December 6, 2021

Via Email

Kim Niemeyer,
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Email: ddw-hexavalentchromium@waterboards.ca.gov

RE: Scoping Comments on the Draft Environmental Impact Report for Adoption of a Regulation for the Hexavalent Chromium Maximum Contaminant Level

Dear Ms. Niemeyer,

On behalf of the undersigned organizations, we offer the following scoping comments on the Draft Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA) for the State Water Resources Control Board's (SWB) adoption of a regulation for the Hexavalent Chromium Maximum Contaminant Level (MCL).

Our various organizations have advocated for a health protective MCL for Hexavalent Chromium for 16 years. Though California was required to establish a drinking water standard for this contaminant by 2004,[1] the MCL was established 10 years later and only after the Natural Resources Defense Council (NRDC) and the Environmental Working Group (EWG) filed a successful lawsuit against the department for failing to act in a timely manner. Moreover, the

[1] See SB 351 (Ortiz) https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB351, and Cal. Health & Safety Code § 116365.5.

final MCL was indefensible due to an inadequate economic analysis that left impacted communities asking why the regulation was five hundred times higher than the Public Health Goal (PHG), and allowed industry to successfully challenge it in court in 2017. Since then, little progress, beyond a limited white paper on economic analyses, has been made and Californians living in 53 counties continue to be exposed to a dangerous carcinogen.

I. The SWB Should Comply With CEQA Through a Mitigated Negative Declaration

The SWB has not explained why it is considering a programmatic EIR for compliance with CEQA, when past packages to adopt new MCLs have relied on a mitigated negative declaration (MND). Given the delay associated with getting this proposed MCL package out for release, we are concerned that a full EIR process will increase the overall time in approving an MCL with little added benefit. The SWB has not indicated, and it does not seem evident, that there are any impacts associated with selecting an MCL that could cause significant and unavoidable impacts, thus requiring an EIR. Further, any localized impacts that may be significant would not be properly considered in a statewide programmatic EIR and would best be considered at the local level by water agencies carrying out the CEQA process. For example, any increase in greenhouse gas emissions by a water system in complying with a proposed MCL would be deemed significant based on its cumulative contribution as compared to a threshold of significance established by a local air pollution control district, with thresholds ranging from 1,100 to 10,000 metric tons of carbon dioxide equivalent per year. The SWB has similarly used MNDs when promulgating MCLs in the past, most recently with the MCL for 123-TCP in 2020. Given the limited benefit and increased delay and cost of a programmatic EIR, the SWB should instead prepare an MND for this MCL.

II. The SWB Should Consider Stannous Chloride, Drilling New Wells, Consolidation of Non-Compliant Water Systems with Nearby Systems and Other Compliance Methods as a Best Available Technology for Treatment of Hexavalent Chromium

During the CEQA workshop held on November 29, 2021 it was stated that despite successful piloting of stannous chloride ($SnCl_2$) to reduce Hexavalent Chromium in drinking water, it is not included as one of the treatment options under CEQA scoping. We deem this to be an inappropriate exclusion given the potential of stannous chloride to provide some water systems with not only a less expensive, but also more environmentally sound option to address Hexavalent Chromium levels, as well as total Chromium. This exclusion will artificially increase the cost of compliance with the proposed MCL during this process, leading to an inappropriately biased result. While we understand that there is concern about residual $SnCl_2$ in treated water, including this treatment under the heading of Reduction-Coagulation/Filtration provides an opportunity to avoid that problem. According to Kennedy, et. al., $SnCl_2$ treatment, followed by sand filtration not only reduced Hexavalent and other forms of Chromium significantly, but "Total tin and turbidity removal were similar, decreasing to below 0.050 mg/L and raw water levels, respectively".[2]

[2] Kennedy, et. al., Stannous Chloride Reduction–Filtration for Hexavalent and Total Chromium Removal from Groundwater, (Mar. 2020), *available at* https://awwa.onlinelibrary.wiley.com/doi/10.1002/aws2.1174.

Other MCL packages also consider low impact, low cost, reasonably foreseeable options for compliance, including drilling new wells and consolidating non-compliant water systems with nearby systems. These options should be considered as part of this MCL package as well. The SWB must include SnCl2 treatment and other compliance methods, such as consolidation and new sources, as compliance methods when considering options and impacts in the CEQA document and cost considerations when proposing an MCL.

III. The SWB Must Accurately Reflect the Existing Environmental Setting to Include Impacts Associated with Hexavalent Chromium Consumption and Existing Options and Efforts to Fund Compliance

The SWB is required under CEQA to establish the existing environmental setting for this regulation.[3] CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published.[4] Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate and meaningful evaluation of environmental impacts. A CEQA document must also describe the existing environmental setting in sufficient detail to enable a proper analysis of project impacts.[5] An accurate description of the affected environment is an essential prerequisite for an adequate analysis of Project impacts. Here, the SWB must consider the existing impacts from Hexavalent Chromium on the public and the state and opportunities for funding compliance that will reduce any impacts water agencies would face in complying with the law.

Hexavalent Chromium is highly toxic to people and when present in water prevents the public from using their tap water for drinking, cooking, or sanitation. The CEQA document should explain the number of people who are currently exposed to Hexavalent Chromium in their water and the likely impacts people face when establishing the existing environmental setting. This discussion should include a robust discussion of how people are faced with increased costs through purchasing bottled water, being unable to cook in their home, and the health impacts associated with exposure. These impacts must be considered as impacts of the no-project alternative and these impacts must be deducted from any costs associated with bringing water systems into compliance with a proposed MCL.

The CEQA document should also discuss the opportunities that exist to help water systems, particularly small water systems serving small or disadvantaged communities, to meet compliance with an MCL and deduct these available funds from cost estimates. Once an MCL is set, the SWB can provide funding for infrastructure and operations and maintenance needed to

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[3] *See, e.g.*, *Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (Mar 15, 2010) 48 Cal.4th 310, 316; *Fat v. City of Sacramento* (2002) 97 Cal.App.4th 1270, 1278, *citing* Remy, et al.; Guide to the Calif. Environmental Quality Act (1999) p. 165.
[4] CEQA Guidelines §15125(a)(1); *Riverwatch v. City of San Diego* (1999) 76 Cal.App.4th 1428, 1453.
[5] 14 CCR § 15125; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1121-22.

comply with the MCL through the Safe and Affordable Funding for Equity and Resilience (SAFER) Program. Infrastructure funds may also be available for all water systems through the existing Safe Drinking Water Revolving Fund, which has received an influx of funding from the state and which will receive a large amount of funding from a recently passed federal infrastructure bill. The CEQA document should also mention these resources when considering how compliance with a proposed MCL would impact water systems and communities.

Finally, the CEQA document should consider existing efforts to treat existing contaminants in ways that would also bring water systems into compliance with a proposed MCL for Hexavalent Chromium. For example, treatment methods for existing MCLs for nitrate and arsenic contamination also include ion exchange and reverse osmosis technologies and many of these systems are in areas facing Hexavalent Chromium contamination. This significant overlap of treatment needs certainly reduces the cost of compliance with any proposed MCL and must be considered as part of the existing environmental setting.

IV. The SWB Must Consider the Human Right to Water When Selecting a Preferred Alternative

Pursuant to existing law, the SWB must consider the human right to right water when promulgating any regulation.[6] This means that for the range of actions the SWB is considering as part of the CEQA document, the SWB must explain how each alternative would affect the public's right to safe, clean, affordable, and accessible drinking water for adequate human consumption, cooking, and sanitary purposes. The SWB should include this consideration into its selection of a preferred alternative and select the alternative that provides the greatest fulfillment of the human right to water.

V. The SWB Should Conduct a Racial Equity Analysis of Exposure to Hexavalent Chromium

The SWB recently passed a resolution condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism. Specifically, the resolution highlighted racial disparity that exists when looking at which communities face unsafe drinking water. Given the industrial nature of Hexavalent Chromium exposure and historical practice of redlining communities of color to force them to live near industrial sources or siting new industrial sources near existing communities of color, it is possible that Hexavalent Chromium exposure will be disproportionately felt by communities of color. Given the process the SWB is undertaking to understand and correct racism within the water sector and move towards a more equitable future, we believe the SWB should also conduct a racial equity analysis as part of this process.

[6] Cal. Water Code § 106.3 subd. (b).

VI. The Public Health Goal Remains Best Available Science for Determining Health Impacts from Hexavalent Chromium and Should Continue to Guide the MCL

The Office of Environmental Health Hazard Assessment (OEHHA) is considered one of the preeminent scientific bodies in the country and takes a rigorous, peer reviewed approach to establishing Public Health Goals (PHG) for drinking water contaminants. OEHHA compiles research on both animal and human health impacts, prepares a comprehensive health risk assessment based on those studies, and then puts their work through a peer review process as well as public comment, before finalizing their PHGs. OEHHA's PHGs represent the level at which, based on current science, "the level of a chemical contaminant in drinking water ...does not pose a significant risk to health"[7] in people who drink that water for 70 years. For carcinogens, the agency uses a one in a million risk level. With this in mind, and based on studies in mice exposed to Hexavalent Chromium in drinking water by the National Toxicology Program as well as data from China correlating increased stomach cancer and Hexavalent Chromium in drinking water, OEHHA established its PHG at 0.02 ppb. That analysis was approved via the peer reviewer process. OEHHA has since reviewed new studies on the health impacts of Hexavalent Chromium, but has determined that none of them thus far would lead to a revision of the current PHG. Thus, the SWB is justified in relying on the PHG as best available as to the health impacts from Hexavalent Chromium exposure.

Several commenters during the scoping presentation noted that additional studies have been conducted that call into question the health impacts of Hexavalent Chromium. The MCL process seeks to establish an MCL as close as possible to the PHG, meaning the PHG should be the primary means by which the SWB determines impacts from Hexavalent Chromium and that additional studies are not relevant and act to further delay the final establishment of this MCL.The SWB has significant deference in which studies they rely on when determining impacts to health.[8] The mere existence of a contrary study does not mean that the SWB must include that study's findings in its CEQA document. We believe that the SWB should continue to rely on OEHHA's PHG for defining the health impacts from Hexavalent Chromium.

Thank you for your consideration of these comments. We look forward to continuing to engage in this process to promote the most health-protective MCL possible.

Sincerely,

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[7] https://oehha.ca.gov/water/public-health-goals-phgs
[8] *See Sierra Club v. Fresno* (2018) 6 Cal.5th 502, 512-513.

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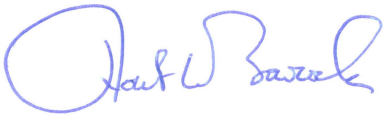

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Cc: Chair Esquivel, Vice Chair D'Adamo, and Boardmembers Firestone, Maguire, and Morgan