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VIA U.S. MAIL AND ELECTRONIC MAIL

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Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 "I" Street
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commentletters@waterboards.ca.gov

Re: Comments of California Water Association on Draft Safe Drinking Water Plan

Dear Ms. Townsend:

In accordance with your notice issued October 20, 2014, the California Water Association ("CWA") hereby respectfully submits its comments on the draft Safe Drinking Water Plan for California, which was released by the State Water Resources Control Board ("State Board") in October 2014.

CWA represents the interests of approximately 115 investor-owned water utilities that are subject to the jurisdiction of the California Public Utilities Commission ("PUC") and, with respect to water quality, of both the CPUC and the State Board. These regulated public utilities serve nearly 6 million Californians with safe, reliable, high-quality drinking water at reasonable rates. On behalf of its member companies, CWA appreciates the opportunity to comment on the State Board's draft Safe Drinking Water Plan.

A. Summary of CWA's Comments

CWA's comments on the draft Safe Drinking Water Plan relate primarily to six topics:

1) The Plan's description of the PUC's regulatory responsibility;

2) The Plan's recommendations for addressing problems of small water companies.

3) The risk of accidental releases from hazardous material storage tanks and pipelines;

4) The cost of compliance with the new MCL for hexavalent chromium;

5) The Plan's recommendation that responsible parties be required to cover groundwater contamination mitigation costs; and

6) The Plan's recommendations for legislation to provide funding for small water systems' treatment costs, to extend metering requirements, and to require annexation of small public water systems.

B. The Extent of PUC Jurisdiction over Investor-Owned Water Utilities Should Be Accurately Described in the Safe Drinking Water Plan.

From the perspective of water service providers subject to the regulatory jurisdiction of the PUC, it is important to describe the extent of PUC jurisdiction accurately in the Safe Drinking Water Plan. For this purpose, CWA proposes the following additions and changes to the draft Plan:

The summary list of state agencies with a role in regulating public water systems at page 12 of the draft Plan omits mention of the PUC. In order to remedy this omission, CWA proposes that the following sentence be added at the end of the first full paragraph on that page: "The California Public Utilities Commission shares regulatory responsibility for ensuring the quality of water supplied by investor-owned water utilities subject to its jurisdiction."

Section 2.1.1.2, at pages 19-20 of the draft Plan, describes the authority and operations of the PUC. For the sake of accuracy and clarity, CWA proposes several revisions to this segment of the Plan, set forth below in red-lined form:

2.1.1.2. Public Utilities Commission (PUC)

The PUC regulates ~~private,~~ investor-owned water utilities ~~and is concerned primarily~~ with particular attention to rates and ~~levels~~ quality of service. These utilities are owned by investors expecting a return on investments in much the same manner as bondholders receive interest on bonds they invest for debt financing. Small utilities are generally owned by a single individual, corporation, or a partnership. Owners of large utilities are generally investors holding ~~stock shares~~financial interests in the utility or its parent company.

The PUC's five commissioners are appointed by the Governor and confirmed by the State Senate~~, with the consent of the State Senate~~. The PUC's primary source of funding is from a ~~1.5%~~ "user fee" that is assessed on utility customers as a percentage of each regulated utility's~~the~~ gross operating revenues ~~of the regulated utilities~~.

In brief, the PUC ensures that customers of regulated water utilities receive ~~the best possible~~safe and reliable water service while allowing the utility a fair opportunity to earn a reasonable return on its investment. In this regard, its functions can be categorized as: (1) ~~issuing Certificates of~~

~~Public Convenience~~authorizing utility service within defined service areas, (2) ~~rate~~ setting rates, and (3) ~~regulation~~ regulating the quality of service.

As a result of ~~mutual concerns with~~shared responsibility for the regulation of investor-owned utilities with respect to water quality, the PUC and the State Water Board's Division of Drinking Water (DDW) have maintained a formal memorandum of understanding to ensure consistency and coordination between the agencies' two programs. This memorandum defines common objectives, principles, agency responsibilities, and project coordination. The large (Class A) investor-owned utilities have acknowledged the coordination between the two organizations and may participate in joint meetings with the staff of both agencies. The PUC can impose stricter water quality requirements, an example being the PUC requirement that Class A utilities implement the distribution system operations plan of the California Water Works Standards, which is a more stringent requirement than that which DDW mandates.

Issues related to the small investor-owned utilities continue to be difficult to resolve because these systems may lack the Technical, Managerial and Financial ("TMF") capacity to secure rate ~~increases~~relief and have an insufficient number of customers to properly fund infrastructure improvements. Incentives offered by the PUC to encourage large investor-owned utilities (Class A companies~~systems~~) have included allowing them: 1) to ~~use~~ apply a ~~universal~~ consolidated water rate structure~~. Under this approach a Class A system can apply the same rate structure to all~~across their water systems within a defined region, which~~. This~~ allows the Class A ~~system~~ company to ~~take excess~~apply revenue generated from a sustainable system ~~and use it~~ for improvements and the operation at a less sustainable system; and 2) an opportunity to earn a higher rate of return ~~(profit margin)~~on the small system assets if ~~they are~~it is willing to purchase such Class C and Class D systems, which are generally ~~poorer~~ in need of improvements and, in some cases, serve disadvantaged communities. These incentives have had very limited success. Many of the small investor-owned utilities experience significant infrastructure problems, such as leaking water pipes, undersized ~~and~~ water storage facilities, and inadequate fire service, and their revenue from water sales is insufficient to address these problems. In addition, present state infrastructure funding opportunities generally prohibit investor-owned utilities from receiving such grants. Thus, ~~they~~the small companies are limited to seeking loans, for which they may have difficulty meeting the ~~technical, managerial, and financial~~TMF capacity requirements.

In ~~addition, in~~ 2012, the Legislature passed AB 1830 (Chapter 539, Statutes of 2012), which allowed complaints to be filed by tenants of mobile home parks claiming that their water rates are not just and reasonable or that the service is inadequate. The PUC reported to State

> Water Board staff that they had received no AB 1830 complaints as of August 27, 2014.

Section 8.8.3 regarding Investor-Owned Water System Financing, at page 145. accurately notes the requirement of PUC authorization for issuance of stocks or bonds by an investor-owned water company and the problem that smaller investor-owned systems may lack financing options. However, the second paragraph of this section, on page 146, is inaccurate. CWA proposes that it be reworded as follows, with changes in red-lined form:

> ~~Very small i~~Investor-owned water systems that do not serve third parties other than tenants are not regulated by the PUC. ~~These include those owned by individuals as sole proprietors, small partnerships, etc.~~ These systems have very few options for funding other than water rates or possibly subsidies from other income sources, such as rental income.

C. The Plan's Recommendations for Addressing Problems of Small Water Companies Neglects to Consider Investor-Owned Water Systems and May Overrate the Efficacy of Relying on Community Service Districts.

The draft Plan's Recommendations 2.2, 2.3, and 2.4 all propose working and coordinating with Local Agency Formation Commissions ("LAFCOs") to address TMF issues for small water systems. These recommendations are sound, but CWA is concerned that the draft Plan fails to recognize the potential roles of investor-owned water systems in addressing the issues facing small water systems. The larger, financially strong investor-owned companies can be a source of support and expertise to help address the small systems' problems. And many of the small troubled systems are investor-owned, but these systems, too, need the concerted attention and assistance envisioned by the draft Plan. For this purpose, CWA recommends adding a new Recommendation 2-5, at p. 34, which would read as follows:

> 2-5 The State Water Board will welcome the participation of investor-owned water systems, both large and small, in the efforts described in Recommendations 2-2 through 2-4, both as sources and recipients of technical, managerial, and financial assistance. Given the PUC's authority over service area expansions and system acquisitions by investor-owned water utilities, PUC participation in such efforts may also be beneficial.

Recommendations 2-5 through 2-7 would be renumbered accordingly as 2-6 through 2-8.

CWA also is concerned that the draft Plan's Recommendations 2-3 and 2-4, relying on the creation of new Community Services Districts ("CSDs") or County Service Areas ("CSAs") for areas lacking safe drinking water, may overestimate the efficacy of such agencies in securing safe drinking water supplies. Many existing CSDs and CSAs lack the TMF capacity to operate a water system. Thus, forming a new CSD or CSA is not a panacea for a lack of technical and financial resources. The PUC's role in defining the service areas of water utilities under its jurisdiction (including authorization of non-adjacent service area expansions and acquisitions of other water systems) may be part of the solution to this issue.

Finally, the draft Plan's Recommendation 3-1, at page 57, would encourage large water systems to assist neighboring water systems in sampling and analysis. This is an appropriate recommendation, but in the case of investor-owned water utilities, the provision of such assistance would have to be consistent with PUC cost recovery procedures. CWA recommends, accordingly, inserting the phrase, "subject to compliance with such PUC requirements as may apply", after the phrase, "large water systems", in the first line of Recommendation 3-1.

D. The Plan's References to Accidental Releases as Threats to Water Supplies Should Be Expanded.

Section 3.2.2.6, at page 49, includes reference to accidental releases in the context of railroad operations. CWA suggests that the risk of accidental releases of hazardous materials from storage tanks and from oil and gas pipelines also should be noted, in the context of threats to both surface water and groundwater supplies. Accordingly, CWA proposes to add the following sentence at the end of the paragraph headed, "**Accidental Releases**", on page 49: "The risk of accidental releases from hazardous material storage tanks or pipelines, sited either above or below ground, also is of concern." Also, CWA proposes to add the following sentence at the end of the paragraph titled, "**Industrial and Agricultural Activities**", on page 50: "Concerns about accidental releases noted in Paragraph 3.2.2.6 also apply to groundwater supplies."

E. Greater Attention Should Be Given to the Challenge of Implementing the Newly Adopted MCL for Hexavalent Chromium.

The draft Plan accurately summarizes the development of a primary drinking water standard and Maximum Contaminant Level ("MCL") for hexavalent chromium in Section 3.2.2.2.1, at page 43, but fails to note the adoption of an MCL of 10 parts per billion ("ppb"). CWA recommends that the adopted MCL be noted in that discussion and in Table 6.1 at page 102, and that the estimated cost of compliance with this new MCL be addressed in Section 7.6 of the Plan, which is intended to address such compliance costs associated with new MCLs. For this purpose, CWA recommends that the first sentence of Section 7.6 be revised to refer to four, rather than three primary drinking water standards with new MCLs, that the phrase, "hexavalent chromium (2014)", be added to that sentence, and that a new Section 7.6.4 be added on page 122, providing an estimate of the cost of compliance with the new MCL for hexavalent chromium.

F. The Plan Recommends Requiring Responsible Parties to Cover Costs of Mitigating Groundwater Contamination, but Fails to Recognize the Need to Coordinate Efforts to Identify Responsible Parties.

The draft Plan's Recommendation 4.4 provides that where the State Water Board has identified responsible parties that have contaminated local groundwater used as a drinking water source causing a public water system to be out of compliance, the State Board will require those parties to cover mitigation costs, with the Division of Drinking Water coordinating its response with Regional Boards and the Office of Enforcement. CWA is

concerned that the starting point for this Recommendation is an assumption that responsible parties have been identified, but, in fact, identifying responsible parties can be a very challenging proposition. The effort to identify responsible parties should focus on identifying sources of contamination and the parties responsible for those sources. Also, the Plan should recognize that, for certain contaminants, the Department of Toxic Substance Control ("DTSC") has a role in identifying responsible parties and, if necessary, pursuing legal action. CWA recommends that the Plan provide for coordination among the Regional Boards and the appropriate Divisions of the State Water Board, as well as with DTSC, in efforts to identify those responsible parties that might be called upon to cover mitigation costs, particularly parties responsible for creating, maintaining, or disposing of products or substances associated with such contamination.

It has been the regulated water purveyors' experience that Regional Boards sometimes have been satisfied to identify the water purveyor as a Responsible Party simply because its operations and service obligations may have resulted in moving a plume, rather than making the effort to identify the Responsible Party or Parties that created the contamination in the first place. While CWA understands that there may be time and resource constraints, CWA believes that the State Board and the applicable Regional Boards should strive to identify the originating Responsible Party or Parties and to assign mitigation costs to them rather than to the local water purveyor.

G. The Recommendation That Legislation Identify a Funding Source to Help Small Water Systems Cover Treatment Costs Should Not Extend to a Broadly Applied Water Use Fee.

Recommendation 4-5, at page 88, recommends legislation to identify a funding source to help small water systems cover the cost of operating treatment facilities, especially those serving disadvantaged communities. Recommendation 4-3, at page 87, supports a "stable, long-term funding source . . . for safe drinking water for small DACs," suggesting as alternatives "a point-of-sale fee on agricultural commodities, a fee on nitrogen fertilizing materials, or a water use fee." CWA supports the goal of helping disadvantaged communities cover their water treatment costs and would support legislation that identifies funding sources that place the funding obligation on those persons or products that have caused the need for treatment. However, a water use fee imposed on unrelated water systems does not meet that test. CWA urges the State Board not to recommend a broadly applied water use fee as a funding mechanism for the needs of particular water systems.

Customers of retail water purveyors pay the cost of water utility service in their monthly bills. When a water system's own customers are unable to bear the full cost of providing safe drinking water, the appropriate source of additional funds is the sources of contamination or a taxpayer subsidy. Ratepayer subsidy in the form of a water use fee is not the answer. (Incidentally, the term, "DAC" is not defined in the list of acronyms or elsewhere in the draft Plan.)

H. The Recommendation That Legislation Require Metering of All Water Customers Should Be Clarified.

Recommendation 8-1, at page 154, recommends legislation to require that all public water system customers be metered, with charges to each customer based on the volume of water used. To clarify this recommendation, CWA suggests that an express exception be made for "fire hydrant and fire protection service customers" and that the phrase, "and that these requirements" be added before the phrase, "be extended to all community water systems." CWA further suggests that the second sentence of Recommendation 8-1, now reading, "Funding for this is available through both grants and loans" be clarified by adding the following phrase: "to both publicly-owned and investor-owned water systems." The same changes should be made to Recommendation 8-1 where it is repeated, at page 168 of the draft Plan.

I. The Recommended Legislation for Annexation of Small Water Systems Should Not Be Mandatory.

Recommendation 8-5, at page 154 of the draft Plan, recommends legislation to require that a small public water system within the sphere of influence of a larger one be required to annex to the larger system. There are a number of intractable problems with this recommendation, and CWA must oppose such a blanket mandate.

First, if applied to small investor-owned utilities, such legislation would mandate the taking of private property and would require compensation under principles of eminent domain law. The proposed mandate also presents a number of practical problems. Among them are:

1. Acquiring a smaller public water system ("PWS") may require substantial infrastructure improvements to meet California Waterworks Standards and to properly serve customers of the smaller PWS.
2. A small PWS that is within the sphere of influence of a large PWS may be in a different political jurisdiction (city or county). In this situation, an annexation may require changes in the authorized service area of the PWS or its water wholesaler.
3. A larger PWS may not have adequate financial or staff resources to accommodate a mandate to acquire a smaller PWS, especially if the mandate requires acquisition of multiple systems over a limited period of time.
4. Financial issues associated with annexing a small PWS will be complex. Determining fair value, working through the necessary property transfers, and assuming or obtaining needed easements is likely to be a slow and burdensome process.

Given all these issues to address and resolve, it would be highly unusual and controversial to mandate such expropriation on a generic basis, without considering the viability of the specific small water systems affected and the capability of the annexing systems to meet the challenges presented.

Accordingly, CWA suggests removing the mandate from this recommendation and converting it to one of strong encouragement. Failing that, the State Board should recommend solutions for these problems and challenges, and should not consider an annexation mandate until it has thoroughly vetted the subject with the drinking water utility community, and until it has offered practical solutions and allowed opportunity to implement them. With respect to investor-owned systems, the recommendation should recognize the PUC's role in defining the service areas of investor-owned utilities and, if applicable to small investor-owned utilities, should recognize such utilities' rights in the context of an exercise of eminent domain. The recommendation also should be limited in its application to small systems that lack adequate TMF capabilities. Favoring the non-mandatory alternative, CWA proposes to revise the first sentence of Recommendation 8-5 and to insert a new second sentence to read as follows, with changes in red-lined form:

> The State Water Board recommends enactment of legislation to ~~mandate~~ encourage ~~a requirement that~~annexation of a small public water system that is within the sphere of influence of a larger water system and that is found by the appropriate or applicable government agency to lack the necessary minimum TMF capabilities ~~should be required to annex to the larger system~~. This policy would apply regardless of whether the annexing system is publicly owned or investor-owned, with recognition of the PUC's role in defining the service areas of investor-owned utilities, but should not require the annexation of small investor-owned utilities absent their consent and PUC approval.

At a minimum, should the State Board move forward with its recommendation on legislation mandating annexation, CWA requests that the State Board include in its recommendation that such legislation provide a mechanism to assess when mandated annexation places an undue burden on either the larger or smaller utility, or their ratepayers. CWA also urges that any mandatory legislation provide an appeal process for either the acquiring or the acquired PWS to challenge an annexation when all the challenges and implications of that annexation, including cost, water quality, legal rights, easements and property transfer, debt resolution, fair market value, and other issues associated with the annexation may be overly burdensome to the larger or smaller PWS.

H. Minor Corrections

At page 15, there appear to be a couple of errors in the second full paragraph. The assertion that housing units increased 27% from 2011 to 2012 appears incorrect. Also, the word "are" at the beginning of the 7th line of that paragraph should be replaced by "is".

Section 2.1.1.4, at pages 21-22 of the Plan, describes the role of the Secretary of State with respect to certain water suppliers, but omits mentioning the Secretary of State's similar responsibilities with respect to for-profit corporations and companies, including many investor-owned water utilities. These responsibilities should be described as well.

In the first paragraph of Section 2.2.1.6, on page 28, the numbering of the enumerated activities is incorrect. The last identified activity regarding the registry of POE and POU water treatment devices should be (5), not (6).

In the third paragraph of Section 2.2.1.6, on page 28, there are references to the drinking water standards, monitoring requirements, and recent regulations that are listed in several appendices to the Plan, but the references are incorrect. The reference to Appendix 2 should be to Appendix 3; the reference to Appendix 3 should be to Appendix 4; and the reference to Appendix 4 should be to Appendix 6.

In the last paragraph on page 141, the reference to the PUC's rate relief program within the energy sector should refer to both electric and gas utilities. The words, "and gas", should be added after the word, "electric" at the end of the 9th line of that paragraph.

Very truly yours,

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