

Analysis

Item 21: Oregon Health Authority

Drinking Water Services Program

Analyst: Linda Ames

Request: Allocate \$724,889 from the Emergency Fund and authorize the establishment of six new full-time positions (1.98 FTE) to restore capacity to the Drinking Water Services program, including response to emerging contaminants like cyanotoxins.

Analysis: Recent events involving cyanotoxins in the Salem drinking water system have highlighted the need for additional resources in the Drinking Water Services program in Public Health. The purpose of this program is to ensure that public water systems provide safe drinking water to the public. The program is required to implement federal requirements for regulation of about 2,500 larger public water systems in the state (serving at least 25 people or at least 15 service connections). In addition, state statutes require regulation of about 900 public water systems that serve between 10 and 24 people. The program surveys community water systems, investigates detections of contaminants, ensures system compliance, provides technical assistance to community water systems to resolve issues that affect water quality, and provides training to water system operators.

The Drinking Water Services program has lost significant capacity since the 2007-09 biennium, as staffing levels went from over 50 FTE to their current level of 35. State funding was reduced during both the 2009-11 and 2011-13 biennia, and while a fee increase was implemented in 2015-17, it has not raised enough revenue to sustain the program. At the same time, federal funding has been flat and has not supported the increasing costs of the program over time. In addition to loss of capacity at the state level, Local Public Health Authorities who contract with the state to perform surveys and respond to contamination alerts have been flat funded over this period.

Impacts of declining resources include periodic compliance data processing backlogs, limited capacity for technical assistance and emergency preparedness, inability to meet plan review processing targets, and an inability to adequately regulate the 900 very small water systems. The program does not currently inspect these small systems or enforce monitoring requirements.

In addition to restoring program capacity to address traditional needs, the recent issue with cyanotoxins has highlighted the need to increase program capacity related to new and emerging unregulated contaminants.

The agency is requesting five positions that will restore program capacity, as well as one position to implement work related to unregulated contaminants and to manage new regulatory requirements for cyanotoxins in public drinking water systems. Their request also includes \$276,600 to pass through to Local Public Health Authorities. The entire request of \$724,889 is General Fund for the current biennium. The agency's plan for the 2019-21 biennium, as laid out in its agency request budget, is to continue the position related to unregulated contaminants as General Fund. The other five positions and the pass-through resources would be funded in 2019-21 with new fees paid by water districts, which would require statutory change during the 2019 legislative session.

Legislative Fiscal Office Recommendation:

- 1) Allocate \$84,914 from the Emergency Fund to support a permanent full-time Natural Resource Specialist 4 to manage new regulatory requirements for cyanotoxins in public drinking water systems. Authorize the establishment of one position (0.33 FTE), which is expected to continue into the 2019-21 biennium.
- 2) Defer the request for five positions to restore capacity in the program, as well as the pass-through funding of \$276,600 to Local Public Health Authorities, until the 2019-21 legislative session. As laid out in the agency's requested budget, this funding is expected to come from new fees approved during the legislative session. By deferring this part of the request, the entire package can be discussed in conjunction with potential revenue sources to fund it.

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Oregon Health Authority
MacDonald

Request: Allocate \$724,889 from the State Emergency Fund and establish six permanent positions (1.98 FTE) to enhance the capacity of the Drinking Water Services program within the Oregon Health Authority (OHA).

Recommendation: Approve the request with the following modification:

Allocate \$724,889 from the State Emergency Fund and establish five limited-duration positions and one permanent position (1.98 FTE) to enhance the capacity of the Drinking Water Services program within the Oregon Health Authority (OHA).

Discussion: Beginning in May 2018 and throughout the ensuing summer, multiple bodies of water across Oregon tested positive for cyanotoxins, which can form harmful algal blooms and pose a health risk to people and pets. In the case of Salem, cyanotoxins were detected in the city's drinking water system and caused a nearly month-long do-not-drink water advisory for vulnerable populations.

Oregon's recent experience with harmful algal blooms and the expectation for these blooms to occur more frequently than in the past has underscored two important public health issues related to safe drinking water: 1) there are no federal or state regulations for monitoring cyanotoxins in drinking water; and 2) due to budgetary constraints, the Drinking Water Services (DWS) program within OHA's Public Health Division and local public health authorities lack the capacity to sufficiently regulate public drinking water systems.

To help resolve the lack of program capacity, OHA requests \$724,889 General Fund to support six new positions in DWS and increase state funding distributed to local public health authorities. This request represents one part of a broader strategy by OHA to address not only the immediate program capacity issues, but also the regulatory approach for ensuring the safety of the state's drinking water and the way in which these regulatory activities are funded long-term.

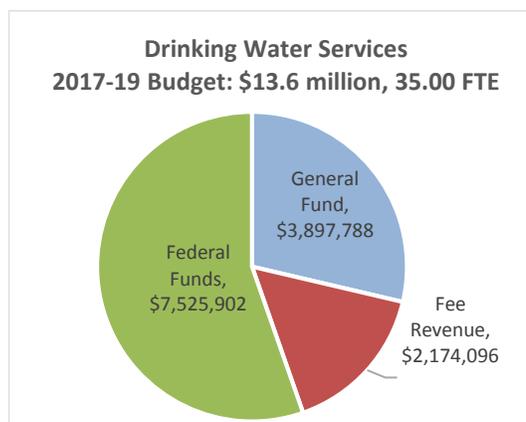
Regulatory Issues

The federal Safe Drinking Water Act protects the country's public drinking water supplies by setting standards and regulations for drinking water quality for water systems that serve at least 25 people or have at least 15 service connections. In Oregon, DWS carries out these federal requirements for the 2,500 water systems in the state that meet the federal designation. State statute goes beyond the minimum federal requirements by establishing an even lower threshold requiring the regulation of water systems serving at least 10 people or have four or more service connections. There are over 900 of these smaller systems in Oregon.

Federal drinking water regulations have requirements for more than 90 potential contaminants, but cyanotoxins are not currently one of them. The City of Salem detected cyanotoxins in the city's drinking water system as a result of voluntarily monitoring for cyanotoxins. Subsequent to Salem's water advisory, OHA implemented temporary rules formally requiring drinking water systems prone to harmful algal blooms to routinely test for cyanotoxins. OHA plans to have permanent rules in place by the end of 2018. This reflects the agency's approach for addressing the regulatory gap displayed by the water emergency.

Staffing and Funding Issues

Although DWS charges fees to certain utilities, cities, water districts, and other water systems to support water safety functions, this revenue is insufficient to fully cover operational needs. Remaining program revenue comes from General Fund and Federal Funds. Since the 2011-13 biennium, DWS has reduced its staff by 18 positions as a result of budget constraints, leaving the program unable to sufficiently monitor emerging water safety issues and the more than 900 small water systems. Likewise, state funding for local public health authorities has remained relatively flat and is also insufficient to support the local regulation of emerging drinking water issues.



The implementation of new rules for cyanotoxin monitoring adds more pressure to both the OHA and local public health authority budgets. To mitigate the DWS staffing issues in the short-term, OHA requests General Fund to support six new positions for the remainder of the 2017-19 biennium. Five of these positions would respond to detections of contaminants in local drinking water systems and one would do work related to unregulated contaminants and the new requirements for cyanotoxins.

The request also includes \$276,600 General Fund as additional funding for local public health authorities to address their funding challenges. On a biennial basis, this represents approximately a 30 percent increase over the existing level of state funds provided to local public health authorities for drinking water safety. OHA plans to distribute this funding consistent with the current methodology, which is based on the number of public water systems regulated by each local public health authority and the Oregon Department of Agriculture.

Future Funding Needs

Given the nature of the work, OHA intends for the additional positions and funding for local public health authorities to be on-going and funded at a full biennial level in 2019-21, which would increase costs by over \$1.4 million from the current biennium.

	2017-19 Proposal (8 months)	2019-21 Est. Costs (24 months)	Increase
Six Positions	\$448,289	\$1,368,918	\$920,629
Funding to locals	\$276,600	\$830,000	\$553,400
Total	\$724,889	\$2,198,918	\$1,474,029

As part of its 2019-21 budget proposal, OHA has recommended a revision to the DWS fee structure, which would increase program revenue to fund the five positions supporting local drinking water systems and the additional funding for local public health authorities. This would leave approximately \$345,000 General Fund to support the one position assigned to work on unregulated contaminants in 2019-21 and beyond. If the fee proposal does not advance or an alternative funding source is not identified, the five positions and funding for local public health authorities would likely need to be supported with General Fund if they are to continue in 2019-21. Because the fee proposal has not yet been approved, the recommendation is for these five positions to be approved as limited-duration at this time.

Legal Reference: Allocation of \$724,889 from the State Emergency Fund to supplement the appropriation made by chapter 545, section 1(1), Oregon Laws 2017, for the Oregon Health Authority for the 2017-19 biennium.



Office of the Director

Kate Brown, Governor

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August 27, 2018

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Oregon Health Authority (OHA) is requesting support for position authority and other needs to restore capacity to the Drinking Water program and to enable response to emerging contaminants like cyanotoxins.

Background

In late May 2018, the City of Salem issued a Do Not Drink Advisory for vulnerable populations due to detection of cyanotoxins in their drinking water system. The cyanotoxins were from Salem's drinking water source at the North Santiam River downstream of Detroit lake, which had harmful algal blooms containing cyanobacteria. Cyanobacteria are photosynthetic bacteria that are found naturally in freshwater and saltwater. Some species of cyanobacteria can produce toxins, which are known to be harmful to human health above certain concentrations. Exposure to high levels of cyanotoxins in drinking water may present a public health risk to certain vulnerable populations and produce health effects that include nausea, vomiting, diarrhea and allergic responses.

The advisory was issued after the City of Salem received monitoring results indicating levels of cyanotoxins exceeded health advisory values for vulnerable populations based upon EPA recommendations. There were no federal or state regulations for cyanotoxins in drinking water. The City of Salem had been voluntarily participating in cyanotoxin monitoring, following OHA and EPA guidance and best management practices.

Shortly after the City of Salem issued the advisory, the OHA Drinking Water Services (DWS) program acted to create and implement emergency rules requiring public drinking water systems that have susceptible water sources to harmful algal blooms or the release of cyanotoxins to monitor, report and notify the public of potential harmful levels of cyanotoxins in drinking water. By late December 2018, the DWS program will make these rules permanent and continue oversight of a statewide cyanotoxin monitoring program.

Agency Action

Access to safe drinking water is essential to public health. The mission of the DWS program is to ensure that public water systems provide safe drinking water to the public. The program has primacy to implement federal requirements under the Safe Drinking Water Act (SDWA), which includes regulation of approximately 2,500 federally defined public water systems that serve at least 25 people or have at least 15 service connections. In addition, the DWS program is mandated by Oregon statutes to regulate public water systems to a lower state-defined threshold that includes systems serving at least 10 people or 4 or more connections. The program has a responsibility to ensure access to safe public drinking water for all Oregonians and accomplishes that mission by surveying community water systems, responding to and investigating detections of contaminants, ensuring system compliance, providing technical assistance to community water systems to resolve issues that affect water quality, and providing training to water system operators.

Over the last four biennia, the DWS program lost significant capacity to adequately regulate the full range of public drinking water systems across the state. Since 2011-13, reductions in the levels of state and federal funding have created a decline in overall funding levels. This decline in resources combined with increasing costs required the DWS program to reduce staffing levels, through attrition, by approximately 18 staff between 2011 and 2017. The chart below provides the DWS program budget history since the 2011-13 biennium.

Drinking Water Services Budget					
	General Fund	Other Funds	Federal Funds	Total	FTE
2011-13	0	\$4,035,454	\$8,393,373	\$12,428,827	53.35
2013-15	\$208,376	\$5,329,125	\$7,746,666	\$13,284,167	43.17
2015-17	\$290,262	\$5,086,443	\$7,397,117	\$12,773,822	38.00
2017-19	\$3,897,788	\$2,174,096	\$7,525,902	\$13,597,786	35.00

Other Funds (OF) include: Water System Surveys, Water System Plan Review, Water System Operator Certification, Backflow/Cross Connection Prevention, and Medical Marijuana Fees.

During the 2017-19 biennium, Other Funds revenue from Oregon Medical Marijuana Program (OMMP) fees were removed as a revenue source to the program and General Fund dollars were restored; however, not in an amount sufficient to restore staffing levels at the beginning of the 2011-13 biennium. Because of this overall decrease in revenue and reduction in staff, the DWS program has been severely limited in its ability to fully meet its mission and statutory mandates. Impacts of declining resources include periodic compliance data processing backlogs, limited capacity for technical assistance and emergency preparedness, inability to meet plan review processing targets and an inability to adequately regulate approximately 900 very small water systems that fall between the federal and State lower thresholds. In addition, Local Public Health Authorities, who perform surveys and respond to contamination alerts under contract, have been flat funded for at least ten years. Funding levels need to be increased to adequately support local costs of service.

In its 2019-21 Agency Request Budget, OHA is proposing a Policy Option Package (POP) and corresponding Legislative Concept that would revise and broaden DWS fee authority and increase program staffing by five positions. By broadening fee authority, generating additional revenue, adding five more staff and providing additional funding to the local public health authorities, the DWS program will be able to restore minimum capacity to adequately regulate all public water systems equitably and better ensure safe clean drinking water for all Oregonians. More specifically, the program will be able to focus resources on emergency preparedness and planning, improve compliance with monitoring requirements, improve responsiveness to technical plan reviews and, working with our Local Public Health Agency partners, focus on providing assistance to very small systems that struggle to comply with complex regulations.

The recent unprecedented issue with cyanotoxins in Salem's drinking water also highlighted the need for additional program capacity related to emerging contaminants. To be able to respond to the ongoing issues related to cyanotoxins and other emerging unregulated contaminants in drinking water, the DWS program would also need one additional position to work on cyanotoxin/unregulated contaminant monitoring and to provide technical assistance to public water systems to mitigate and manage these emerging contaminants. These collective enhancements to program capacity will ensure protection of public health and will help to restore the public's trust in the safety of public drinking water supplies.

Action Requested

OHA requests funding and position authority for six new permanent full-time staff in the Public Health Division, effective November 1, 2018.

- Five positions will restore capacity to respond to local contaminant detections in the drinking water program.
- One position will implement work related to unregulated contaminants and manage new regulatory requirements for cyanotoxins in public drinking water systems. This position will serve as a technical expert related to emerging contaminants, including cyanotoxins.
- Pass through funding (\$276,600) will be used at the local level to enable the continued presence of drinking water regulators with a focus on serving the needs of the small systems to address health equity issues.

These positions and local funding are included in a fee based POP requested in OHA's 2019-21 Agency Request Budget. The OHA total General Fund request for 2017-19 is \$724,889, and the establishment of six positions (1.98 FTE). General Fund to pay for one position will be needed in future biennia.

Legislation Affected

Oregon Laws 2017, chapter 545, section 1, subsection 1.

Sincerely,



Patrick Allen
Director

CC: Linda Ames, Legislative Fiscal Office
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Tom MacDonald, Department of Administrative Services
George Naughton, Department of Administrative Services