

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

In 2011 the Governor signed AB 685, the Human Right to Water (HRTW) (Water Code Section 106.3). The legislation states that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” The law requires all relevant state agencies to consider the human right to water “when revising, adopting, or establishing policies, regulations, and grant criteria” relevant to achieving the human right to water. Statewide implementation of the HRTW is an administrative priority¹. HRTW applies to all new policies, regulations, and grant criteria.

This document provides direction specific to the administration of the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). This document focuses on implementing the HRTW law in the process of adopting grant criteria in the project solicitation and evaluation guidelines required by Proposition 1. The direction provided below is intended to supplement Proposition 1 and the HRTW legislation and does not supersede the law.

Which Fund Allocations Identified in Proposition 1 Does this Document Apply To?

In preparing funding guidelines for a Proposition 1 program, the first step is for the administering Agency to make a determination of the applicability of HRTW. It is important that the determination process be transparent and explicit in the guidelines adoption process.

Initial evaluation may begin with whether the HRTW legislation has a direct or indirect relationship with the HRTW. There is a direct relationship if the funding provides or could provide a direct benefit to advancing the HRTW (e.g., funding of drinking water treatment). There is an indirect benefit if funding provides or could improve conditions related to advancing the HRTW (e.g., cleaning up a contaminated aquifer). If the funding program has a direct or indirect relationship, then the Agency should follow the direction provided below to ensure the law is properly considered during the development of the grant criteria and project solicitation and evaluation of the guidelines

If there are no apparent direct or indirect relationships a secondary evaluation may be helpful to consider whether program funding could be structured to avoid impediments to achieving HRTW or to incentivize applicants to consider whether their project could provide any benefits toward advancing the HRTW. If there are no direct or indirect relationships, but there are opportunities to avoid impediments or encourage applicants to consider HRTW the Agency should consider the direction provided below and apply any elements deemed relevant to ensure that reasonable opportunities to advance HRTW are incorporated into the grant guidelines.

¹ California Water Action Plan

http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf (p. 15)

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

At the end of an initial assessment an Agency may determine that HRTW does not apply to the funding being distributed. The Agency should still make an explicit finding in adopting its guidelines stating that it has considered the HRTW legislation and indicating why the law does not apply.

Outreach and Public Participation in Developing Funding Guidelines

Agencies are required to conduct meetings and ensure the meaningful participation of affected communities and other stakeholders to inform responsive policies and guidelines. Proposition 1 mandates that, “prior to disbursing grants or loans, the state agency shall conduct three public meetings to consider public comments prior to finalizing the guidelines. One meeting shall be conducted at a location in Northern California, one meeting shall be conducted at a location in the Central Valley of California, and one meeting shall be conducted at a location in Southern California.” Agencies may need to go beyond these minimum requirements to ensure communities and individuals that might be impacted by the consideration of the HRTW have an opportunity to engage in the discussion of the funding guidelines.

Listed below are some basic public participation principles that should be considered when developing your public participation and outreach strategy. If public participation and environmental justice liaisons within the Agency exist, they should be consulted on appropriate methods of outreach for the affected communities.

To ensure successful and meaningful engagement, agencies are encouraged to consider the following basic public participation principles:

- Setting meetings
 - When arranging workshops, focus group, public and stakeholder meetings, consider the following:
 - Appropriate meeting times for impacted/interested communities
 - Avoid selecting dates that conflict with other community events
 - Locations & facility capacity (accessibility considerations)
 - Cultural and linguistic needs of the community
- Collaborating
 - Ensure that all the people and communities impacted, or who have a stake in the outcome of the project, are included in planning and decision making discussions.
 - Invite advisory groups and committees, environmental justice groups, tribal communities who may be impacted.
 - Ensure stakeholders have adequate time to comment during the comment review period

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

- Conducting Outreach
 - Determine if additional outreach needs to be conducted for specific areas such as in disadvantaged communities (DACs) and severely disadvantaged communities (SDACs)². If so, consider the methods best to reach those communities such as door-to-door outreach and holding meetings in local venues such as churches, schools, and community gathering places.
 - Be cognizant of community needs and if an advisory group or social justice group could aid in reaching your goals.
- Public Notice:
 - Consider the language needs of the community where signage and notifications are used.
 - Ensure meeting materials are appropriate for the audience and in appropriate languages.

DRAFT

² DAC is defined in Water Code Section 79505.5 and SDAC is defined in Public Resources Code Section 75005.

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

Content of Funding Guidelines

The funding guidelines developed by the Agency drive project selection and, therefore, provide the primary mechanism by which the goals of the HRTW law can be met. Below are suggestions on how to implement the HRTW into the guidelines.

- **Identification of Affected Communities**

To the extent known, the funding guidelines should identify areas in which communities do not have access to safe, clean, and affordable water for domestic uses. Identification of such communities in the funding guidelines will provide potential project proponents with greater clarity as to which areas will be more competitive for funding and assist the Agency in determining whether a project should be given preference during the project evaluation process.

- **Include Advisory Role for Community Representatives**

The Agency should consider requiring that a Community Advisory Group be established for any selected project whose purpose includes addressing the HRTW. The role of the Community Advisory Group would be to advise the Agency and project proponent in both the development of the grant or loan agreement and the implementation of the project. The purpose of the Community Advisory Group would be to ensure that the project proponents are considering the needs of the community and maximizing the project's potential to provide safe, clean, accessible, and affordable water for domestic use.

- **Provide Technical Assistance to Affected Communities**

Many communities that do not have access to safe, clean, and affordable water, also do not have the capacity to prepare competitive grants or understand the costs and benefits of options presented to them. If allowed by the Proposition, the Agency should consider providing technical assistance to the community by either providing funds for the community to hire independent technical consultants (i.e., a technical consultant who would not benefit from the project being funded) to assist with the project and application development, or the Agency should hire third party technical consultants directly and provide them to the communities. Alternatively, the Agency should consider providing staff assistance to help evaluate project alternatives and application materials.

- **Set Aside or Preference for Projects that Address HRTW**

Many of the funding programs established by Proposition 1 have minimum set asides for disadvantaged or severely disadvantaged communities. Agencies should consider building on those already established minimum funding levels by

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

establishing a “Human Right to Water” set aside. Projects that benefit disadvantaged communities will generally also advance the HRTW law, however, by establishing a HRTW set aside, the Agency may be able to further promote the HRTW goals. Alternately, the administering agency could consider giving a preference or additional points to projects that benefit a disadvantaged community, or a community without clean, safe, accessible, affordable water.

The various funding programs in Proposition 1 often have many types of eligible projects. Some of the project types directly or indirectly support the HRTW law. Agencies should consider giving preference or additional points in scoring to the projects that advance the HRTW.

- **Grant Application**

The Agency should consider including the following in its grant application requirements:

- Identification of the community that will benefit from the project.
- Information on whether the community has access (i.e., water is of sufficient quantity to meet its needs for human consumption, cooking, and sanitation) to safe, clean (i.e., water delivered to residents meets drinking water standards) water that is affordable. Affordability of drinking water has generally been defined as when the cost of water equals some percentage of MHI, and while it is important to consider a range of factors when evaluating affordability for a community, a percentage of 1.5 percent is broadly considered a reasonable starting point.
- Identification of whether the project will directly (e.g., reducing costs of treatment) or indirectly (e.g., cleaning up a contaminated aquifer) make water cleaner, safer, more accessible, or more affordable for the impacted community or avoid impediments to achieving HRTW.
- The number of community households or residents for whom the quality; accessibility; or affordability of the domestic water supply will improve.
- Calculation of the change in cost per gallon of water delivered for the community benefiting from the project.
- Calculation of the change in the amount of water delivered for the community benefiting from the project.

Where feasible, the Agency should provide templates or metrics for providing the information above to promote consistency in how the information is described in grant applications.

Implementing The Human Right to Water & The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) Guidance

- **Evaluation/Scoring Criteria**

The Agency should include evaluation/scoring criteria in the funding guidelines that explicitly address the considerations in the HRTW legislation. Options include assigning higher scores:

- To projects that improve the quality of water delivered to communities whose supply is contaminated.
- To projects that result in a reduction in cost of water delivered.
- To projects that increase the amount of water available to residents who do not have sufficient water to meet their consumption, cooking, and sanitation needs.
- To projects that diversify a community's water supply to make it more reliable.
- To projects that avoid creating new impediments or exacerbating existing impediments to community access to safe, reliable, and affordable water.

Accountability

To the extent feasible, the Agency should provide information to the public and, specifically, to impacted communities, about the actual project outcomes that advanced HRTW or avoided increasing impediments to HRTW.