

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JULY 19, 2016**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO DELEGATE AUTHORITY TO ADMINISTER CLEANUP AND ABATEMENT ACCOUNT (CAA) DROUGHT-RELATED EMERGENCY DRINKING WATER FUNDING TO INCLUDE FUNDS APPROPRIATED BY THE BUDGET ACT OF 2016 AND AUTHORIZE UP TO \$4 MILLION FROM THE CAA TO CONTINUE FUNDING DISADVANTAGED COMMUNITIES WITH CONTAMINATED DRINKING WATER SUPPLIES

DISCUSSION

Due to severe and persistent drought conditions in the State of California (State), the Governor issued a “Proclamation of a State of Emergency” on January 17, 2014; a “Proclamation of a Continued State of Emergency” on April 25, 2014; and Executive Orders B-26-14, B-28-14, B-26-15, B-29-15, and B-37-16.

In 2015, Assembly Bill (AB) 91 (Stats. 2015, ch. 1) added Item 3940-101-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$15 million from the CAA to the State Water Resources Control Board (State Water Board) to “address drought-related drinking water emergencies or threatened emergencies, without regard to whether the need for emergency drinking water is as a result of the discharge of waste.” AB 91 also added Item 3940-102-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$4 million from the CAA to the State Water Board to “provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions.” In total, there was \$19 million appropriated from the CAA under AB 91 for projects that address drinking water emergencies. This funding had an encumbrance deadline of June 30, 2016.

In addition, AB 92 (Stats. 2015, ch. 2) amended section 13442 of the Water Code, which addresses eligibility requirements for CAA funds. Eligible entities include public agencies; and tribal governments, not-for-profit organizations, and community water systems serving disadvantaged communities. Amendments to section 13442 also: (1) allow funds to be spent from the CAA on urgent drinking water needs, even if the need is not related to a discharge of waste; (2) exempt eligible entities from state contracting and procurement requirements to the extent necessary to take immediate action to protect public health and safety; and (3) allow the State Water Board to develop guidelines that are exempt from the California Administrative Procedure Act’s requirements for administrative regulations and rulemaking (Gov. Code, tit. 2, div. 3, pt. 1, ch. 3.5 [§ 11340 et seq.]).

On May 19, 2015, the State Water Board approved [Resolution No. 2015-0035](#), which adopted the Drinking Water Emergency Funding Guidelines (Guidelines) and delegated authority for administering the funding appropriated by AB 91.

The 2016 Budget Act, Senate Bill (SB) 826, appropriated \$15 million from the CAA to continue addressing drought-related drinking water emergencies and threatened emergencies within the state. The currently adopted delegations of authority and Guidelines do not address this funding appropriation.

Furthermore, the drinking water emergency funding appropriated under the Budget Act of 2016 is for addressing only drought-related emergencies. As part of the proposed resolution, staff recommends that the State Water Board authorize up to \$4 million from the CAA to continue, as it had for the \$4 million appropriated in SB 103 (Stats. 2014, ch. 2) and AB 91, to provide emergency drinking water funding to disadvantaged communities that have contaminated drinking water supplies. As with the prior appropriations, staff proposes that such funding may be, but need not be, used for addressing drought-related drinking water contamination.

In order to continue to quickly react to emergency situations and fund projects with the new \$15 million drought-related appropriation and the proposed additional \$4 million contamination-related allocation, staff recommends that the State Water Board extend the same approach for funding criteria, procedures, and delegations as used in Resolution No. 2015-0035, including the Guidelines, to these two funding sources. Staff plans to prepare and present substantive revisions to the Guidelines for the State Water Board's consideration at an upcoming meeting.

POLICY ISSUE

Should the State Water Board:

1. Authorize the allocation of up to \$4 million from the CAA to continue to provide grant funding to disadvantaged communities with contaminated drinking water supplies?
2. Authorize the Executive Director, Deputy Director of the Division of Financial Assistance (Division), or designee to approve or deny funding requests for \$500,000 or less, not to exceed the \$4 million CAA allocation, to provide emergency drinking water funding to disadvantaged communities with contaminated drinking water supplies?
3. Authorize the Executive Director, Deputy Director of the Division, or designee to approve or deny drought-related emergency drinking water funding requests for \$500,000 or less, consistent with Item 3940-101-0679 of Section 2.0 of the Budget Act of 2016?
4. Authorize the Executive Director, Deputy Director of the Division, or designee to execute agreements and amendments to disburse funds approved pursuant to Nos. 3 and 4, and to perform all acts and to do all things necessary and convenient to implement such agreements?
5. Direct the continued use of the criteria and procedures in the Funding Guidelines approved in Resolution No. 2015-0035 to administer drought-related emergency drinking water funding requests for CAA funds appropriated by SB 826 and the \$4 million allocation from the CAA in this item?

FISCAL IMPACT

As of March 31, 2016, the uncommitted CAA balance is estimated to be \$7.7 million, which is sufficient for the requested \$4 million allocation for disadvantaged communities with contaminated water supplies.

The Budget Act of 2016 appropriated \$15 million from the CAA for addressing drought-related drinking water emergencies or threatened emergencies. There are not currently sufficient funds in the CAA to fully support this expenditure when all prior commitments to other projects are considered. However, not all prior approved projects will draw on CAA funds during the next fiscal year so on a cash basis funding should be available. In the event there is a shortage of funds, the Budget Act of 2016 authorized the State Water Board to borrow funds from other special funds to cover the expenditures.

REGIONAL BOARD IMPACT

Yes. The Division of Drinking Water and Regional Water Quality Control Boards will assist in coordinating with impacted communities that are potentially eligible for emergency drinking water funding.

HUMAN RIGHT TO WATER

The actions proposed under this item are consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes (human right to water; Water Code section 106.3). The proposed actions are also consistent with [Resolution 2016-0010](#), in which the State Water Board adopted the human right to water as a core value and top priority. As directed by the State Water Board in Resolution 2016-0010, staff has determined that the proposed actions support the human right to water by continuing to provide financial assistance to communities dealing with drought related emergencies or threatened emergencies or contaminated water supplies.

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>

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

DELEGATING AUTHORITY TO ADMINISTER CLEANUP AND ABATEMENT ACCOUNT (CAA) DROUGHT-RELATED EMERGENCY DRINKING WATER FUNDS APPROPRIATED BY THE BUDGET ACT OF 2016 AND ALLOCATING UP TO \$4 MILLION FROM THE CAA TO BE ADMINISTERED TO CONTINUE EMERGENCY FUNDING FOR DISADVANTAGED COMMUNITIES WITH CONTAMINATED DRINKING WATER SUPPLIES

WHEREAS:

1. Due to severe and persistent drought conditions in the State of California (State), the Governor issued a "Proclamation of a State of Emergency" on January 17, 2014, and a "Proclamation of a Continued State of Emergency" on April 25, 2014; and Executive Orders B-26-14, B-28-14, B-26-15, B-29-15, and B-37-16;
2. In Executive Order B-26-14, the Governor directed the State Water Resources Control Board (State Water Board), among other agencies, to assist local agencies in identifying and addressing acute drinking water shortages in domestic water supplies;
3. Assembly Bill (AB) 91 (Stats. 2015, ch. 1) added Item 3940-101-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$15 million from the State Water Pollution Cleanup and Abatement Account (CAA) to the State Water Board to "address drought-related drinking water emergencies or threatened emergencies, without regard to whether the need for emergency drinking water is as a result of the discharge of waste";
4. AB 91 also added Item 3940-102-0679 to Section 2.00 of the Budget Act of 2014 to appropriate \$4 million from the CAA to the State Water Board to "provide interim emergency drinking water to disadvantaged communities with contaminated drinking water supplies, without regard to the source of contamination, including those contaminated drinking water supplies exacerbated by drought conditions";
5. The appropriations in AB 91 had an encumbrance deadline of June 30, 2016;
6. On May 19, 2015, the State Water Board adopted [Resolution No. 2015-0035](#), which delegated authority and adopted the Drinking Water Emergency Funding Guidelines (Guidelines) for administering the emergency drinking water funding appropriated by AB 91;
7. Senate Bill (SB) 826 (Stats. 2016, ch. 23), the Budget Act of 2016, appropriated \$15 million to continue addressing drought-related drinking water emergencies or threatened emergencies within the State (Sec. 2.00, Item 3940-101-0679);
8. Funding for disadvantaged communities that are experiencing contamination-related, but not drought-related, drinking water emergencies is not included in the Budget Act of 2016;
9. The delegations of authority and Guidelines adopted by the State Water Board in Resolution No. 2015-0035 do not address the SB 826 funding appropriation;

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10. It is the intent of the State Water Board to continue to provide interim emergency drinking water to affected disadvantaged communities and to address drought-related drinking water emergencies and threatened emergencies in an expedient manner.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the allocation of up to \$4 million from the CAA to continue to provide emergency drinking water funding to disadvantaged communities with contaminated drinking water supplies;
2. Authorizes the Executive Director, Deputy Director of the Division of Financial Assistance (Division), or designee to approve or deny funding requests for \$500,000 or less, not to exceed the \$4 million CAA allocation, to provide emergency drinking water funding to disadvantaged communities with contaminated drinking water supplies;
3. Authorizes the Executive Director, Deputy Director of the Division, or designee to approve or deny drought-related emergency drinking water funding requests for \$500,000 or less, consistent with Item 3940-101-0679 of Section 2.0 of the Budget Act of 2016;
4. Authorizes the Executive Director, Deputy Director of the Division, or designee to execute agreements and amendments to disburse funds approved pursuant to Resolved Nos. 2 and 3, and to perform all acts and to do all things necessary and convenient to implement such agreements; and
5. Directs State Water Board staff to administer the drinking water funds addressed in Resolved Nos. 2 and 3 in a manner consistent with the Guidelines approved in Resolution No. 2015-0035.

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 July 19, 2016.

Jeanine Townsend
Clerk to the Board