

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF PUBLIC PARTICIPATION  
FEBRUARY 16, 2016**

**ITEM 6**

**SUBJECT**

CONSIDERATION OF PROPOSED RESOLUTION ADOPTING THE HUMAN RIGHT TO WATER AS A CORE VALUE AND DIRECTING ITS IMPLEMENTATION IN WATER BOARD PROGRAMS AND ACTIVITIES

**DISCUSSION**

On September 25, 2012, the California Legislature adopted Assembly Bill 685, which added section 106.3 to the Water Code (effective January 1, 2013), declaring that every human has the right to clean, affordable, and accessible water for consumption, cooking and sanitary purposes (generally referred to as the human right to water). Water Code section 106.3 states in full:

- (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- (b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.
- (c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).
- (d) This section shall not apply to water supplies for new development.
- (e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

The new law specifically requires the State Water Resources Control Board (State Water Board), as well as other agencies, to consider the human right to water when establishing policies, regulations, or grant criteria when such actions are pertinent to water for human consumption, cooking, and sanitary purposes. (Wat. Code § 106, subd. (b).) The new law does not require the State Water Board to develop new policies, regulations, or grant criteria.

The State Water Board and the nine Regional Water Quality Control Boards (collectively, the Water Boards) administer the Porter-Cologne Water Quality Control Act (Wat. Code, Div. 7, § 13000, et seq.), which establishes a comprehensive statutory program for water quality control. The Water Boards protect water quality and beneficial uses of the State's waters, including domestic uses, through their authority under the Porter-Cologne Water Quality Control Act and the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S. C. § 1251, et seq.) (Clean Water Act).

On March 3, 2015, staff presented an informational item to the State Water Board to summarize a survey of the Water Boards' programs with respect to the consideration of the human right to water in taking certain board actions. Results of that survey are at:

[http://www.waterboards.ca.gov/board\\_info/agendas/2015/mar/030315\\_8\\_surveyresp.pdf](http://www.waterboards.ca.gov/board_info/agendas/2015/mar/030315_8_surveyresp.pdf).

During that meeting, staff was directed to develop a resolution which would provide guidance and direction to the Water Boards to achieve consistency with respect to the manner in which the human right to water should be considered in certain actions.

The State Water Board's adoption of the draft Resolution would establish the human right to water as a core value and provide direction and guidance to the Water Boards to ensure consistency in the manner in which the right is considered in certain board actions. The proposed Resolution will not expand the legal scope of the human right to water as described in Water Code section 106.3, nor will it impose new requirements on the regulated community, expand any obligation of the Water Boards to provide water, or otherwise alter existing law.

### **POLICY ISSUE**

Should the State Water Board adopt a resolution declaring the human right to water a core value and provide direction and guidance to the State Water Board staff and Regional Water Board staff to ensure consistency regarding the manner in which the human right to water should be considered in certain actions?

### **FISCAL IMPACT**

State Water Board and Regional Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

### **REGIONAL BOARD IMPACT**

Yes, State Water Board approval of the draft Resolution may impact the Regional Water Boards in that it encourages the Regional Water Boards, to consider the human right to water when taking actions relevant to existing potential sources of drinking water, which many of the Regional Water Boards are already doing.

### **STAFF RECOMMENDATION**

Staff recommend the State Water Board adopt the proposed resolution.

<p>State Water Board action on this item will assist the Water Boards in reaching Goals 5, and 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling Goal 5 which is to improve accountability and transparency by ensuring the Water Boards goals are clear and accessible; and Goal 6 which is to enhance consistency across the Water Boards to ensure the Water Boards' processes are effective, efficient, and predictable and to promote the fair application of laws and procedures.</p>
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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

### ADOPTING THE HUMAN RIGHT TO WATER AS A CORE VALUE AND DIRECTING ITS IMPLEMENTATION IN WATER BOARD PROGRAMS AND ACTIVITIES

#### WHEREAS:

1. With the enactment of Water Code section 106.3, on September 25, 2012, California became the first state in the nation to recognize legislatively the human right to water, following two other state's recognition of the right in their respective constitutions.
2. Water Code section 106.3 provides, in full:
  - (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
  - (b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.
  - (c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).
  - (d) This section shall not apply to water supplies for new development.
  - (e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.
3. Effective July 1, 2014, the State's Drinking Water Program was transferred from the California Department of Public Health to the State Water Resources Control Board (State Water Board).
4. To reflect the expanded scope of the State Water Board's public health responsibility, on February 3, 2015, the board clarified and revised its mission statement as follows: "To preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations."
5. The State Water Board recognizes that a wide range of activities and projects undertaken by the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) (collectively, Water Boards) may involve the human right to water, as established by Water Code section 106.3, subdivision (a).

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6. Preventing and/or addressing discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources, are among the Water Boards' highest priorities. Providing replacement water is an interim solution that may be used to address such discharges while long-term water quality solutions are developed.
7. The Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. § 1251 et seq. (Clean Water Act)), and the Porter-Cologne Water Quality Control Act (Wat. Code, Div. 7, § 13000 et seq.) require the Water Boards to protect all beneficial uses of water, including municipal or domestic water sources (MUN) to ensure their suitability for those uses in water quality control planning and permitting actions. (Wat. Code §§ 13241, 13263, subd. (a), 13050, subds. (f) and (h).)
8. The State Water Board's Sources of Drinking Water Policy (State Water Board [Resolution No. 88-63](#)) presumes that most surface and ground waters of the state are "suitable, or potentially suitable, for municipal or domestic water supply" (MUN).
9. The Regional Water Boards administer the Sources of Drinking Water Policy through their respective water quality control plans by designating water bodies as suitable, or potentially suitable, for municipal or domestic water supply (MUN).
10. In acting on applications to appropriate water, the State Water Board must consider "the relative benefit to be derived from [...] all beneficial uses of the water concerned," including domestic uses, "and any uses specified in any relevant water quality control plan[.]" "The board may subject such proposed appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated." (Wat. Code, § 1257.) The State Water Board has continuing authority over permitted and licensed appropriations, and authority to ensure the water resources of the state are put to beneficial use to the fullest extent and that water not be wasted or unreasonably used. (*Id.*, §§ 100, 275.)
11. Water Code section 189 established the Office of Sustainable Water Solutions within the State Water Board "to promote permanent and sustainable drinking water and wastewater treatment solutions to ensure effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services," focusing on, among other actions, addressing financial and technical assistance needs for disadvantaged communities, and promoting regional solutions to communities unserved or underserved by public water systems and wastewater treatment systems. "Disadvantaged community" is defined as "a community with an annual median household income that is less than 80 percent of the statewide annual median household income." (Wat. Code, § 79702, subd. (j) (incorporating Water Code section 79505.5).)
12. Water Code section 189.5, referred to as the Low-Income Water Rate Assistance Act, requires the State Water Board, in collaboration with relevant stakeholders and the State Board of Equalization, to develop a plan, no later than January 1, 2018, to fund and implement the Low-Income Water Rate Assistance Program. The Act requires the State Water Board to report to the Legislature no later than February 1, 2018, on its findings regarding the program's feasibility, financial stability, and desired structure, and include any recommendations for legislative action. (Wat. Code, § 189.5, subds. (a)-(b), (e)(1).)

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13. Considerations relevant to the affordability of water for human consumption, cooking, and sanitary purposes include economic and cost factors, water supply operation and maintenance expenses, and household incomes.
14. The amount of water necessary for human consumption, cooking, and sanitary purposes varies by individual circumstance but assumptions in current law provide information regarding a reasonable maximum daily per capita human use. The Water Efficiency Act of 2009 identifies 55 gallons per capita per day as a provisional conservation standard for “indoor residential water use” by 2020. (Wat. Code, § 10608.20, subd. (b)(2)(A).) Similarly, a prior State Water Board emergency regulation established an exemption from a prohibition on diverting water, under specified circumstances, up to a maximum of 50 gallons per capita daily in order to meet “minimum health and safety needs.” (Cal. Code Regs., tit. 23, § 878.1, subds. (a)-(b) [operative March 30, 2015 and repealed Dec. 29, 2015].)
15. At the March 3, 2015 State Water Board meeting, staff reported on the status of the implementation of the human right to water. Staff presented results of a survey concerning the wide range of activities and projects undertaken by the Water Boards that address the human right to water through actions to protect any existing or potential MUN beneficial use, including but not limited to, basin planning, permitting actions, site remediation, monitoring, and water right administration.
16. In consideration of the legislative enactment of the human right to water and the Water Boards’ ongoing efforts to consider or promote attainment of that right, it is appropriate for the State Water Board to provide clear and transparent guidance to State Water Board staff and the Regional Water Boards concerning the manner in which the human right to water continue to be administered.

## THEREFORE BE IT RESOLVED THAT:

### The State Water Board:

1. Adopts the human right to water as a core value and adopts the realization of the human right to water as a top priority for the Water Boards.
2. Will continue to consider, and encourages the Regional Water Boards to continue considering, the human right to water in all activities that could affect existing or potential sources of drinking water (MUN), including, but not limited to, revising or establishing water quality control plans, policies, and grant criteria, permitting, site remediation, monitoring, and water right administration. However, nothing in this resolution changes, or is intended to change, the Water Boards’ authority and obligations under applicable law.
3. Directs State Water Board staff to work with relevant stakeholders to, as resources allow, develop new or enhance existing systems to collect the data needed to identify and track communities that do not have, or are at risk of not having, safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

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4. Directs State Water Board staff to work with relevant stakeholders and develop performance measures for the evaluation of the board's progress towards the realization of the human right to water, evaluate that progress, and explore ways to make that information more readily available to the public.
5. Directs State Water Board staff to explore opportunities for the State Water Board, and when practical, in partnership with other governmental agencies or organizations, non-profit organizations, impacted communities, and private businesses, to work toward realizing the human right to water within the State Water Board's administration of its programs and projects.
6. Directs the State Water Board's Office of Sustainable Water Solutions to provide, when feasible and as resources allow, technical and compliance assistance to disadvantaged communities to develop the capacity of the recipient community to evaluate solution(s) and select a sustainable approach that supports the human right to water.
7. Directs State Water Board staff, when submitting a recommendation to the board pertinent to the human right to water, to describe how the right was considered, and encourages Regional Water Board staff to do the same when making pertinent recommendations to their boards.
8. Directs State Water Board staff and encourages Regional Water Boards, as resources allow, to meaningfully engage with communities that lack adequate, affordable, or safe drinking water, including providing community outreach, technical assistance and financial resources, as part of the Water Boards' administration of programs or project funding pertinent to human right to water, including those described in recitals 11 and 12.
9. Directs State Water Board staff and encourages Regional Water Boards to evaluate the extent to which a proposed project, plan, decision, or action, pertinent to the human right to water, has been developed with meaningful engagement of impacted communities.
10. Encourages Water Board staff to consider existing law and policies that may be relevant to assessing water safety, cleanliness, affordability, accessibility, adequacy, and sustainability, such as those referred to in recitals 7-14, when considering the human right to water.
11. Directs State Water Board staff to incentivize regional approaches, where appropriate, by implementing financial assistance programs to address communities unserved or underserved by public water systems and wastewater treatment systems.

## **D R A F T**

12. Directs State Water Board staff to provide annual progress reports to the board regarding implementation of the human right to water, and incorporate that information into the board's annual performance report. The report shall identify successful strategies that have furthered the realization of the human right to water.

### **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 February 16, 2016.

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Jeanine Townsend  
Clerk to the Board