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# Drinking Water State Revolving Fund: U.S. Environmental Protection Agency to Allow Use for Water Rights Purchases/Access to New Sources of Drinking Water

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The United States Environmental Protection Agency announced in a November 26th memorandum that it would allow the Drinking Water State Revolving Fund (“Fund”) to be used for purchasing rights or access to new sources of drinking water under certain circumstances.

The new policy was announced in a Memorandum from Anita Maria Thompkins, Director of EPA’s Drinking Water Protection Division to the Water Division Directors of the agency’s Regions in a memorandum titled:

*Approval of Class Deviation From the Regulatory Prohibition on the Use of the Drinking Water State Revolving Fund to purchase water rights (“Memorandum”).*

The Drinking Water State Revolving Fund program is a federal/state partnership enacted by Congress to provide safe drinking water. The current structure of the Fund was created by the 1996 Amendments to the Safe Drinking Water Act. It provides financial support to water systems in the states drinking water programs.

Congress appropriates monies for the Fund. EPA then provides capitalization grants to each state for their fund. A state is required to provide a 20% match. A dedicated revolving loan fund is used by the states to provide loans and other authorized assistance to water systems for eligible infrastructure projects.

EPA states in the Memorandum that its Office of Grants and Debarment approved a class deviation from the fund regulatory prohibition at 40 C.F.R. § 35.3520(a)(2). As the agency notes:

...the class deviation allows for the use of DWSRF funds for the purchase of water rights, which supports meeting the public health protection objectives of the Safe Drinking Water Act...

The purchase of “water rights” is defined by the Memorandum as the monetary value of the right to use water from a given source to supply drinking water to an existing population. Such sources might include a river, lake, aquifer, etc.

The purchase of water rights is defined to include (but is not limited to) the following:

...the payment for the transfer of water rights from one entity to another, the purchase of ground water credits, the purchase of storage capacity in an existing raw water reservoir, or the purchase of newly created/newly available water rights.

Eligibility is dependent upon the project meeting the criteria outlined in a document attached to the Memorandum entitled:

Policy and Technical Evaluation for a DWSRF Class Deviation for Purchase of Water Rights.

States utilizing the class deviation for assistance agreements involving water rights are required to notify their EPA Regional Project Officer. The Memorandum further notes that:

...for the first project in each state requesting to use this class deviation, the EPA Region must collaborate with EPA HQ on the review.

A copy of the EPA Memorandum and the referenced attached document can be found [here](#).