

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JUNE 17, 2014**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO RESCIND RESOLUTION NO. 2012-0053 AND TO ALLOCATE \$2,000,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO PROVIDE INTERIM REPLACEMENT DRINKING WATER TO DISADVANTAGED COMMUNITIES

DISCUSSION

On October 16, 2012, the State Water Resources Control Board (State Water Board) adopted [Resolution No. 2012-0053](#), which allocated \$2,000,000 from the CAA to the California Department of Public Health (CDPH) to provide interim replacement drinking water to severely disadvantaged communities. Because CDPH matched the State Water Board's allocation with Proposition 84 funds available for emergency drinking water (see Public Resources Code section 75021), the combined \$4,000,000 allocation was subject to CDPH's "Section 75021 Emergency Grant Criteria" for "Part 1" public health emergencies. Eligibility was consequently limited to public water systems that a) serve severely disadvantaged communities, b) lack the technical or financial capacity to deliver water that meets primary maximum contaminant levels (MCLs) to their service areas, c) have submitted a "pre-application" for funding of a project to address the public health emergency, and d) have had that project ranked on CDPH's project priority list. Funding was limited to \$50,000 per public water system for the duration of the public health emergency. Bottled water funding was limited to \$30 per month per service connection and was not to continue for more than three years.

In administering the interim replacement drinking water funds in partnership with CDPH, DFA staff recognized that the Section 75021 Emergency Grant Criteria severely limited the range of options in allocating the available funding to otherwise CAA-eligible communities. Many small disadvantaged communities are not served by public water systems but rather rely on state and local small systems (i.e., 14 or fewer service connections), which are ineligible both for CDPH's planning funds and for CDPH's project priority list. Furthermore, the funding limit of \$50,000 per project (or \$30 per month per service connection) may not adequately cover communities' interim drinking water supply needs. Lastly, there are a number of water systems that are in need of interim emergency drinking water but do not meet the criteria for being severely disadvantaged.

To date, only about \$125,000 has been disbursed to eligible communities. Therefore, DFA staff recommends that the State Water Board rescind [Resolution No. 2012-0053](#). DFA staff recommends that the State Water Board instead allocate \$2,000,000 from the CAA to be administered by DFA for the provision of interim replacement drinking water to disadvantaged communities whose drinking water supply is affected by a waste. The proposed new allocation will not be subject to CDPH's Section 75021 Emergency Grant Criteria but will be consistent both with the permissible uses of the CAA and with the purposes of the prior resolution.

The CAA funds allocated under the proposed resolution would be available to those water systems, including state and local small water systems, whose existing water supply is affected by a waste, as defined in section 13050 of the Water Code. As further detailed in section 13442

of the Water Code, entities that could apply for this CAA funding for affected disadvantaged communities include public agencies, tribal governments, and not-for-profit organizations. Also because of the Water Code sections governing uses of the CAA, naturally occurring contaminants cannot be addressed with this funding.

The State Water Board is taking other actions to assist with providing an interim source of safe drinking water. In April 2014, the State Water Board allocated \$4 million in funding (appropriated by section 19 of Senate Bill 103 (Stats. 2014, ch. 2) [adding Item 3940-002-0679 to Section 2.00 of the Budget Act of 2013]) to provide interim emergency drinking water to disadvantaged communities with drinking water supplies that are contaminated by waste or by naturally occurring substances. The State Water Board has developed an extensive outreach strategy and is currently coordinating with the Regional Water Quality Control Boards (Regional Water Boards), CDPH district offices, the Office of Emergency Services (OES), and other stakeholders (e.g., environmental justice groups, community assistance groups, etc.) to identify those disadvantaged communities that are most at-risk and would benefit from financial assistance, and to provide funding in the most expeditious manner possible. The State Water Board is also coordinating resources and assistance efforts with other State and Federal entities that provide funding for interim emergency drinking water supplies.

The requested allocation to set aside funding from the CAA is consistent with the purposes of Water Code section 13442. Section 13442 provides that the State Water Board may order monies to be paid from the CAA to a public agency, a tribal government that is a disadvantaged community, or a not-for-profit organization serving a disadvantaged community, all of which must meet other specified statutory criteria, to assist in cleaning up a waste or abating the effects of a waste on waters of the state.

This Project meets the following CAA program preferences:

- Preference #1: Emergency Cleanup Projects – Public Safety.
- Preference # 2: Projects that address Disadvantaged Communities Environmental Justice infrastructure needs.

POLICY ISSUE

Should the State Water Board:

1. Rescind [Resolution No. 2012-0053](#), except that the State Water Board shall honor its existing financial commitments and agreements entered into pursuant to Resolution No. 2012-0053 to provide interim replacement drinking water to severely disadvantaged communities?
2. Allocate \$2,000,000 from the CAA to be administered by the DFA for the provision of interim replacement drinking water to disadvantaged communities whose drinking water supply is affected by a waste, as defined by Water Code, section 13050, subdivision (d)?
3. Authorize the Deputy Director of the DFA to approve or deny replacement drinking water funding requests, consistent with Policy Issue No. 2, for \$150,000 or less?
4. Authorize the Executive Director to approve or deny replacement drinking water funding requests, consistent with Policy Issue No. 2, including but not limited to funding requests for more than \$150,000?

5. Authorize the Deputy Director of the DFA to execute agreements and amendments to disburse funds approved pursuant to Policy Issue Nos. 3 or 4, and to perform all acts and to do all things necessary and convenient to implement such agreements and amendments?

FISCAL IMPACT

Only about \$125,000 has been committed to date from the funds allocated by [Resolution No. 2012-0053](#). Upon the rescission of Resolution No. 2012-0053, any uncommitted funds will revert back to the CAA. Therefore, the allocation of \$2,000,000 proposed in this item will have a net fiscal impact of only approximately \$125,000. The current uncommitted CAA balance is estimated to be no less than \$4 million.

REGIONAL BOARD IMPACT

Yes. The Regional Water Boards (and CDPH district offices) will assist in coordinating with impacted communities that are potentially eligible for interim replacement drinking water funding.

HUMAN RIGHT TO WATER ANALYSIS

Staff has considered section 106.3 of the Water Code (added by Assembly Bill 685 (Stats. 2012, ch. 524)) and has completed the Human Right to Water analysis. This proposed reallocation of funds supports the Human Right to Water Bill in that it will provide safe interim drinking water to disadvantaged communities.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

<p>State Water Board action on this item will assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.</p>

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

RESCINDING RESOLUTION NO. 2012-0053 AND ALLOCATING \$2,000,000 FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO PROVIDE INTERIM REPLACEMENT DRINKING WATER TO DISADVANTAGED COMMUNITIES

WHEREAS:

1. On October 16, 2012, the State Water Resources Control Board (State Water Board) adopted [Resolution No. 2012-0053](#), which allocated \$2,000,000 to the California Department of Public Health (CDPH) to provide interim replacement drinking water to severely disadvantaged communities;
2. Because CDPH matched the State Water Board's allocation with specific emergency drinking water funds authorized by Proposition 84 (Public Resources Code, § 75021), Resolution No. 2012-0053 incorporated funding restrictions contained in CDPH's "Section 75021 Emergency Grant Criteria," which severely limit the State Water Board's ability to fund replacement drinking water projects in certain disadvantaged communities that would otherwise be eligible for CAA funding;
3. Entities eligible for CAA funding include public agencies, tribal governments that are disadvantaged communities, and not-for-profit organizations that serve disadvantaged communities, provided that such entities meet other applicable statutory criteria and have the authority to clean up a waste or abate the effects of a waste; and
4. It is the intent of the State Water Board to provide interim replacement drinking water to eligible affected disadvantaged communities in an expedient manner.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Rescinds Resolution No. 2012-0053, except that the State Water Board shall honor its existing financial commitments and agreements entered into pursuant to Resolution No. 2012-0053 to provide interim replacement drinking water to severely disadvantaged communities;
2. Allocates \$2,000,000 from the CAA to be administered by the Division of Financial Assistance for the provision of interim replacement drinking water to disadvantaged communities whose drinking water supply is affected by a waste, as defined by Water Code, section 13050, subdivision (d);
3. Authorizes the Deputy Director of the DFA to approve or deny replacement drinking water funding requests, consistent with Resolved No. 2, for \$150,000 or less;
4. Authorizes the Executive Director to approve or deny replacement drinking water funding requests, consistent with Resolved No. 2, including but not limited to funding requests for more than \$150,000; and

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5. Authorizes the Deputy Director of the DFA to execute agreements and amendments to disburse funds approved pursuant to Resolved Nos. 3 or 4, and to perform all acts and to do all things necessary and convenient to implement such agreements and amendments.

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 Resources Control Board held on June 17, 2014.

Jeanine Townsend
Clerk to the Board