



June 30, 2015

Uyen Trinh-Le  
SDWSRF Program  
P.O. Box 997377  
Sacramento, CA 95899-7377  
Comments Submitted Electronically

Re: Comment Letter on 2015- 2016 Safe Drinking Water State Revolving Fund program (DWSRF) draft Intended Use Plan (IUP)

Dear Uyen Trinh-Le,

The above listed environmental and environmental justice organizations are dedicated to securing a sustainable and equitable water future for California. Many of the organizations listed work directly in or on behalf of communities most adversely impacted by the current drought. Our joint comments call for the adoption and implementation of the principles and practices of integrated water management and drinking water resources to benefit public health and the environment, and improve the quality of life for all Californians. In order to accomplish this, we believe the Drinking Water State Revolving Fund, Intended Use Plan (IUP), as well as all Proposition 1 (Prop 1) guidelines, must 1) implement the Human Right to Water Bill within each funding program by identifying how assistance can be targeted for Californians who lack access to safe and affordable water for basic drinking and sanitation needs and; 2) promote integrated water management by defining and supporting the concept of multiple benefit projects.

Prop 1 makes investments of \$260 million to address the most serious and long-standing small community drinking water needs. Combined with tens of millions more from the DWSRF, this represents the single largest investment for drinking water projects in decades; yet it still accounts for just a fraction of the state's unmet needs. As such, we intend to continue to engage in the development of the IUP funding programs and alongside communities to ensure funding opportunities for the most vulnerable communities are maximized and are effective in addressing long standing water access and quality issues.

Emergency drought legislation and the fiscal year 2015/16 State Budget appropriated nearly all the remaining drinking water resource from Prop 1 and stipulated that this funding be spent within three years. If this is to transpire, it is imperative that during this time, most if not all of the 384 public water systems identified (but not

yet publicly listed) by the State Water Resources Control Board (SWB) as lacking safe drinking water are returned to a compliant state or are receiving technical assistance to move towards securing a long-term solution. Further, it is imperative that the SWB conduct research to identify all communities in the state of California that lack safe, clean, affordable and reliable drinking water and develop a comprehensive publicly available database. The next few years present an incredible opportunity to invest up to a half a billion dollars in public drinking water resources through Prop 1 and DWSRF and we strongly support the recommendations in the draft DWSRF IUP with the following amendments and additions.

We appreciate the staff's efforts in developing a straightforward document in which DAC drinking water issues are prioritized. Still, we offer the following comments and recommendations focused on removing ongoing barriers in accessing funding for very small DACs, private well communities and schools that lack access to safe drinking water.

### **Document Needs More Proposition 1 Specificity**

We appreciate the thoroughness of this document and the DWSRF Policy adopted by the Board in December. However, Proposition 1 is NOT the DWSRF; it has both different and fewer limitations. Yet several of the unique opportunities it provides to disadvantaged communities, small water systems, state smalls and residents reliant on domestic wells are not articulated in this document. Among those key requirements and opportunities include:

1. Chapter 5 states that "Eligible recipients serve disadvantaged communities and are public water systems or public agencies." It's not clear that the SWB has the authority to fund projects in "economically distressed areas" that do not also qualify as disadvantaged communities. This is a concern for us because the Board's shovel-ready funding policy may limit the ability of disadvantaged communities to access funding if forced to compete with wealthier areas.
2. "Eligible expenses may include initial operation and maintenance costs for systems serving disadvantaged communities." "Initial operation and maintenance costs are eligible to receive funding pursuant to this section for a period not to exceed two years." Prop 1 provides an invaluable opportunity to address affordability barriers by ensuring that some funding is available to support operations and maintenance over a short term, potentially transition period. This an opportunity unique to Prop 1 and not available under the DWSRF. Unfortunately, use of Prop 1 funds for operations and maintenance is not adequately explained in the IUP except with regards to developing a Regional Operations and Maintenance Cooperative Fund that is not expensive enough and lacks the specificity necessary to address this very serious issue. Given all that the Board has learned with respect to affordability barriers presented by high operations and maintenance costs, this IUP should include a more detailed objective and program focused on addressing operations and maintenance as an eligible costs.
3. "Priority shall be given to projects that provide shared solutions for multiple communities, at least one of which is a disadvantaged community that lacks safe, affordable drinking water and is served by a small community water system, state small water system, or a private well." The IUP makes no mention of state small water systems or private wells, even though the DWSRF can provide some funding through an extension of service project, and Proposition 1 encourages it. The IUP should articulate the availability of funds for service extensions or consolidations that serve state small water systems or private wells.
4. "Construction grants shall be limited to five million dollars (\$5,000,000) per project, except that the state board may set a limit of not more than twenty million dollars (\$20,000,000) for projects that provide regional benefits or are shared among multiple entities, at least one of which shall be a small disadvantaged community." The IUP identifies the \$5 million cap, but provides no process for expanding that cap for consolidation projects as specified. The IUP must include a process for accessing more funds for regional projects and incentives for undertaking such projects.

5. “Not more than 25 percent of a grant may be awarded in advance of actual expenditures.” Cash flow is a major problem for small water systems, and the slow pace of reimbursement requires them to either negotiate a bridge loan, or contract with entities that will allow late payment. The IUP should identify efforts by the SWB to address this cash flow challenge, including pre-payment.

To recap; we ask that the final IUP clarify the intent of the board to limit Prop 1 funding to projects serving disadvantaged communities; provide up to 2 years of operations and maintenance funding for DAC projects; clarify that projects that connect communities reliant on state small water systems and private wells to public water systems are eligible for funding; identify a greater resource commitment for consolidation projects; and investigate options for pre-paying some portion of the grant to address cash-flow issues.

## **COMMENTS ON INTRODUCTION**

### *Human Right to Water*

We strongly support adding Subsection 106.3(b), requiring all relevant state agencies, including the SWB, to consider the Human Right to Water when “revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water” to the DWSRF IUP.

Additionally, we encourage staff to prioritize multiple benefit projects in order to maximize limited resources. Multiple benefit projects promote integrated watershed management, and also leverage limited taxpayer dollars to deliver greater value to California taxpayers and support greater environmental and economic health. Multiple and different types of projects combine to maximize water supply and quality, public health and safety, environmental protection, economic stability, and employment opportunities in impacted communities. An example of a successful multi benefit drinking water project would be combined investment in a treatment facility for a community that lacks safe drinking water and water meters to support water conservation measures.

### *Safe Drinking Water Small Community Emergency Grant (SDWSCEG) Fund*

Health and Safety Code Section 116760.46 created the SDWSCEG Fund for the purpose of providing emergency grant funding to Public Water Systems (PWS) that serve small, disadvantaged and severely disadvantaged communities. We are supportive of additional emergency resources and program funding for DACs, particularly those adversely impacted by the drought, which include private well and state small communities. We encourage staff, in the development of the program, to work with other water resource agencies such as the Department of Water Resources (DWR) and the California Energy Commission (CEC) to maximize the state's response to drought related emergencies.

### *Legal Entity Formation Assistance (LEFA) Program*

The LEFA program was established in 2013 to assist communities not currently served by a PWS and have domestic wells or surface water sources with violation(s) of primary drinking water standards. While well intended, LEFA has only resulted in one successful project to date. At this time, with the new authorities on consolidation of systems granted to the SWB as a result of the State Budget Consolidation Bill 825, it seems more appropriate to determine how best to encourage LEFA eligible projects (20 identified remaining communities) to pursue assistance in addressing legal formation through the state's new authorities and Prop 1 technical assistance resources.

### *Set-Aside Funding*

We appreciate the Board's interest in ensuring that DWSRF funds are used on actual projects. However, the set-asides allowed in the DWSRF provide important assistance to communities attempting to access safe and affordable drinking water. We support the proposal to use set-asides to build technical, managerial, and financial (TMF) capacity in DACs, particularly to help vulnerable communities qualify for the DWSRF.

Additionally, we recommend that the Board allocate a portion of the available Local Assistance set-aside funding to develop data on the number of communities that lack access to safe, affordable, accessible and reliable drinking water; and to target resources to schools that lack safe drinking water. Through our work in communities and at the state level, we recognize that the state and local entities still struggle to collect and provide accurate and comprehensive information regarding small PWSs, particularly those systems with fewer than 200 service connections, and private wells and state smalls that are not meeting drinking water standards and/or have experienced loss of water due to the drought. We suggest adding an objective of developing a clear and comprehensive analysis of the Human Right to Water to the SRF IUP *Short Term Goals*, which is more thoroughly explained in our *Concluding Recommendations* below. .

## COMMENTS ON DWSRF GOALS

### A. Short Term Goals

3. *Increase public transparency and communication by posting application status reports online.* We strongly support this goal and support the recommendation that information related to the drinking water program be transparent. To further this objective, we suggest that such transparency be extended to activities impacting drinking water quality including point and non-point discharges and groundwater pumping. Further, in order to accurately account for the number and cost of projects pending and resolved, it is imperative that projects unable to reach a resolution continue to be accounted for and tracked in some way. We recommend staff develop an annual report that reports on all projects pending and resolved, and also notes the project application and resolution date.

### 4. *Explore the feasibility of a Regional Operations and Maintenance Cooperative Fund.*

We strongly support a program to help small DACs cover their operation and maintenance costs. Under Prop 1, O&M is an allowable use and this first of its kind funding should be maximized and provided to vulnerable communities in need. Permanent funding for this activity continues to elude communities and while we support the use of Prop 1 resources to fund this program, but also call on the SWB to explore a permanent other means of funding for O&M. Permanent funding could come from a variety of other sources including:

- Fees and/or enforcement action to require parties responsible for contamination to contribute toward providing safe drinking water.
- A contamination discharger fee
- A fertilizer fee at the rate of state sales to address nitrate contamination
- A statewide public goods charge on water use. (Lower income water users should not be subject to such a charge).

There is insufficient information regarding this program at this point but we look forward to responding to further information regarding the structure and authorities anticipated in these planning efforts as it becomes available. We are extremely interested in working with the State Board to develop this program as it could potentially offer a means of securing safe, affordable and reliable drinking water in disadvantaged communities.

### 8. *Utilize Spanish translation services*

We strongly support translation services in providing technical assistance to DACs and encourage the SWB to hire technical staff that speak Spanish and can interact directly with impacted communities.

### 11. *Provide at least 15 percent (15%) of all DWSRF funds to PWSs serving fewer than 10,000 people to the extent such projects are ready to proceed to financing agreement.*

Previously the State's drinking water program heavily favored funding projects that were *ready to proceed*, which is one of the reasons why so many small DAC projects were bypassed for state resources, time after time. Small system funding must be used to get projects on the path toward permanent solutions. We believe using 15% of

DWSRF funding for small communities, should be the floor, not the ceiling and this funding should be set-aside for small communities.

*13. Position the DWSRF program to facilitate drought relief through expedited funding efforts to help ensure eligible PWSs, experiencing drought related drinking water emergencies or imminent threat of drought related drinking water emergencies, achieve permanent solutions.*

The drought has disproportionately impacted small community drinking water systems and communities. While some emergency drought funding was committed through emergency legislative actions and in the 2015/16 State Budget, these funds are limited and insufficient in meeting all the needs of drought impacted communities, especially those that have experienced complete domestic water loss and elevated levels of drinking water contamination due to diminished water supplies. We believe communities receiving emergency resources should be prioritized for long-term funding. These communities are prime candidates for the SWB's new authority to mandate consolidations of water systems. Also, we encourage continued efforts to coordinate and collaborate with other state water resource agencies (DWR and the Office of Emergency Services), which are also providing drought resources. Interagency collaboration to address the needs of private well communities continues to be a struggle for the state, and the growing problem of domestic well failures makes this collaboration even more critical.

*15. Continue to provide DWSRF funding to PWSs when possible for the installation of new water meters in order to promote the DWSRF Green Project Reserve.*

Small rural communities that depend on groundwater as their primary source of drinking water are experiencing historical drops in their water supply due to the drought and unsustainable water use management practices primarily by the agricultural water users. We work with communities that have been denied funding for water meters several times, all while their water supplies have been reduced by drought. Meters for qualified DACs, especially those that have experienced severe drops in their water supply should be prioritized. For those that are interested and able to install meters, there must be grant funding and technical assistance to support meter installations. Still, while we believe water conservation measures should be explored as a means to secure sustainable water supplies in rural areas we caution on the over reliance of meters to accomplish this in DACs. While meters might be good for some communities, others are already struggling with limited water supplies and others have already implemented conservation measures.

The Board should consider expanding its use the Green Project Reserve to provide water conservation assistance to communities that lack access to a water conservation program. For many of these communities, the cost of safe drinking water will mean a dramatic increase in water rates; however, small water systems lack the capacity to administer water conservation programs and therefore receive little or no funding to improve their water use efficiency. We urge the Water Board to provide funding to:

- detect and repair leaks
- install high-efficiency toilets
- provide low-flow showerheads and faucet aerators
- install drip irrigation systems
- install graywater or rainwater capture systems.

In many cases, water use can be cut significantly and water access and affordability improved by these basic actions that are accepted norms for larger systems, but are out of reach for small systems.

*17. Using a dedicated unit of drinking water technical staff, work closely with SWSs and 18. Reduce instances of noncompliance with drinking water standards and requirements by providing technical assistance to SWSs that have significant SDWA violations.*

An effective, targeted and responsive technical assistance program is key to advancing the needs of non-compliant SWSs. See our comments below on the role of the Office of Sustainable Water Solutions.

## ***B. Long Term Goals***

*4. Improve Management of Drinking Water Spatial Data / 5. Reduce Cost of Drinking Water/ 6. Acknowledge and Address Household Affordability Constraints:*

We strongly agree with the SWB's recommendation to use the DWSRF set-aside funds, and Prop 1 drinking water funds to help communities achieve an affordable water rate. Still, in order to do this, much more information on community needs and data on the number of communities, including schools that lack the Human Right to Water in California is necessary. Further, we recommend the SWB work towards developing a permanent source of funding that is broadly available to address the needs of communities that are unable to afford their water rate.

First, we believe that in order to effectively target resources, the State Board must have a clear picture of the degree and extent of drinking water challenges throughout California. There is no comprehensive data regarding access to safe, clean, affordable drinking water in California. Further, an analysis of the obstacles facing PWSs, state smalls, and domestic wells is needed. As such, we believe that achieving the short and long term goals for the program are predicated on developing and improving evaluation and tracking systems of Californians still unable to enjoy the Human Right to Water. These analyses and tracking methods must include schools, day care centers and communities not served by PWSs. This information should be maintained, updated, and publicly available. Such data should include:

- The location of PWSs, state smalls, and communities on individual wells;
- PWSs whose drinking water does not meet water quality standards;
- State small water systems and domestic wells whose drinking water does not meet water quality standards;
  - Until such time that comprehensive data on state smalls and domestic wells exists, the SWB should supplement its current information with data developed through CalEPA's CalEnviroScreen to identify areas with contaminated groundwater and populations in those areas that are not currently served by PWSs.
- Drinking water and wastewater service rates and the affordability thereof;
- Small DACs that lack TMF capacity to sustainably address drinking water contamination or otherwise provide reliable and affordable water to customers;
- Systems with a single well and are at a greater vulnerability for contamination or water depletion;
- Communities without adequate wastewater systems and/or where individual septic systems are known to be failing;
- Areas where opportunities for regional planning exist, based on indicators such as geographic proximity to communities facing similar obstacles to accessing safe and affordable drinking water and proximity to systems that could consolidate the struggling systems.
- The location of schools and day care centers without safe drinking water

An estimated 25 percent of schools in California lack adequate drinking water facilities for students at meal times every day, despite state and federal laws that require it. As dramatic as these statistics are given the importance of clean drinking water for children, these numbers are likely an underestimate. We recommend that the SWB begin to accurately track schools that lack safe drinking water and allocate resources through Prop 1 and the DWSRF to deliver safe drinking water to students including through installation of fountains or water bottle filling stations to deliver reliable water to students.

## **COMMENTS ON IV. *CRITERIA AND METHOD FOR DISTRIBUTION OF FUNDS***

### *A. Distribution of Funds Analysis*

The IUP identifies Proposition 1 funding as providing the required state match for the federal capitalization grant. However Proposition 1 establishes clear priorities for this funding. “Priority shall be given to projects that serve disadvantaged communities and severely disadvantaged communities, and to projects that address public health hazards.” The IUP merely states that this funding will be used to provide zero interest loans. We would argue that Proposition 1 requires that this funding be earmarked as noted in the Proposition 1 citations above, and that it be in addition to the 20-30% of the capitalization grant earmarked for disadvantaged community subsidies. Additionally, we find no commitment in the document for how Proposition 1 funding will be allocated.

### *B. Comprehensive List*

We appreciate that the Project Priority List (PPL) created by the Department of Public Health was outdated, unwieldy and inaccurate and that, accordingly the SWB wishes to initiate a fresh list. Unfortunately, creating a new list - as well as removing non-responsive water systems from the list - also obfuscates the actual number of systems that require assistance and the length of time that they’ve been waiting. The PPL, while a flawed tool, has been the only public place in which to find information about at-risk systems. The Small Water System list is a potential replacement, but is by definition limited by system size, and in addition has not been publicly updated since it was originally posted in late 2012. This deficiency reinforces the importance of creating a comprehensive, dynamic list of Californians that lack the Human Right to Water.

We also recommend that systems that have received a planning grant but have not yet applied for a construction grant, be included either in this list or a list of “Current Planning Projects”. These systems applied for assistance to address a problem and without a completed project, the problem has not yet been solved. Yet once that planning grant has been approved, the systems disappear from the Comprehensive list into some kind of private limbo. This is especially problematic for DACs since most DAC projects are planning projects. The State Board and stakeholders should be able to track the trajectory and ultimate success (or lack thereof) of planning grants to determine if they lead to construction projects. It is also important to track how long project completion takes, from planning initiation through completion. We think our recommended list of current Planning Projects should include the funding date of the projects and their estimated timelines for completion.

We also find this list difficult to read and navigate and would appreciate it being provided in an Excel or other sortable format so we could better sort the data to our needs.

### *C. Priority System*

We agree with the top ranking of immediate risk, DAC and consolidation projects. We encourage staff to also prioritize multiple benefit projects in order to maximize limited resources. Multiple benefit projects promote integrated watershed management, and also leverage limited taxpayer dollars delivering greater value to California taxpayers. Multiple and different types of projects combine to maximize water supply and quality, public health and safety, environmental protection, economic stability, and employment opportunities in impacted communities. An example of a successful multi benefit drinking water project would be one that funds a treatment facility or related infrastructure for a community that lacks safe drinking water and simultaneously funds water meters so that communities improve their water conservation measures, and provides funding to ensure that communities can implement basic conservation measures.

### *F. Small Water System Funding*

Office of Sustainable Water Solutions. The Office of Sustainable Water Solutions (OSWs) presents the framework to address small community water issues in a more systematic and comprehensive manner. The OSWS should develop efficiencies and modes of communication and collaboration that lead a specific amount of communities toward long-term sustainable projects. We encourage staff to set priorities, timelines, and performance measures to ensure these limited resources are reaching the most vulnerable communities and accomplishing the end goal of long-term safe and affordable drinking water and wastewater services. Prop 1 funding should prioritize issues in the most vulnerable communities and systems serving the most vulnerable populations, including schools, daycares, elder care centers, and health care centers.

The IUP currently provides little detail on the goals and objectives of the OSWS. It would be helpful for the final draft to identify short and long-term goals and objectives so we can begin to develop a reasonable understanding of staff and funding needs.

#### ***H. Consolidation Incentive Program***

We're disappointed with the passive nature of this section. With the signing of the state budget, new opportunities now exist to reduce vulnerability of small community water systems that are not independently sustainable. We strongly urge that the SWB incorporate those new opportunities into this plan, in particularly complying with the Prop 1 priority to encourage consolidations.

We recommend the following actions to encourage consolidation

- Provide technical and financial assistance necessary to prepare communities for consolidation or extension including funding for capital infrastructure needed to connect to neighboring systems
- Develop structures and systems to support and facilitate consolidation, including:
  - Regional analyses to identify where potential consolidation opportunities exist
  - Statewide standards and indicators that TA providers and engineers can draw on to assess consolidation opportunities
  - Independent review at the individual project level to ensure that there is adequate analysis of consolidation opportunities
  - Technical assistance for legal and administrative processes and costs associated with consolidation
  - Technical assistance for community outreach and engagement as well as facilitation service
- Maintain a comprehensive list and map of communities that could benefit from consolidation and service extension to facilitate State Board planning and local government planning

We look forward to working with the SWB to develop and implement this program

#### ***I. Fundable List***

We appreciate the inclusion of the 2015-2016 Fundable List, along with the breakdown of what is going to disadvantaged and severely disadvantaged communities. As we noted earlier, it would be helpful to receive this list in a sortable format so we could more easily find information that we consider a priority. We also would appreciate the inclusion of the final Fundable Lists from prior years so we can better understand whether the funding level committed to DACs at the beginning of the fiscal year represents the final funding total.

#### ***J. Project Removals***

We are uncomfortable with the proposal to remove projects from the list due to non-response for a single year. We believe a longer period of time must be granted to allow systems to determine their next steps. Additionally, we ask that the IUP include a list of systems and projects that were removed from the prior year's list, and identify what is being done to address the problem for which those systems were originally placed on the list. Similarly, the IUP should identify projects on the Comprehensive and Fundable Lists that were bypassed in the prior year and what is being done to address the reason for that bypass,

### **COMMENTS ON V. DWSRF and Prop 1 Financial Management**

#### ***B. DWSRF and Prop 1 Financial Terms***

##### ***6. Prop 1 Affordability and Additional Subsidy for Disadvantaged Communities***

We strongly disagree with the proposed funding limits for disadvantaged communities identified in Table 5. As we read this, the proposal requires disadvantaged communities to provide a funding match for their project when

their water rates are already unaffordable. This makes no sense. We ask that the SWB apply their affordability standards consistently.

We see that the term “economically distressed area” created in Proposition 1 has been applied here. Our organizations opposed this designation out of concern that it would siphon funding from severely disadvantaged communities, and we continue to have that concern, particularly in light of the SWB’s adherence to a shovel ready policy of funding allocation. We ask that the Board monitor projects applying for funding under this category and consider modifying the guidelines if more than 15% of funds in FY 2015/2016 are appropriated to these types of projects.

### ***C. Prop 1 Local Cost Share***

We must reiterate our objection to the proposal to limit the ability of DAC communities to access funding because of arbitrary local match requirements. We understand and share the interest of the Board in making funding go as far as possible, but we don’t understand why, having set an affordability standard (based on US EPA recommendations), the IUP funding match requirements ensure that it is *exceeded* for *all* disadvantaged community projects. We hope that we’re mis-reading the tables, in which case we’d ask that they be clarified in the final IUP. If we are not mistaken, then we implore the Board revise the IUP to ensure that projects funded result in affordable drinking water for the communities funded by the bond.

### ***D. Disbursements***

In addition to disbursement requirements, we ask the IUP contain commitments by the SWB to speedily *reimburse* systems who have submitted a complete claim; our suggestion is that reimbursements occur within 20 days.

### ***Comments on VI. Set-Aside Activities***

As we’ve stated throughout the document, we think the SWB should use funds from the Local Assistance Set-Aside to develop a comprehensive list of communities that lack the Human Right to Water. Such a list will better inform future resource allocation.

Thank you for providing us with an opportunity to comment in this plan. We look forward to working with you to make good projects happen.

Sincerely,

*Phoebe Seaton*, Co-Director, Leadership Counsel for Justice and Accountability

*Jennifer Clary*, Water Programs Manager, Clean Water Action

*Omar Carrillo*, Senior Policy Analyst, Community Water Center

*Colin Bailey*, Executive Director, Environmental Justice Coalition for Water

*Sara Aminzadeh*, Executive Director, California Coastkeeper Alliance

*Sarah Sikich*, Vice President, Heal the Bay

*Noe Paramo*, Legislative Advocate, California Rural Legal Assistance Foundation

*Liz Crosson*, Executive Director, Los Angeles Waterkeeper

*Becky Hayat*, Natural Resources Defense Council

*Jeff Odefey*, Director, Clean Water Supply Programs, American Rivers