



April 20 , 2020

Ms. Jeanine Townsend
Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
P. O. Box 100 Sacramento, California 95812-2000
Via: commentletters@waterboards.ca.gov

Re: COMMENTS – White Paper On Economic Feasibility Analysis In Consideration of a Hexavalent Chromium MCL

Dear Ms. Townsend:

I am writing on behalf of the California Association of Mutual Water Companies (“CalMutuals”) to submit comments on the White Paper On Economic Feasibility Analysis In Consideration of a Hexavalent Chromium MCL (“the White Paper”), released for public comment by the State Water Resources Control Board in February 2020. CalMutuals represents over 300 mutual water companies throughout the state, most of which are small community-owned water systems with less than 3,000 service connections. In 2012, we submitted a letter to the Department of Finance citing that the Division of Drinking Water, which was then operating under the California Department of Health, had not conducted a suitable economic feasibility analysis in determining a maximum contaminant level for hexavalent chromium, in conformance with California law. It has been our long-standing belief that state regulations should accommodate the needs of small water systems and their residents in assuring safe drinking water.

While CalMutuals agrees with certain aspects of the White Paper, we were struck by the fact that, for the most part, the White Paper is unresponsive to the 2017 Sacramento County Superior Court order invalidating the standard for hexavalent chromium. If the premise of the White Paper is followed in setting a new standard for hexavalent chromium, or, any other pollutant, it will exacerbate uncertainty and add potentially high costs for impacted water suppliers, because of the standard’s continued vulnerability to another challenge. This is why we urge the comments and other input provided in response to the White Paper be incorporated into a report the State Water Resources Control Board should consider in the adoption of a formal policy on economic feasibility of safe drinking water standards.

We appreciate that the White Paper offers a definition of economic feasibility: “protecting public health and ensuring scarce public funds are not over-extended on water

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quality objectives disproportionately expensive compared to the public health protection provided.”¹ However, the proposed definition requires further refinement to comply with the Court Order.

Below are observations the State Water Resources Control Board should consider related to the Court’s major findings that resulted in the invalidation of the standard for hexavalent chromium adopted in 2012:

1. *According to the Court, the Department “simply estimated the cost of complying with seven possible MCLs, and then stated it was adopting one of them. It was required to do more.”²*

The “Department set the MCL at 10 ppb without discussing or analyzing the economic feasibility of that standard.”³

The White Paper and the eventual policy of the State Water Resources Control Board on Economic Feasibility, should address the “more” (i.e., further analysis) that the Court is requiring. That raises the question of what, specifically, will be done to determine whether MCLs are economically feasible. In particular, the White Paper should describe a methodology that will be employed to determine whether an MCL is economically feasible.

2. *“Whether one uses the term ‘economically feasible’ or the term ‘affordable,’ the court is concerned that some families will not have the income or resources to pay a water bill that increases by \$5,600 per year. More important, the court is not convinced that the Department properly considered this fact when it adopted the MCL.”⁴*

We appreciate that the White Paper acknowledges the shortcomings of conventional affordability metrics like median household income (MHI), which ignore disproportionate impacts on the most economically disadvantaged segments of the population in a given service area.⁵ However, the conclusion that affordability is beyond the scope of the economic feasibility inquiry is inconsistent with the Court’s view that: “it is difficult to conceive of a definition (of economic feasibility) that does not at least *consider* affordability.”⁶

The evaluation of economic feasibility should be a two-step process. Step one should consider whether the proposed MCL would be economically feasible for all of the potentially affected systems and their ratepayers. Step two should then evaluate whether the proposed

¹ White Paper, page 6.

² Order, page 13.

³ Order, page 7.

⁴ Order, page 13.

⁵ The White Paper states that MHI only evaluates affordability for half of the population. In other words, it averages household income across the entire population in a water system service area, which means MHI ignores actual affordability problems for the most economically vulnerable segments of the population. This is especially true for service areas with widely distributed incomes.

⁶ Order, page 12.

MCL would be affordable for segments of the population within the service areas of affected systems that would be disproportionately impacted.

3. *The Court asserted that: “Moreover, the fact that customers of large water systems will see their bills increase by \$64 per year is cold comfort to customers of small water systems, whose bills are estimated to go up by \$5,630 per year, or \$469.17 per month.”⁷*

“It does not follow, however, that the Department can simply ignore the economic feasibility of the regulation on that small segment of the population that will bear disproportionately higher costs.”⁸

The White Paper proposes to either eliminate consideration of small system costs, or to average total costs across all affected systems.⁹ This approach would have the effect of obscuring costs for the most impacted systems, which is inconsistent with the Court’s findings that evaluation of economic feasibility: (1) should not average costs across all systems; and (2) should address the disproportionate burdens on small systems: *“When considering the MCL’s economic feasibility, the court is not convinced that it is reasonable to spread the cost of compliance among every household in California when it is clear that the cost will be borne by a much smaller subset.”¹⁰*

Small system costs should be separately identified and factored into future evaluations of economic feasibility for proposed MCLs. Costs should not be averaged across all affected systems.

The State Water Resources Control Board’s recent report on *Recommendations for a State Low Income Water Rate Assistance Program* thoughtfully addresses the needs and challenges facing the most vulnerable members in the State. The insights and recommendations from the report are largely missing here and need to be considered and incorporated.

4. The Court Order also addresses alternatives to centralized treatment available to small systems that may assist with compliance with the MCL. The implication of these statements is that despite the high cost estimates for small systems, employing one or more alternative compliance mechanisms will make the MCL economically feasible for those systems. The Court considered each of the following mechanisms:
 - Exemptions (for economic factors or serving a disadvantaged community)
 - Point-of-entry or point-of-use treatment devices
 - Blending water sources
 - Grants to supplement the cost of treatment

⁷ Order, page 9.

⁸ Order, page 13.

⁹ White Paper, page 8.

¹⁰ Order, page 11.

The Court concluded that the agency failed to demonstrate that any of these alternatives actually made the MCL feasible for small systems, noting that each one has statutory or regulatory limitations that render them either temporary (only delaying the cost of compliance) or potentially inadequate to meet the needs of the affected systems:

“Perhaps more importantly, it does not appear that the Department considered either 1) how the various alternatives would affect the economic feasibility of the MCL, particularly for small water systems, or 2) whether these alternatives would actually make the MCL economically feasible.”¹¹

Under the Court Order, the SWRCB cannot simply point to alternative compliance mechanisms to establish that a proposed MCL is economically feasible for affected systems without first determining if those options are actually viable for those systems, and then determining the extent to which they would reduce the cost of compliance in order to arrive at a net compliance cost. Even with the advent of the Safe and Affordable Drinking Water Fund, it must be demonstrated that sufficient funding is available to meet the needs of affected systems, considering competing demands on that funding source.

5. The Court concluded that the Department failed to consider whether any of its cost estimates were economically feasible: *“Simply coming up with cost estimates for seven MCLs and then selecting one of those MCLs is not equivalent to considering the economic feasibility of complying with the MCL.”¹²*

The White Paper’s proposal of a “multi-faceted approach” that involves looking at various lines of evidence on a case-by-case basis¹³ invites the same kind of ad hoc decision-making that resulted in the invalidation of the prior MCL. The White Paper should develop a methodology that will allow stakeholders to understand how the State Water Board will approach evaluation of economic feasibility for a new Cr6 MCL, and for every MCL adopted thereafter.

The White Paper suggests that the needs of the many are greater than the needs of the few. We do not accept that it is reasonable or appropriate to leave the poorest among us behind. We further do not accept the assertion that there are adequate resources to support water systems and their customers in need. While some have been able to access grant resources, the elephant in the room is that getting grants is an insider’s game where funds go to those aligned with the informal goals and expectations in the Office of Financial Assistance. Small systems by and large do not have the financial or technical resources needed to hire the experts, engineers and accountants required to develop and manage a state grant. Alternative approaches to financial support that do not require engagement of expensive consultants are urgently needed.

¹¹ Order, page 9.

¹² Order, page 8.

¹³ White Paper, page 11.

We believe the White Paper does not adequately address the issues cited by the Court in invalidating the previous standard for hexavalent chromium. The premise of the White Paper should not be the basis for adopting a new MCL for hexavalent chromium or any other contaminant. Instead, the State Water Board should consider the public testimony and written comments to direct the formulation of a formal policy on economic feasibility that will truly protect the integrity of the safe drinking water standards it adopts.

Sincerely yours,

Lisa Yamashita-Lopez
President
California Association of Mutual Water Companies

Cc: Distribution list on page 5

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