

## **Administration Proposals Regarding the Transfer of the Drinking Water Program**

The Administration proposes to transfer the Drinking Water Program from the Department of Public Health to the State Water Resources Control Board. This document presents the Administration's draft proposals relating to several major aspects of the Drinking Water Program. The Administration has solicited feedback from a group of stakeholders, convened as the Drinking Water Reorganization Task Force (Task Force), and is currently soliciting further feedback through a public meeting. The Administration will prepare a Transition Plan in February, 2014, that will take into account the Task Force and Public Meeting input on the following proposals.

### **Regulatory Program:**

- The Drinking Water Program would be organized in a new Division of Drinking Water at the State Water Board. Program regulatory staff would remain in locally-based offices.
- The Division would be overseen by a Deputy Director, who would be required to have public health expertise and who would report directly to the Executive Director.
- The Deputy Director would have the authority to grant or deny water system permit applications. These decisions would not be subject to Board review. Permit issuance and enforcement would not be delegated to the regional water quality control boards (Regional Water Boards).
- *[Please note that statutorily-mandated minimum penalties for waste discharge violations do not apply to drinking water violations.]*

### **Maximum Contaminant Level (MCL)-Setting:**

- MCLs would continue to be established through the regular rulemaking process under the Administrative Procedures Act.
- The Deputy Director would develop the proposed MCL for the Board's consideration.
- As with all regular rulemakings, the State Water Board would conduct one or more public hearing(s) no sooner than 45 days after issuing the Notice of Proposed Rulemaking.
- The State Water Board would review oral and written comments and staff's responses to comments.
- The State Water Board would then act on the proposed regulations in a public meeting.
- After approval by the State Water Board, staff would submit the rulemaking package to the Office of Administrative Law for review.

### **Maintaining and Improving the Local Primacy Agency Program:**

- The State Water Board plans to maintain the existing Local Primacy Agency (LPA) Program, which would be managed by the new Division of Drinking Water.
- The new Division of Drinking Water would maintain existing Drinking Water Program staff and their expertise, including LPA Program expertise.
- The State Water Board would utilize its experience with various local programs and agencies to support and seek opportunities to improve the LPA Program and engage its stakeholders.
- Established working relationships between LPAs and Drinking Water Program District Office staff would continue.

### **Facilitating the Safe and Efficient Use of Recycled Water:**

- The Recycled Water personnel in the Drinking Water Program would be organized under the new Division of Drinking Water, providing continued public health management.
- By being under the State Water Board, the Recycled Water public health functions would continue to be coordinated into Water Board permits.
- The State Water Board does not propose to change how Water Board permits are issued, but would actively seek opportunities for more efficient and effective permitting and would engage stakeholders in this effort.
- The State Water Board would finalize the groundwater recycled water regulations, the reservoir augmentation regulations, and the report on the feasibility of direct potable reuse, as required by Senate Bill 918 (Pavley, Chapter 700, Statutes of 2010).
- On October 8, 2013, the Governor signed Senate Bill 322 (Hueso, Chapter 637, Statutes of 2013), stating, “In an effort to enhance the use of recycled water, I have proposed the consolidation of the management of the drinking water program and all other water quality programs, including recycled water, under the State Water Board. I am directing the Water Board to ensure that this work is completed expeditiously; the 3-year time frame mandated in this bill is too slow. California needs more high quality water and recycling is key to getting there.”

### **Emergency Response**

- The State Water Board would maintain the existing local emergency response structure of the Drinking Water Program, including rotating District Office Duty Officers.
  - State Notification: Office of Emergency Services (OES) emergency calls are triaged to the on-call District Office Duty Officer, who relays calls to the District Engineer for appropriate action.
  - District Notification: Water system informs its District Engineer of an emergency, who notifies the Deputy Director of the Drinking Water Program and takes appropriate action.
- As a Division of the State Water Board, the Drinking Water Program would become a part of the Cal/EPA Emergency Response Management Committee (ERMaC), which is Cal/EPA’s coordinating body that assists in emergencies requiring cross-department or cross-agency solutions. CDPH’s Drinking Water Program already participates in ERMaC.
- For emergencies affecting water quality such as sewage or chemical spills, the Drinking Water Program would continue to coordinate with Regional Water Boards. In emergencies, the Water Boards currently send liaisons to CDPH’s Emergency Operations Center as appropriate.

### **Operator Certification**

- The State Water Board plans to jointly manage both Operator Certification Programs within the Division of Financial Assistance, maintaining close ties with the Division of Drinking Water.
- The State Water Board has a new web-based data management system for wastewater operators and would expand this system to include drinking water operators.
- Investigate opportunities to modernize the administration and content of exams for both Operator Certification Programs.

- There are differences between the Operator Certification programs; we would welcome input to find synergies while continuing the important differences.
- External stakeholders for both Operator Certification Programs will continue to be involved.

#### **Funding: Program Resources**

- The State Water Board does not propose to revise the existing Drinking Water Program fee schedule at this time.
- Task Force and Public Meeting recommendations regarding fee structures or program resources will be considered.

#### **Financial Assistance for Drinking Water Projects, including for Disadvantaged Communities**

- In order to optimize and expedite the funding of drinking water projects, the State Water Board plans to jointly manage both the Clean Water and Drinking Water State Revolving Funds (SRFs) and both Bond programs (Propositions 50 and 84) within the Division of Financial Assistance, maintaining close ties with the Division of Drinking Water.
- There are differences between the Drinking Water and Clean Water SRFs; the State Water Board welcomes input as we seek not only to build upon synergies from joint management of the SRFs but also to address, as feasible, constraints that are specific to the Drinking Water SRF.
- Using Task Force and Public Meeting input, the Administration would propose statutory and regulatory changes to harmonize the Safe Drinking Water State Revolving Fund with the Clean Water State Revolving Fund; see also below under the topics “Review and Updating of Regulations” and “Additional Legislative Action.”
- To serve disadvantaged and other communities, the Division of Financial Assistance would become a financial assistance one-stop shop for water quality infrastructure financing, including application assistance.
- The Administration acknowledges the significant challenges ahead as it continues to provide financial assistance for drinking water projects in disadvantaged communities.
  - Stakeholders have recommended a new, sustainable source of operations and maintenance funding and also recognized the need for further consolidation, regionalization and shared solutions.
- For the Drinking Water SRF, the State Water Board would:
  - Continue the Department of Public Health’s actions under their SRF Corrective Action Plan approved by USEPA, including a loan over-commitment strategy.
  - Utilize our recent experience and updated master indenture agreement to sell revenue bonds to generate the State Match funds (as bonds diminish).
  - Fully utilize the Loans and Grant Tracking System (LGTS) database, including adopting its dynamic cash flow modeling system.
  - Utilize cross-collateralization to assist in funding drinking water projects.
  - Continue the existing Regulatory Program funding provided by the SRF set-aside.
- Funding for interim drinking water for severely disadvantaged communities would be facilitated by joint management of Proposition 84 and Cleanup and Abatement Account funds.

#### **Stakeholder Advisory Group**

- The State Water Board’s meeting schedule (normally twice a month) would provide regular opportunities for stakeholders to directly address decision-makers regarding the Drinking Water

Program transition or other Program opportunities or concerns. Staff would provide regular updates to the State Water Board on Transition progress by means of the [Executive Director's Reports](#), ensuring program transparency and accountability.

- The State Water Board would continue CDPH's existing stakeholder groups for Operator Certification and Drinking Water Funding Programs.
- The Administration is considering Task Force input on the need for continuing the Task Force to advise on the reorganization process; the Administration will also consider any Public Meeting input, as well as expected demands on Program staff time as they implement the transition.

### **Review and Updating of Regulations**

- The State Water Board would use the Administrative Procedures Act's regular rulemaking process for the Drinking Water Program's upcoming regulations and welcomes Task Force and Public Meeting input on their relative priority.
- See also Additional Legislative Actions below.

### **Memoranda of understanding and interagency agreements between CDPH and State Water Board**

- A new interagency agreement would be needed between the State Water Board and CDPH (Drinking Water and Radiation Laboratory), since primacy for the Drinking Water Program requires the availability of laboratory services currently provided by CDPH.
- Interagency agreements required by Senate Bill 918 (Pavley, Chapter 700, Statutes of 2010) for the development of (1) criteria for reuse of recycled water for groundwater recharge and surface water augmentation, as well as (2) a report on the feasibility of developing criteria for direct potable reuse, would no longer be necessary since the State Water Board would fund the work directly.
- The existing \$2 million Cleanup and Abatement account interagency agreement for interim water supplies for severely disadvantaged communities would no longer be necessary since the State Water Board would fund the projects directly.
- The [Memorandum of Agreement on the Use of Reclaimed Water](#) (dated 1996) would no longer be necessary since recycled water would be managed under the State Water Board. The State Water Board plans to continue to implement the MOA's existing provisions regarding Regional Water Board roles.
- The Administration will review the need for any additional MOUs or interagency agreements.

### **Integrated Water Quality Management:**

*The new structure -- which combines drinking water, groundwater, and water quality programs in a single agency -- is intended to maximize the efficiency and effectiveness of the programs and best position the state to protect water quality and water-related aspects of public health and environmental health.*

- The State Water Board would have a renewed focus on protection of surface and groundwater quality, since its responsibility for water quality protection would include the treatment and delivery of drinking water. Integrated water quality management in a single governmental entity for state-level activities would provide a coordinated approach and would further key elements in the draft [California Water Action Plan](#) and the State Water Board's draft [Groundwater Workplan Concept Paper](#). Comprehensive management of water quality at the state level would enhance both environmental and public health.

- The State Water Board recognizes that our groundwater resources are being stressed by nitrate fertilizer applications, industrial pollution, sea water intrusion, and use of deeper aquifers due to over-pumping or contamination of shallow groundwater. The State Water Board would manage the assessment portions of the Drinking Water Source Assessment and Protection Program (DSWAP) alongside the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) program and Surface Water Ambient Monitoring Program (SWAMP), to allow for an integrated understanding of surface and groundwater and to inform the Water Boards' regulatory responsibilities.
- The State Water Board would ensure close coordination between the Drinking Water Program and groundwater cleanup activities overseen by the Regional Water Boards. For example, currently there is no governmental nexus between well siting and groundwater cleanup. A public water system that plans to drill a new well may not be aware of nearby groundwater cleanup activities regulated by the Water Boards. This lack of awareness could lead to contaminants from a nearby plume being drawn into a new municipal well, an expensive and avoidable problem. Conversely, the new well could compromise the effectiveness of the groundwater remediation system that is cleaning up the groundwater. The transition allows the Administration to strengthen relationships among these entities and improve coordination.
- The Water Boards' focus on water quality planning would be enhanced by the program transfer, for example in the Salt and Nutrient Management Plans mandated by the State Water Board's Recycled Water Policy. These Plans may lead to identification of areas needing special protection of drinking water.
- The State Water Board could review the Potentially Contaminating Activities identified under DSWAP for potential applicability to Water Board permitting of discharges of waste and for potential identification of areas requiring special protection.
- Recycled water permitting and regulation development could also benefit from the transfer. In the face of water scarcity and the imperative to reduce greenhouse gasses, the State Water Board has committed the State to greatly increase the use of recycled water. Consolidating the Drinking Water Program's role in recycled water into the Water Board structure is expected to enhance coordination and facilitate water recycling. Public health recommendations under the Water Code could more seamlessly be integrated into Water Board permits. The public health standards-setting for recycled water would continue with existing staff and would be consolidated into the State Water Board's existing recycled water activities. In addition, the State is already looking ahead to direct potable reuse. The State Water Board would include drinking water considerations in wastewater treatment for eventual direct potable reuse, including the following:
  - Possible development of general permits by Division of Drinking Water
  - Potential benefits of co-locating for eventual direct potable reuse projects (if authorized by statute):
    - Single Operator program
    - Single permit (issued by Division of Drinking Water)
- Having a single agency for water quality would ensure the public knew which agency to hold accountable for water quality concerns and would further heighten the Water Boards' responsibilities to regulate discharges of waste that affect drinking water quality.

### **Additional Legislative Action**

- In order to provide expanded flexibility and administrative effectiveness in co-managing the State Revolving Funds (SRFs), the Administration will propose changes (1) to better align the state law that

governs the Drinking Water SRF with the state law governing the Clean Water SRF, and (2) to allow guidance for implementing these voluntary financial assistance programs to be accomplished through the State Water Board's policy handbook process (which gathers public input both in writing and orally at Board Meetings), rather than through the regulatory process.

(1) The state statutory Drinking Water SRF provisions include:

- Interest rates are locked in at ½ the General Obligation (GO) bond rate; program may not reduce
- Priority-setting language more prescriptive than federally required
- Program must consider applicants' efforts to secure other sources of funding
- Extensive restrictions on applications and on program's ability to loan funds
- General Fund loan language that could hamper the continued receipt of federal capitalization grants.

(2) The State Water Board would consider, after public comment and consideration at a Board Meeting, which Drinking Water SRF regulatory provisions should be retained in a Drinking Water SRF policy handbook. The Drinking Water SRF regulations include:

- Program must invite applicants, who then must submit statement of intent and complete application by a certain date
  - Zero percent interest rate loans for "local match" applicants is limited to projects under \$5 million
  - Amounts of source water protection loans are limited
  - Financing for planning is limited
  - Ability to refinance is limited
  - Program's ability to fund projects that are ready-to-proceed is further limited beyond federal restrictions
  - Late penalties on loan repayments are high
- The Administration will consider any Task Force and Public Meeting recommendations regarding additional legislative actions that the Administration may want to propose.