

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD
AND THE
CALIFORNIA PUBLIC UTILITIES COMMISSION

REGARDING THE REGULATION OF PUBLIC WATER SYSTEMS

The State Water Resources Control Board (State Water Board) and the California Public Utilities Commission (CPUC) agree that it is their joint goal and responsibility to ensure that public water systems under the regulatory jurisdictions of both the State Water Board and the CPUC are delivering drinking water that is safe and reliable. These public water systems include systems operated by California investor-owned utilities (IOUs).

The State Water Board and the CPUC also agree that it is their goal to achieve the state policy "...that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Wat. Code, § 106.3, subd. (a).)

The State Water Board and CPUC will implement this Memorandum of Understanding (MOU) to achieve these mutual goals. This MOU replaces in its entirety the previous MOU executed between State Water Board and the CPUC on December 1, 2015.

OBJECTIVES

1. To monitor IOUs to ensure compliance with safe drinking water standards and regulations established under the federal and California Safe Drinking Water Acts (SDWA).
2. To identify water system deficiencies and noncompliance with the SDWA by IOUs, and to determine needed improvements, including alternatives, for providing safe and reliable drinking water.
3. To ensure that IOU system improvement projects to meet standards under the SDWA are cost-effective solutions.
4. To effectuate consolidations of unsustainable public water systems with sustainable ones that are cost-effective, result in economies of scale, and provide for reasonable and more stable rates for existing customers; prevent the formation of new unsustainable systems; and coordinate on the appointments of administrators and petitions for receiverships.
5. To increase low-income household enrollment in energy IOU assistance programs (e.g., California Alternative Rates for Energy (CARE)).
6. To facilitate the sharing of information for implementing this MOU.

AGENCY RESPONSIBILITIES

The State Water Board (including local primary agencies, as applicable) shall be responsible for the following with respect to IOUs:

1. Evaluation of water quality monitoring to determine compliance with primary and secondary drinking water standards.
2. Performance of periodic sanitary surveys.
3. Evaluation of water system facilities to identify public health deficiencies and determine noncompliance with the SDWA and all rules and regulations adopted thereunder.
4. Initiation of enforcement actions under the SDWA.
5. Issuance of domestic water supply permits, including review of plans and specifications for new drinking water infrastructure improvements.
6. Inspection of drinking water quality improvement projects during and after construction, as applicable, and sharing project status reports with the CPUC.
7. Participation at appropriate CPUC public meetings, outside of formal proceedings, where drinking water quality matters raised by the State Water Board or any other person are to be discussed.
8. Assessing technical, managerial, and financial capacity of new IOUs and existing IOUs changing ownership pursuant to the State Water Board's authority under the SDWA.
9. Advising the CPUC of situations where service area consolidations involving IOUs may further the agencies' joint goals, and notifying the CPUC if the consolidation involves an extension of service to a disadvantaged community so that the CPUC may consider this point when scheduling proceedings.
10. Providing the CPUC with copies of enforcement actions, permits, and sanitary survey reports upon issuance.
11. Advising the CPUC of any instance of an IOU being out of compliance with drinking water standards or regulations, along with any State Water Board directives or recommendations for returning to compliance (which may be fulfilled by paragraph 10, above).
12. Notifying the CPUC of enforcement actions taken by the Department of Housing and Community Development against mobile home parks in response to Safe Drinking Water Act violations.

The CPUC shall be responsible for the following:

1. Analyzing, evaluating, and proposing for CPUC approval rate changes needed to finance necessary system improvement projects, including projects necessary to address public health violations.
2. Conducting proceedings related to consolidations of IOUs with other public water systems or extensions of service to disadvantaged communities.
3. Arranging public meetings with customers and hearings to ensure that customers are made aware of the need for system improvement projects and the impacts the projects will have on rates.

4. When necessary to coordinate with the State Water Board regarding issues of water quality or system sustainability problems, the CPUC will:
 - a. Promptly inform the State Water Board of CPUC-scheduled public meetings with customers and CPUC hearings where water quality problems will be discussed; and
 - b. Consult with State Water Board regarding making recommendations on the financial and rate-setting aspects associated with implementing the necessary improvements identified by the State Water Board or an IOU to provide safe and reliable water supplies.
5. Evaluating non-SDWA water quality and fire flow requirements.
6. Providing analyses of the financial impacts, if any, of system improvement projects on both customers and water companies.
7. Sharing with the State Water Board:
 - a. All recycled water projects submitted to the CPUC;
 - b. All requests for approval of acquisition of a public water system;
 - c. All orders prohibiting or limiting an IOU from furnishing water to any new or additional customers;
 - d. Any complaints filed with the CPUC from customers of mobile home parks and any proceedings initiated by the CPUC involving water service to mobile home parks;
 - e. Copies of all notices and orders regarding issuance or modification of an IOU's certificate of public convenience and necessity (CPCN); and
 - f. Upon request of the State Water Board, information relating to water affordability, especially for low-income households. This information, which may include confidential data, includes without limitation:
 - 1) Information on affordability metrics developed by the CPUC;
 - 2) Customer arrearage information from IOUs;
 - 3) Information regarding Low-Income Rate Assistance Programs (LIRA) operated by IOUs, including but not limited to: (i) number of customers enrolled in IOU LIRA programs; (ii) number of customers late or behind on their bills; (iii) percentage and absolute amounts of customer debt the IOUs expect to recover; and (iv) number of customers who have left the LIRA program;
 - 4) Information on electric arrearages by IOUs (i.e., water IOUs that are behind on their electric bills to electric utilities regulated by the CPUC); and
 - 5) Information on electric arrearages by public water systems that are not water IOUs (i.e., public water systems that are behind on their electric bills to electric utilities regulated by the CPUC).
8. Assisting the State Water Board with identifying IOUs for consolidations with other public water systems to address unsustainable systems or systems that consistently fail to provide safe and accessible drinking water.
9. Providing the State Water Board with financial information on IOUs annually or as otherwise requested to address water systems that consistently fail, or are at risk of

consistently failing, to provide safe and accessible drinking water.

10. Assessing the financial capacity of IOUs under its relevant statutory authority.

Joint Responsibilities:

1. Each agency shall encourage its staff to keep the other agency informed of their respective activities and assist each agency in carrying out its responsibilities.
2. Each agency shall provide appropriate assistance in implementing necessary enforcement actions taken against individual water systems.
3. Upon request, each agency shall assist the other with placing a public water system under the control of a court appointed receiver or an administrator appointed by the State Water Board, including the identification of an appropriate and available person or entity to act as receiver or administrator, and cooperate with the receiver or administrator to further the joint goals of the agencies. Both agencies will be proactive in seeking court appointed receiverships for failing systems. The CPUC will exercise its authority to seek receiverships for IOUs and will coordinate with the State Water Board.
4. The State Water Board will provide technical input to the CPUC as necessary and appropriate to aid CPUC advisory staff in CPUC proceedings. On a regular basis, the CPUC will share with the State Water Board all requests for rate increases from IOUs and shall routinely provide the State Water Board with schedules of CPUC hearings on issues that are implicated by this MOU. The CPUC may request consultation with, and will consider input from, the State Water Board regarding the necessity or desirability of drinking water infrastructure projects considered in rate cases and other proceedings. The State Water Board shall provide its technical input during a requested consultation or upon the State Water Board's determination that its input would further the goals of this MOU.
5. If the State Water Board notifies the CPUC of the identity of a public water system that is within the CPUC's regulatory jurisdiction and that is operating without a valid operating certificate, the CPUC will consult with State Water Board while carrying out its plan for corrective actions.
6. Both agencies shall share with each other their assessments of technical, managerial, and financial capacity of new IOUs and existing IOUs changing ownership.
7. Both agencies shall exchange information regarding IOUs that are experiencing water quality, water availability, or pressure problems. The information may include, but is not limited to:
 - a. Communications with the system regarding its problems,
 - b. Citations and compliance orders issued,
 - c. Decisions rendered,
 - d. Regulations and policies applicable to the problems and potential solutions,
 - e. Permits issued and amended,
 - f. Information regarding a proposed sale, transfer, or other change of ownership of the system experiencing problems,
 - g. Proposed petitions for appointment of a receiver or an order appointing an administrator,
 - h. Litigation affecting the system,

- i. Reports and complaints of problems at mobile home parks, and
- j. IOUs requiring technical assistance in filing documents with the CPUC including, but not limited to, rate increase applications.

PROJECT COORDINATION

1. The State Water Board and the CPUC review system improvement projects proposed by IOUs and may, from time to time, take different views on which project alternative is most appropriate. When it appears to staff of one or both agencies that their recommendations may differ regarding a particular proposed project, the agencies shall encourage staff to confer with each other and attempt to reach an agreement before formalizing their respective staff recommendations. The protection of public health shall receive the highest priority.
2. The State Water Board understands that CPUC Commissioners and Administrative Law Judges must follow strict statutory requirements in the conduct of CPUC proceedings. Nothing in this Agreement binds the CPUC to a particular outcome in a formal proceeding or requires a particular action from the Assigned Administrative Law Judge or Commissioners. This Agreement envisions agencies' staff coordination outside of the formal proceedings and does not require the State Water Board to become a party to a formal CPUC proceeding.
3. In order to protect public health, there must be an open exchange of information between State Water Board and CPUC. Each agency will set forth where and to whom material will be sent regarding an IOU's proposed system improvement project. The agencies will send copies of all correspondence between an agency and other parties concerning a water system improvement project to the appropriate District Office and the Division of Financial Assistance, as applicable, of the State Water Board, and to the appropriate office of the CPUC until the project is completed.

CONFIDENTIALITY AGREEMENT

The agencies agree that a candid and deliberative analysis of matters related to improving drinking water quality and costs to customers is required to further the goals of this MOU. Government Code section 6254.5, subdivision (e) states that disclosures made by a governmental agency to another governmental agency that agrees to treat the disclosed material as confidential will not constitute a waiver of an exemption under the California Public Records Act. The agencies therefore agree, pursuant to Government Code section 6254.5, subdivision (e), to maintain the confidentiality of the following information that they may exchange (Confidential Material), consistent with the provisions of the California Public Records Act:

All records that are privileged or otherwise exempt from disclosure under the California Public Records Act and have been shared or will be shared between the agencies for the purpose of this MOU. Records include, without limitation, emails, text messages, electronic chat messages, other electronic communications, video or sound recordings, draft or internal documents, calculation worksheets, customer specific information, written submissions by IOUs, letters, memoranda, correspondence, calendar entries, analyses, staff reports, briefing papers, agenda materials, responses to comments, draft enforcement actions and sanitary survey reports, notes documenting internal meetings not open to members of the public, and other materials.

The agencies further agree to the following:

1. The agencies shall treat the Confidential Material as confidential. Confidential Material obtained by the agencies pursuant to this agreement will be used only for purposes that are consistent with existing law. With the exception of consultants or contractors, the agencies shall not share Confidential Material with other persons (except, in the case of the State Water Board, an employee or member of a Regional Water Resources Control Board or local primacy agency, as appropriate to implement this MOU) unless otherwise authorized.
2. Pursuant to Government Code section 6254.5, subdivision (e):

The Executive Director of the CPUC authorizes employees and Commissioners of the CPUC who have a need to read or use Confidential Material for their work to obtain the Confidential Material. The Executive Director of the State Water Board authorizes employees and members of the State Water Board who have a need to read or use Confidential Material for their work to obtain the Confidential Material.
3. Confidential Material shared under this agreement should prominently be labeled as confidential or include a similar prominent written advisory to that effect. The failure to label a document as confidential does not affect its status under this MOU or waive any disclosure exemptions under the California Public Records Act or that may otherwise apply.
4. This MOU applies to information previously shared between the agencies under prior MOUs.
5. The agencies will notify the transmitting party that deemed the information protected of any requests they receive for Confidential Material under the California Public Records Act, before the date on which a response to such a request is due, except if earlier disclosure is required by order of a court of competent jurisdiction. Unless the transmitting party consents to disclosure or release of protected information, the agency that received the disclosure request shall assert all relevant privileges and other objections to the disclosure to the extent authorized by law and subject to any court orders. The agencies further agree that if they are required by law to disclose any of the Confidential Material, they shall provide notice to the other agency at least ten days prior to any planned disclosures. In the event of litigation regarding the disclosure or non-disclosure of Confidential Material, the litigating agency will permit the transmitting agency to intervene. This paragraph only applies to Confidential Material that is labeled as Confidential Material of the transmitting agency and to Confidential Material that the party from whom the records are sought is aware is Confidential Material.

MISCELLANEOUS

This MOU may be amended by mutual agreement of the State Water Board and the CPUC. It shall remain in effect until the State Water Board or the CPUC decide otherwise, upon written notice to the other agency. The provisions of the section entitled "Confidentiality Agreement" will remain in effect and survive termination of the MOU insofar as they apply to Confidential Material exchanged between the agencies before termination of the MOU.

This MOU may be executed in counterparts. The signatories below are authorized to sign on behalf of their respective agencies.

Approved:



Eileen Sobeck
Executive Director
State Water Resources Control Board

Date:

Approved:



Rachel Peterson
Acting Executive Director
California Public Utilities Commission

Date:

December 9, 2020