



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ADMINISTRATION  
AND RESOURCES  
MANAGEMENT

February 12, 2018

**MEMORANDUM**

**SUBJECT:** Deviation from 40 CFR Part 35.3520(e)(2) for the Well Relocation Project for Oshkosh, Nebraska and the North Douglas Regional Intertie Project for Carson City, Nevada

**FROM:** Laurice Jones, Director *Laurice E. Jones*  
National Policy, Training and Compliance Division

**TO:** Peter Grevatt, Director  
Office of Ground Water and Drinking Water

I am responding to your request for a deviation from the prohibition of water rights as an eligible project in 40 CFR 35.3520(e)(2) in implementing the Drinking Water State Revolving Funds (DWSRF) under the Safe Drinking Water Act (SDWA) for the states of Nebraska and Nevada. The deviation will allow the state of Nebraska to use DWSRF funds for a water transfer permit fee from the North Platte Natural Resource District, which would then allow the City of Oshkosh to withdraw water from new wells in the Blue Creek drainage basin. In addition, the deviation will allow the state of Nevada to refinance Carson City's existing Build America Bond (BAB) using the DWSRF program.

**BACKGROUND**

The DWSRF regulations at 40 CFR 3520(e)(2) state that "water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy" are ineligible projects. The intent was that DWSRF funds should only be used for "compliance with the national primary drinking water regulations...or otherwise significantly further the health protection objectives of the Act." The prohibition is based on the premise that the primary purpose of water rights is to prepare drinking water systems for future population growth, thus detracting from the SDWA public health protection purpose. However, there are aging and undersized infrastructures, public health, compliance, and affordability issues that make the situations in Oshkosh and Carson City unique that justify granting a deviation from 40 CFR 35.3520(e)(2) while continuing to meet the public health protection purposes of the SDWA.

Oshkosh, Nebraska currently owns three municipal wells contaminated with uranium and arsenic and cannot consistently provide its residents with safe drinking water meeting compliance with SDWA. The cost-effective alternative is drilling new wells in a different aquifer six miles north of town. Use of this different aquifer requires the purchase of a water transfer permit to offset water withdrawals by Oshkosh.

Consistent with SDWA, the principal purpose of the well relocation project is to sustain public health through a safe drinking water supply for the existing population, not for growth from new development. The new drinking water source will allow Oshkosh to reliably provide safe drinking water and improve public health protection for residents. In addition, Oshkosh, which has been designated as disadvantaged by the state of Nebraska under SDWA 1452(d), has exhausted other sources of adequate and affordable funding and is relying on an existing DWSRF loan for the low interest rate, additional subsidization, and extended finance terms to make the project affordable. The fees for the water transfer permit would be rolled into this existing loan for the rest of the project.

Over the years, Carson City, Nevada has been unable to consistently provide its residents with safe drinking water that is in compliance with SDWA. Facing significant arsenic and uranium groundwater contamination, as well as extended drought conditions, Carson City undertook the North Douglas Regional Intertie Project with the town of Minden in 2009. The initial phases of the project were funded by the DWSRF, with the exception of the water rights. The purchase of the water rights was financed through BAB. Due to sequestration, Carson City has not received the subsidy on the BAB as anticipated. The state of Nevada is seeking to refinance Carson City's debt because DWSRF interest rates are more affordable than the BAB interest rate. By refinancing the BAB, Carson City can save approximately \$3.3 million. The savings earned from the refinancing would be used to complete the last phase of the intertie project, which addresses ongoing public health concerns. Carson City has otherwise been unable to afford this last phase.

Consistent with SDWA, the principal purpose of the North Douglas Regional Intertie Project in Nevada is to sustain public health through a safe drinking water supply for the existing population, not for growth from new development. The new drinking water source will allow Carson City to reliably provide safe drinking water and improve public health protection for residents.

## **ACTION**

I have reviewed the request for a deviation from 40 CFR Part 35.3520(e)(2) that will allow the state of Nebraska to use Drinking Water State Revolving Funds for a water transfer permit fee from the North Platte Natural Resource District, which in turn will allow the City of Oshkosh to withdraw water from new wells in the Blue Creek drainage basin. The deviation also will allow the state of Nevada to refinance Carson City's existing Build America Bond using the Drinking Water State Revolving Funds program. The projects are consistent with the Safe Drinking Water Act and the deviation is in the best interest of the Agency and the public. I, therefore, approve the deviation. The assistance agreement finance term with Oshkosh, Nebraska for the water transfer permit fee is limited to fifteen years, which is the useful life of this fee. The refinance loan agreement with Carson City, Nevada must include a requirement that the estimated \$3.3 million in savings be directly tied to a specific drinking water project.

cc: Denise Polk, Office of Grants and Debarment  
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