

APPENDIX H

Drinking Water State Revolving Fund

RESPONSES TO DRAFT 2014-2015 INTENDED USE PLAN COMMENTS and SUMMARY OF REVISIONS

I. RESPONSES TO IUP COMMENTS

The California Department of Public Health (CDPH) posted to its website a notice dated May 15, 2014, regarding the availability of the 2014-2015 Draft Intended Use Plan (IUP) and related documents for public review and comment. The notice established that written comments would be accepted no later than 5 p.m. on June 16, 2014. A public hearing was also held at the East End Complex in Sacramento on June 16, 2014 from 10 AM to 11 AM.

During the public review and comment period from May 15 to June 16, 2014, CDPH received comments in one letter via email from the following:

- Omar Carrillo, Community Water Center (CWC)
- Jennifer Clary, Clean Water Action (CWA)
- Phoebe Seaton, Leadership Council for Justice and Accountability (LCFJAA)
- Noe Paramo, California Rural Legal Assistance Foundation (CRLAF)
- Jeanette Pantoja, California Rural Legal Assistance, Inc. (CRLA)

General Response:

CDPH appreciates the time and energy that went into the preparation of the comments by CWC, CWA, CRLA, CRLAF and LCFJAA. The Draft IUP that was circulated in May/June 2014 is adopted essentially intact, except as noted in the responses to specific comments below. This is necessary in order to meet the federal grant application timeline. Failure to meet the federal deadline could jeopardize all DWSRF funding for California. However, CDPH intends to work with the State Water Resources Control Board during the transition of the Drinking Water Program to ensure continuity of administration of the DWSRF as outlined in the 2014-2015 IUP.

Responses to Specific Comments to the Draft 2014-2015 IUP:

Comment 1:

B. Set-Aside Funding

The set-aside funding is flexible funding that can be used to aid community readiness to proceed and access SDWSRF funding. We strongly support the proposed use of this funding, especially the focus on *Water System Technical Managerial & Financial (TMF)* for capacity development; *Small Water System (SWS) technical assistance*, to assist small PWS serving less than 10,000 people with the focus on PWS that serve less than 200 service connections; and *Local assistance and other state programs*, to assist PWS achieve capacity development via Third-party Contracts.

Comments: We are **strongly opposed** to CDPH's recommendation to postpone or defund activities related to the "Legal Entity Formation Assistance" (LEFA) pilot program. This program is funded with set-aside funding and satisfies the most critical objectives set out by CDPH, including (1) the funding of projects that address California's public health priorities; (2) the timely and expeditious use of DWSRF funds; (3) additional subsidy assistance to PWS that serve "disadvantaged" and "severely disadvantaged" communities; and (4) minimum funding assistance to SWS. LEFA is stalled primarily due to inadequate staffing and not because of lack of interest or need. There is significant additional interest in this program. Of the 22 communities selected in 2013 to participate in LEFA only two have been funded and authorized by CDPH to move forward with their intended work plans. Therefore, it is not appropriate to wait to hold up progress on this program "until CDPH has had an opportunity to evaluate the effectiveness of the pilot program, when in fact the program is in high demand, needs additional staff and loan resources now. This program, if funded in the IUP, could help many communities secure permanent solutions via the DWSRF and possibly emergency drought funding in 2015.

Response 1:

As a component of CDPH's Corrective Action Plan, USEPA has required the DWSRF program to prudently manage its set-aside budgets to achieve a set-aside spending rate of 80 percent. CDPH must take into account LEFA demands when planning set-aside budgets. Presently, the LEFA program has sufficient funds budgeted to address current demand of the 19 applications that are currently active. Please note that the LEFA program only received 21 applications total, one of which was determined to be ineligible and another withdrew, resulting in current 19 active applications. The LEFA pilot program is continuing to evaluate active applications and funded eligible project activities while also simultaneously evaluating the effectiveness of the pilot program to ensure funds are expended for critical activities designed to accomplish program and project goals alike, in the most cost-effective and timely manner. CDPH is open to considering budgeting future set-aside funds

to continue the program and meet the demand of future application rounds as the LEFA program develops.

Comment 2:

III. DWSRF GOALS

We support the short and long-term goals developed for the DWSRF with proposed amendments:

3. Provide at least 15 percent (15%) of all DWSRF funds to PWS serving fewer than 10,000 people ~~to the extent such projects are “ready to proceed” to funding.~~

Comment: 15% of DWSRF funds should go to small water systems in order to satisfy CDPH’s overall program objectives and CAP obligations for 2014-2015.

Response 2:

CDPH administers the DWSRF program in accordance with Federal and State Statutes and regulations. It is always CDPH’s intent to provide at least 15 percent of all DWSRF funds to PWS serving fewer than 10,000 people to the extent such funds can be obligated for eligible projects (per Code of Federal Regulations (CFR), Section 35.3525 (a) (5)).

Comment 3:

5. Position the DWSRF program to facilitate drought relief through expedited funding efforts to help ensure eligible PWS & qualified entities approved for the Legal Entity Formation Assistance” (LEFA) pilot program, which are currently without water supplies due to drought, experiencing drought related drinking water emergencies or imminent threat of drought related drinking water emergencies, to achieve a permanent solution. Communities that have run out of water will be prioritized for available resources.

Comments: The LEFA eligible projects include more than (*sic*) just PWS. Also, many communities are currently without water and solutions to address their needs must be prioritized.

Response 3:

The comment that LEFA eligible projects include more than just PWS is correct. However, CFR Section 35.3520 provides definitions for eligible systems and eligible projects that the DWSRF funds may be provided to and unfortunately, those communities/entities are not currently eligible for DWSRF funding. CDPH has recognized the needs and therefore, has created the LEFA pilot program to assist

these communities/entities to become eligible PWS to gain access to DWSRF funding. Until these communities become eligible PWS, DWSRF loan funds cannot be provided.

Please note, in addition to the DWSRF loan fund, CDPH has a separate drought related funding program to assist eligible PWS that have experience drought related drinking water emergencies or imminent threat of drought related drinking water emergencies.

Comment 4:

14. ~~Continue~~ Increase outreach activities to ensure PWS and eligible entities are aware of and understand DWSRF assistance options and the loan application process by improving website presence and interactions, including new web-enabled Loans and Grants Tracking System (LGTS) database, as well as participating in funding fairs to publicize the DWSRF program. Further, CDPH will fund staff to act as ombudsmen between Sacramento and regional offices and communities.

Comments: Community and stakeholder outreach is most effective when provided via multiple platforms. CDPH's website is not always current on important program information, particularly project status updates. More web based information, combined with stakeholder information workshops and Staff committed to improving and disseminating information are necessary components for successful community outreach.

Response 4:

Thank you for the comment. CDPH recognizes the importance of public outreach and the need for a robust website. Certain efforts have been in place to continue to increase outreach activities when possible and to support the Regional Funding Coordinator positions. However, for this short term goal, CDPH wants to reiterate its continued participation in the funding fairs.

Comment 5:

19. Continue to implement CDPH's Small Water System Program Plan to reduce the number of small CWS with maximum contaminant level (MCL) violations. Increase by 50% or more, compared to 2013-2014, the number of water systems returned to compliance.

Comment: CDPH should set goals on the number of systems it intends to bring into compliance. As of April 2014, 23 (12.5%) of the 183 communities identified in 2012 had returned to compliance. At this rate it would take several years to address long-term solutions for the communities on this list; meanwhile, the number of communities without safe drinking water will continue to grow.

Response 5:

CDPH will continue funding these SWS and providing technical assistance at a productive rate. However, a realistic goal to increase the return to compliance (RTC) rate for the Small Water System Program Plan cannot be set. It can take a great deal of time for these SWS to evaluate alternatives, select the most cost effective long-term solution, engineer the solution, and finally construct the solution. We have found many systems need up to 36 months for planning project. Once a most cost effective long-term solution is determined, it can take another three years for construction to complete at which point a system would return to compliance. Thus, the RTC rate increase per year may not necessarily be a measure for progress. It is more important to get these systems on track toward returning to compliance, recognizing that some may take longer than others; and CDPH continues to focus on engaging those systems to work on finding a solution as a means to return to compliance. Current status of the SWS program plan can be found at: <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/SWSMonthlyProgressUpdates.aspx>

Comment 6:

B. Long-Term Goals

Address Significant Risks to Public Health: CDPH uses the DWSRF funds for low interest loans and, in some cases, principal forgiveness (grants) to enable water systems to fund necessary infrastructure improvements. CDPH is targeting program resources and funds to address the most significant public health and compliance issues, especially addressing the needs of communities that have no water supplies at all due to the drought. CDPH will ensure sufficient coordination between the DWSRF and PWSS Program.

Comments: Many communities are currently without water and have not been able to identify any resources, including funding or technical assistance to address their short term or long term needs. CDPH should prioritize the needs of communities most hard hit by the drought.

Response 6:

CDPH recognizes the needs of PWSs impacted by the drought. In coordination with the PWS Drought Emergency Response program, the DWSRF program provides an expedited application submittal and review process to facilitate a PWSs ability to gain access, more rapidly, to DWSRF funds sought to address drought emergencies or threatened drought related emergencies as with all emergencies affecting public health.

Comment 7:

3. Reduce Cost of Drinking Water: *DWSRF funding assists PWS minimize costs of supplying reliable, safe, accessible and affordable drinking water by providing affordable financing for the construction of technically sound drinking water infrastructure projects. CDPH encourages PWS to include energy efficiency and water conservation measures, including water meters, in conjunction with public health related projects. Water meters not only encourage the conservation of water, thereby producing savings related to costs of production, treatment, storage and pumping, but also allow systems to establish effective water rate structure as well as identify water loss occurring in distribution systems contributing to a loss in revenue. In addition, CDPH will increase its efforts to incentivize regional or shared solutions that can reduce the cost of water service in small communities.*

Comments: The Human Right to Water Bill became effective on January 1, 2013. It provides every human being the “right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” It creates a duty for administrative agencies, including CDPH, to consider the Human Right to Water when adopting new policies.

Response 7:

Thank you for the comment. CDPH, in establishing this IUP, has considered the statewide policy set forth in section 106.3 of the Water Code. Section I of the 2014-2015 IUP has been revised to explicitly state as such. On the other hand, CDPH has made efforts to reduce the cost of drinking water by funding solutions to solve PWS’s public health problem so long as the solution is the most cost-effective long-term solution as defined in Section 116760.20 (a) (1) and (2) of the Health and Safety Code.

Comment 8:

4. Acknowledge and Address Household Affordability Constraints: *Strategically use the DWSRF subsidy provision and set-aside funds to maximize the DWSRF’s impact on achieving affordable compliance. CDPH will regularly reevaluate the affordability criteria to ensure that PWS which are in the greatest need of assistance receive subsidy and technical assistance pursuant to its responsibilities under the Human Right to Water (California Water Code Section 106.2, which became law on January 1, 2013. It establishes as 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”. All relevant state agencies, including CDPH, are required to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria.*

Comment: Same as #3 above.

Response 8:

See Response 7 above.

Comment 9:

IV. CRITERIA AND METHOD FOR DISTRIBUTION OF FUNDS

E. Small System Funding “Small Water System (SWS)”

CDPH has implemented the Small Water System (SWS) technical assistance, as a way to assist and return a specific group of SWS to compliance. CDPH created a list of 183 small CWS with fewer than 1,000 service connections that have violated at least one health-based drinking water standard.

Comment: CDPH should set goals on the number of systems it intends to bring into compliance. As of April 2014, 23 (12.5%) of the 183 communities identified in 2012 had returned to compliance. At this rate it would take several years to address long-term solutions for the communities on this list; meanwhile, the number of communities without safe drinking water will continue to grow. We suggest the Drinking Water Program increase the amount of systems it returns to compliance by 50%, compared to 2013-14 in order to meet the objectives set-out in the CAP.

Response 9:

See Response 5.

Comment 10:

G. Consolidation Incentive Program

The consolidation incentive program utilizes its PPL ranking criteria as a means of providing an incentive to encourage a PWS to agree to consolidate with one or more PWS with higher ranked projects.

Comments: In order to take advantage of these incentives, PWS need to know the incentives are available and those currently involved in the program, which at last count was six entities, need to show progress by demonstrating agreement between/among consolidating entities and ultimately submit a DWSRF application. This has not happened and it possible that this program is under funded, or understaffed. We recommend more resources and attention be placed on this program as it greatly needed and should be effective in addressing critical capacity, O&M and overall economies of scale barriers for small DACs. This program is one of those that should be incorporated in the Office of Sustainable Water Solutions.

Response 10:

Thank you for your comments and suggestions. To date, six systems have requested a re-ranking, the first step in taking advantage of this program. CDPH invited all six to submit applications by March 2014 (planning) and June 2014 (construction). We have received two planning applications – City of Colusa and Eastern MWD and both are under review. The rest of the applications are being processed as they come in this week. It is necessary to restate that these Consolidation Incentive projects are being processed along and in same manner as all other regular applications received during an invitation cycle.

Comment 11:

VI. SET-ASIDE ACTIVITIES

B. Establishing Project Priority

CDPH revised its project priority ranking criteria to streamline the prioritization process, to allow community water systems and public schools with one water source to receive project prioritization. While we support this effort, we also encourage CDPH to include projects that have up to two sources, of which one of the sources is not compliant due to contamination above the MCL. Communities in this situation face similar challenges to those with one water source since many cannot treat the water source to a legal health standard if at all.

Response 11:

Thank you for the comment. CDPH believes its project priority ranking criteria addresses concerns on severity of public health problems experienced by PWS. The revised ranking criteria include modifications to have water systems with a single source, without any primary MCL violation, ranked in category H. However, a water system that is not compliant due to contamination above a primary MCL would have their project ranked higher in either category F or G depending on type of contaminants. In this case, PWS with source(s) that are in violation of a primary MCL and required treatment would have already been ranked higher than H.

Comment 12:

D. Local Assistance and Other State Programs

CDPH will also continue its contract with the University of California, Davis – Center for Affordable Technology for Small Water Systems (UCD) to provide preliminary engineering assistance to small PWS that lack the funds and expertise to obtain these services on their own.

Comment: Our organizations have been contacted regarding this program, but to the best of our knowledge, this program has not addressed issues in any small PWS to date. The State Water Board has a similar program. We encourage CDPH and the State Water

Board staff to find synergies that will enable both these programs to successfully meet the needs of impacted DACs as intended. This program should be integrated into the Office of Sustainable Water Solutions.

Response 12:

CDPH appreciates your comments and suggestions. The DWSRF program will coordinate with the State Water Board's existing similar program to address the needs of impacted small and/or disadvantaged PWS especially when the program completes its transition to the State Water Board.

Comment 13:

Other

AB 21 (Alejo)

Assembly Bill 21 (Alejo) was introduced in 2013 and approved by the Governor on October 8, 2013. AB 21 authorized CDPH established the Safe Drinking Water Small Community Emergency Grant (SDWSCEG) Fund. The purpose of the SDWSCEG fund is to provide emergency grant funding to public water systems that serve small, disadvantaged and severely disadvantage communities.

Comments: We strongly support the implementation of the SDWSEG. These resources are needed now, particularly in light of the current drought conditions impacting many communities. We urge steps be taken to advance necessary regulations so this program is operational in 2015.

Response 13:

CDPH appreciates your comments and support and will be taking steps toward developments and implementation of the SDWSEG.

Comment 14:

Office of Sustainable Water Solutions (SWS)

The above listed groups have participated in several state level stakeholders groups over the past few years, including the Drinking Water Reorganization Task Force in 2014. We are confident that the transfer will improve on efforts to help DACs begun by CDPH. As part of this transfer and for consideration in this IUP, is a recommendation by our groups to include provisions that would strengthen community and regional resilience. We propose resources be made available to create of an Office of Sustainable Water Solutions (SWS) with the explicit goal of facilitating and promoting regional solutions which would include, but not be limited to, consolidation of existing districts, expansion of existing districts to serve communities unserved by public water systems and wastewater systems and extension of services. This office would create a focused

and accountable unit of staff dedicated to systemically working through some of core barriers preventing small systems from securing, safe, affordable and accessible drinking water.

Response 14:

CDPH appreciates your suggestions but has no comments at this time.

II. SUMMARY OF REVISIONS

In response to comments received and progress made during the public review, CDPH has made the following revisions to the draft IUP:

- 1) Explicitly include the languages of the Water Code Section 106.3 regarding human rights to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes in Section I. Introduction of the IUP.
- 2) Add Table 5 to show actual disbursements per quarter that occurred in SFY 2013-2014.
- 3) The final fundable list now includes projects expected to be funded from July 1, 2014 through June 30, 2015 for a total of \$115 million. At the time the draft fundable list was generated, CDPH anticipated having \$135 million available to fund projects from October 1, 2014 through June 30, 2015. However, more funds were committed to eligible projects as of June 27, 2014 than initially projected. In consultation with USEPA, the final fundable list would also include projects previously projected to receive funding agreements by September 30, 2014 that was part of CDPH's commitment to meet requirements detailed in the Corrective Action Plan.