvantaged communities, CWA agrees with the goal’s scope, which encompasses affordability in small communities that may not technically qualify for disadvantaged community status.

However, as the State Water Board is aware, CWA notes that a specific eligibility requirement, which precludes CPUC-regulated water utility participation, runs counter to this long-term affordability goal. Specifically, on Page 34, the third element under “Standard DWSRF and Proposition 1 Financing Terms” reads as follows:

3. Extended Term Financing for a PWS

A PWS that serves a DAC or a Small Disadvantaged Community may be eligible for an extended repayable financing term up to 30 years for a construction project under the DWSRF/Prop 1 Drinking Water program ... A PWS owned by a public entity and serving a non-disadvantaged community may be eligible for an extended repayable financing term of up to 30 years for a construction project under the DWSRF, not to exceed the useful life of the financed facilities (emphasis added).

The fact that a PWS seeking extended financing for a project serving a non-disadvantaged community must be owned by a government entity to receive a 30-year financing term is a significant hardship for customers of regulated public utilities. Because these utilities are owned by investors rather than a local or regional government entity, their customers are unduly discriminated against, even though their tax dollars are supporting the DWSRF in the same manner as customers of government-owned utilities.

The misconception that underlies this discrimination is that regulated public utilities under the jurisdiction of the CPUC are considered to be “For-Profit” entities under the definitions on page 32 under “DWSRF and Prop 1 Financing Terms.” In this context, “for-profit” is a misnomer and an inaccurate characterization because the utility’s owners do not earn a profit or return on any infrastructure investments made with DWSRF or CWSRF loans or any grants made under Prop 1 or under any other granting authority.

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Nor do regulated utilities earn a profit on the sale of water. Their profitability is limited to the extent that there is an opportunity to earn a rate of return on the capital invested by the owners, and that opportunity is realized only when sufficient revenues are received to cover the costs authorized by the CPUC. In fact, a perverse provision in the new federal Tax Cuts and Jobs Act of 2017 now requires regulated public utilities to pay federal income taxes on any grants and other contributions in aid of construction received, even though they derive no income and no profits from those funds.

A specific example of this discrimination is occurring in real time. In 2005, the California Department of Public Health (now the State Water Board's Division of Drinking Water) issued compliance orders to an owner of a small water system in Tulare County correct nitrate, uranium, arsenic and gross alpha contamination in 14 groundwater wells. These wells served the community of River Island in Springville, near Porterville. At the behest of the county and state, in part, Del Oro Water Company, a Class B water utility regulated by the CPUC, acquired the system in 2008 and commenced a process to rectify the problems with the drinking water.

After a very long, involved and frustrating process, the company has received approval from the State Water Board for an SRF loan of \$5,189,176 for a mandated Treatment Plant & Conveyance System Project to remediate the groundwater for 419 customer service accounts in its River Island District Territory #1. CPUC approval is pending; the resolution will be considered at the Commission's June 21, 2018 Open Meeting. This community's median household income in 2016 was \$57,853, just above the limit to qualify as a DAC and be a recipient of grant funds. Hence, an SRF loan was the most feasible option for Del Oro Water.

Because the financing term for this loan is 20 years, the customers will be subjected to a monthly SRF surcharge of approximately \$67.20. This surcharge will be in addition to each customer's regular drinking water service, so the average monthly water bills for all levels of consumption will be in excess of \$100.

The company hosted a customer meeting on February 27, 2018 and explained in detail the situation, the contamination problems, the treatment options, the preferred solution and the impacts on customers. While the customers are going to have reliable, safe drinking water from these wells for the first time in many years, the affordability impacts are significant.

If the River Island community was a DAC, then Del Oro Water would be eligible for the 30-year extended financing terms. This would have a precipitous impact on the SRF surcharge, reducing it to an estimated \$48.33 per month. Admittedly, this is still a substantial amount, but much less than \$67.20 and much more palatable.

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CWA, of course, is well aware that the extended financing prohibition against regulated public utilities is a federal issue, not a problem that can be resolved by the State Water Board. This particular prohibition stems from a 2014 Memorandum issued by the U.S. Environmental Protection Agency, titled "Financing Terms Greater than 20 Years in the Drinking Water State Revolving Funds."¹ The Memorandum restricts extended term financing for a state DWSRF program to those instances where the state may purchase or refinance a capital project debt obligation of a publicly owned system and the purchase of that debt must be through direct state DWSRF acquisition of municipal bonds issued for project construction.

CWA representatives met with the Division of Financial Assistance earlier this year, and they appreciated the explanation given by DFA staff that this problem can only be solved at the federal level. Given that affordability of drinking water is now a top State Water Board priority under the Human Right to Water law, CWA respectfully requests that the State Water Board staff engage with the Association's members in seeking a formal remedy to this punitive limitation, which directly affects the affordability capacity of customers of regulated public utilities. The extended financing option should be available to all water utility customers whose tax dollars support the Drinking Water State Revolving Fund program.

III. Conclusion

CWA appreciates the opportunity to provide these comments and information to the State Water Board. Please do not hesitate to contact me with any questions you may have at (415) 561-9650.

Respectfully submitted



Jack Hawks

cc: Members of the State Water Resources Control Board
Commissioner Martha Guzman Aceves, California Public Utilities Commission
Eileen Sobeck, Executive Director
Leslie Loudon, Deputy Director, Division of Financial Assistance
Darrin Polhemus, Deputy Director, Division of Drinking Water
Rami Kahlon, Director, Division of Water & Audits, California Public Utilities Commission

¹ Environmental Protection Agency, April 14, 2014. "Financing Terms Greater than 20 Years in the Drinking Water State Revolving Funds." Policy Memorandum from Peter Grevatt, Office of Ground Water and Drinking Water.