



## **WYOMING DRINKING WATER PRIMACY SUMMARY**

### **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **JULY 24, 2023**

#### **Background and History**

The Safe Drinking Water Act (SDWA), originally enacted in 1974, is the primary federal law established to protect public health by regulating the nation's public water supplies. The Act allows states to seek delegated authority, or primacy, to implement SDWA programs rather than the federal government. The Public Water System Supervision (PWSS) program is one of the key SDWA programs, under which drinking water regulations for public water systems are established and enforced. Wyoming is currently the only state in the nation that has not assumed primacy for the PWSS Program. Therefore, EPA Region 8 currently implements the program in Wyoming.

Currently, under the Wyoming Environmental Quality Act, the DEQ issues permits to ensure public water supplies are constructed in accordance with standards established to protect human health and the environment. The DEQ also implements other SDWA programs, including the Operator Certification Program, the Capacity Development Program, the Source Water Protection Program, and, in coordination with the Office of State Lands and Investments and the Water Development Office, the Drinking Water State Revolving Fund Program. Thus, DEQ's programs and EPA's implementation of the PWSS program share the goal of providing safe drinking water to the public, and DEQ coordinates with EPA Region 8 regularly. However, DEQ does not currently implement any aspect of the PWSS program. While there have been situations where Wyoming has disagreed with EPA's implementation of the PWSS program, overall, implementation has been effective in ensuring safe drinking water is being provided to the public.

Attaining primacy for the PWSS program includes adopting drinking water regulations that are at least as stringent as federal regulations and demonstrating the state can enforce the program. When a state assumes primacy for a federal program, EPA continues to be involved in an oversight role. Primacy does, however, allow states to develop programs that are more responsive to state and local needs. Key activities under the PWSS program include conducting sanitary surveys and associated enforcement, compliance, reporting, data management, technical support, and water testing; having an EPA-certified drinking water lab and the ability to certify labs for drinking water testing; and responding to and providing safe drinking water in emergencies and natural disasters. If Wyoming obtains primacy, the DEQ would likely need to establish new coordination procedures with other state agencies for some aspects of the program (e.g., coordination with Department of Homeland Security on emergency response).

The Wyoming Legislature has previously discussed whether Wyoming should obtain PWSS primacy. It is DEQ's understanding that the significant costs of obtaining and implementing the program have outweighed benefits of assuming primacy during these past discussions. DEQ's records show that DEQ provided information on drinking water primacy to the Wyoming Legislature in 2001, 2005 and 2018.

It is important to note that EPA has added numerous new requirements to the PWSS program in recent years that represent significant workload increases to state primacy programs (e.g., cybersecurity, lead lines, and emerging contaminants). At the same time, federal funding to support state programs has not increased. Therefore, the cost to maintain the program, as federal requirements increase and federal funding declines, needs to be considered.

## **Summary of Advantages and Disadvantages**

### **ADVANTAGES**

- Primacy will allow for state administration of the drinking water program to best tailor the program to respond to local issues and needs. Wyoming knows Wyoming. Primacy would allow for greater flexibility in implementing the requirements of the SDWA where flexibility is allowed. In particular, there could be greater flexibility in how compliance and enforcement activities are conducted, while maintaining the same level of drinking water protection for the public.
- Primacy will bring all of the SDWA programs together at the state level to allow for more efficient operation of the programs and support better coordination, communication, collaboration on:
  - System oversight
  - Troubleshooting problems
  - Determining funding options to address deficiencies
  - Resolving compliance issues
  - Providing technical assistance, particularly for small, rural communities
- Primacy would provide greater opportunity to work collaboratively across state agencies (e.g., Department of Health, Department of Homeland Security, Wyoming Water Development Office, Office of State Lands and Investments, Wyoming Department of Agriculture) for the benefit of our communities.
- Primacy would facilitate the state having a more comprehensive understanding of the current state of water infrastructure throughout Wyoming, particularly communities with deficiencies that need assistance.
- Primacy would provide the appropriate drinking water protection consistent with federal regulations.

## DISADVANTAGES

- The primary disadvantage is cost. Based on DEQ's preliminary estimates, the state would need at least 25 new FTEs. Costs include approximately \$600,000 in one-time funds and approximately \$5M per year for staff and other expenses (e.g., vehicles, supplies/equipment, databases).

- Funding Sources:

Federal Funds - Approximately \$800,000 per year (which has remained flat for the last 15 years)

General Funds – Approximately 4.2M per year

*(Note that some states implement fee systems to support program costs. Some states also use set-aside funds under the Drinking Water State Revolving Fund (DWSRF) grant; however, DWSRF grants are not a guaranteed source of funding, and grant allocations to states in 2024 may be reduced by 90% or more due to congressionally-directed spending.)*

- Additional lab capacity would be needed, and it is unlikely that the current Combined Labs Facility would be able to accommodate the additional staff, space, and instruments needed for the program. Costs for additional lab capacity are not included in the above estimates.
- Additional office space (Cheyenne and field offices) would be needed to house 25 new FTEs; additional office space costs are not factored into the above estimates.
- Contingencies to increase funding should be considered as it is likely that EPA will continue adding new requirements to the program. Additional FTEs will likely be needed over time to meet new requirements. For example, EPA has promulgated or is proposing new requirements related to the Lead and Copper Rule, Cybersecurity, and Emerging Contaminants. Most states do not have the staff and other resources to meet the new requirements, and the full impacts of the new requirements are unknown.
- If Wyoming chooses to consider pursuing primacy, the DEQ recommends contracting with a consultant to develop an in-depth feasibility and cost analysis.
- Pursuing primacy would also take significant time. It will likely take 3 to 5 years for Wyoming to develop the primacy application and receive primacy from EPA. Wyoming would need to make statutory revisions, and DEQ would need to undertake rulemaking before primacy could be obtained. In addition, the DEQ would need to hire and train the necessary staff and implement procedures, workflows, and data management systems.