State Water Resources Control Board

FINAL ENVIRONMENTAL IMPACT REPORT FOR ADOPTION OF A REGULATION FOR THE HEXAVALENT CHROMIUM MAXIMUM CONTAMINANT LEVEL

A Programmatic Analysis under Section 21159

of the California Environmental Quality Act

SCH # 2021110099

April 2024

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Contents

LIST OF NEW AND REVISED APPENDICES

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Acronyms, Other Abbreviations, and Definitions Used in the Final EIR

Acronym	Definition
APA	Administrative Procedures Act
BAT	best available technologies
CalEPA	California Environmental Protection Agency
CALFED	A consortium of state and federal agencies with management and regulatory responsibilities in the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDB	California Natural Diversity Database
CVMSHCP	Coachella Valley Multi-Species Habitat Conservation Plan
CVWD	Coachella Valley Water District
EIR	Environmental Impact Report
DEIR	Draft Environmental Impact Report
HCP	Habitat Conservation Plan
ISOR	Initial Statement of Reasons
LED	Light emitting diode
LSA	Lake and Streambed Alteration
MCL	Maximum Contaminant Level
MSWD	Mission Springs Water District
ug/L	Micrograms per liter
NCCP	Natural Community Conservation Plan
NOP	Notice of Preparation
OEHHA	Office of Environmental Health Hazard Assessment
PEIS/R	Program Environmental Impact Statement/Report
PHG	Public health goal
SRIA	Standardized Regulatory Impact Assessment
State Water Board	California State Water Resources Control Board
SWRCB	California State Water Resources Control Board
TPWD	Twentynine Palms Water District
USACE	Unites States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service

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1 INTRODUCTION TO THE FINAL ENVIRONMENTAL IMPACT RERPORT

1.1 Background

As the lead agency in accordance with sections 15089 and 15132 of the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), this document is the Final Environmental Impact Report (Final EIR) for the adoption of statewide regulations setting the maximum contaminant level (MCL) for hexavalent chromium (Proposed Regulations). The Proposed Regulations include a maximum contaminant level (MCL) of 10 µg/L for hexavalent chromium. (Cal. Code Regs. tit. 22, § 64431 Table 64431-A.) The Proposed Regulations also include a compliance schedule based on public water system size, by adding subdivision (p) and Table 64432-B to section 64432 of title 22 of the California Code of Regulations, identifies a detection limit for purposes of reporting, sets monitoring and reporting requirements and public notice requirements for violations of the MCL, and establishes the Best Available Technologies (BAT) for treating hexavalent chromium in drinking water.

This Final EIR includes a list of persons, organizations, and public agencies who commented on the draft program environmental impact report (Draft EIR), their comments and recommendations on the Draft EIR, the State Water Board's responses to significant environmental points raised in those comments, and changes to the Draft EIR in response to those comments. Together with the Draft EIR, this document constitutes the Final EIR for the proposed project. This document has been prepared to accompany the Draft EIR for the Proposed Regulations.

The Proposed Regulations in their entirety were provided as Appendix A of the Draft EIR. Proposed changes to the Proposed Regulations are in Revised Appendix A of this Final EIR.

1.2 Type of CEQA Document

As described in the Draft EIR Summary chapter (Draft EIR p. S-2) and section 1.2 of Chapter 1, the Draft EIR is a first-tier, programmatic analysis of the potential direct and indirect impacts from public water systems' compliance with the Proposed Regulations. Public Resources Code section 21159 requires the State Water Board to perform an environmental analysis of the reasonably foreseeable methods of compliance at the time it adopts a rule or regulation requiring the installation of pollution control equipment or establishing a performance standard or treatment requirement. This analysis must include:

1) an analysis of the reasonably foreseeable environmental impacts of the methods of compliance;

2) an analysis of reasonably foreseeable feasible mitigation measures; and

3) an analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

The analysis does not have to include a site-specific analysis but must include consideration of a reasonable range of environmental, economic, and technical factors, populations and geographic areas, and specific sites. (Pub. Resources Code, § 21159, subds. (c) & (d).) An EIR prepared at the time of adopting the rule or regulation pursuant to CEQA satisfies these requirements. (*Id*., subd. (b).)

Another purpose of the Final EIR is to provide sufficient analysis for public water systems to rely on and use in the preparation of their own project specific CEQA analyses of potential environmental impacts from their compliance with the Proposed Regulations. As described in section 2.9 of the Draft EIR, public water systems may prepare focused EIRs pursuant to section 21159.1 of the Public Resources Code when analyzing the potential impacts of their compliance projects.

Because the State Water Board cannot predict how each public water system will choose to comply with the Proposed Regulations, it does not know where the site-specific compliance projects will be located, what site-specific sensitive resources may be located there, what mitigation measures may be feasible, and what the potential significant environmental impacts could ultimately be. Although potential mitigation measures are identified, the ability to implement those measures, or equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting the future compliance projects. Therefore, although we are adopting a mitigation monitoring and reporting program, we do not know what specific mitigation measures will be appropriate for any specific project, and there is no means to enforce the mitigation requirements at this time.

1.3 Public Review of Draft EIR

The State Water Board released the Draft EIR for review and comment by public agencies and the public on June 16, 2023. The State Water Board posted a Notice of Availability of Draft EIR (Notice of Availability) on the State Water Board's website, circulated the Notice of Availability to the public via email listserv and by email to individuals who previously requested notice or participated in CEQA scoping for the Proposed Regulations, and published the Notice of Availability in newspapers in 56 counties throughout California. The State Water Board mailed the Notice of Availability to the county clerks of all counties in California for posting and submitted the Notice of Availability to the State Clearinghouse for distribution to state and trustee agencies. The State Water Board also mailed a copy of the Notice of Availability to the University of California Board of Regents.

In addition to the electronic availability of the Draft EIR on the State Water Board's website and at the State Clearinghouse, the board made hardcopies of the Draft EIR available at the State Water Board's Office of Chief Counsel in Sacramento, the Sacramento County Law Library, and the 13 Division of Drinking Water district offices located in Redding, Santa Rosa, Richmond, Monterey, Sacramento, Lodi, Carpinteria, Glendale, Santa Ana, Fresno, San Bernardino, San Diego, and Bakersfield.

The adoption of the Proposed Regulations requires compliance with the Administrative Procedures Act (APA) and CEQA. Both processes involve the public through noticing, a public meeting, and comments and responses. The State Water Board elected to hold the public meeting and comment period for both the APA and CEQA together.

The State Water Board held a public hearing (virtual and in-person) to solicit public comments on the Proposed Rulemaking and the Draft EIR on August 2, 2023.

On August 1, 2023, the State Water Board circulated a revised Notice of Proposed Rulemaking and extended the public comment period for APA and CEQA from August 4, 2023, to August 18, 2023. On August 4, 2023, the State Water Board extended the public comment period on the Proposed Rulemaking and the Draft Environmental Impact Report to noon on August 18, 2023. On November 22, 2023, the State Water Board provided an additional comment period until December 15, 2023, on changes to the proposed regulations. No changes to the Draft EIR were required in response to those changes because they did not result in any impacts to the environment, and consisted solely of changes to reporting requirements.

The State Water Board also had a meeting with the California Department of Fish and Wildlife (CDFW) staff to discuss their comment letter. In the meeting the State Water Board clarified that new surface water intakes or surface water storage reservoirs are not reasonably foreseeable means of compliance with the Proposed Regulations and CDFW staff explained their concerns regarding groundwater dependent ecosystems.

1.4 Requirements for the Final EIR

As described in the CEQA Guidelines (Cal Code Regs., tit. 14, § 15000 et seq.), specifically sections 15088, 15089, 15090, and 15132, the State Water Board as lead agency must evaluate comments received on the Draft EIR, prepare written responses to significant environmental points raised, certify the EIR and consider the information in the EIR before approving the project. Pursuant to CEQA Guidelines section 15132, a final EIR consists of: (a) the draft EIR or a revision of the draft EIR; (b) comments and recommendations received on the draft EIR either word for word or in summary; (c) a list of persons, organizations, and public agencies commenting on the draft EIR; (d) the responses of the lead agency to significant environmental points raised in the review and consultation process; and (e) any other information added by the lead agency.

Section 15088(c) of the CEQA Guidelines specifies that the focus of the responses to comments shall be on the disposition of significant environmental issues. Responses

are not required on comments regarding the merits of the project or on issues not related to the environmental impacts of the Proposed Regulations. Comments on the merits of the Proposed Regulations or other comments that do not raise environmental issues are responded to separately as part of the APA process and will also be reviewed by the State Water Board before they take any action on whether to approve the Proposed Regulations or an alternative to the Proposed Regulations.

One state and several local agencies provided written and one oral comment on issues evaluated in the Draft EIR. This Final EIR has been prepared to respond to those comments and to make appropriate revisions to the Draft EIR, consistent with sections 15088, 15089, and 15132 of the State CEQA Guidelines. Comments and responses to each of the comments received are provided in Chapter 2, "Comments on the Draft EIR and Responses," of this Final EIR.

1.5 Changes to the Draft EIR

Although some of the response to comments have resulted in changes to the text of the Draft EIR (see Chapter 3, "Changes to the Draft EIR"), none of the changes constitute "significant new information" as defined in section 15088.5(a) of the State CEQA Guidelines, which would require recirculation of the Draft EIR. Examples of significant new information that would require recirculation include disclosures showing that:

- New significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

1.5.1 Distribution of Final EIR before Certification

This Final EIR and associated appendices are available online at https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/SWRCBDDW-21-003_hexavalent_chromium.html.

Lead agencies are required to provide responses to public agency comments on Draft EIRs at least 10 days before the certification of the Final EIR (Cal. Code Regs., tit. 14, § 15088, subd. (b)). This Final EIR will be distributed as part of the State Water Board agenda at least ten days before adoption of the Proposed Regulations. Notice of release of the Final EIR was also provided to all persons who subscribed to receive notices about the Proposed Regulations via the board's email subscription mailing list.

1.5.2 Decision Making Process

As the decision-making body of the lead agency, the State Water Board is responsible for certifying that the EIR has been completed in compliance with CEQA, that the information in the Final EIR has been reviewed and considered, and that the EIR reflects Board's independent judgment. (CEQA Guidelines, § 15090.) The Board must further find, based on the standards provided in Section 15088.5 of the CEQA Guidelines, that recirculation of the Draft EIR is not required.

Prior to approving the Proposed Regulations, the State Water Board must also prepare one or more findings of fact for each significant environmental impact identified in the document. (CEQA Guidelines, § 15091 and 15092.) Following adoption of a resolution certifying the Final EIR, the Board has the authority to approve, approve with modifications, or reject the Proposed Regulations. To approve the Proposed Regulations, the Board will adopt a resolution documenting the approval. For each significant environmental effect identified in the EIR, the Board will issue a written finding reaching one or more of three possible conclusions. According to section 15091 of the State CEQA Guidelines, the three possible findings with respect to each significant effect are:

- Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR;
- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency; or
- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

If any significant unavoidable impacts would result from the approval of project elements, the State water Board would also be required to state in writing why it proposes to approve the project despite these significant unavoidable impacts. This is termed a Statement of Overriding Considerations, pursuant to section 15093 of the State CEQA Guidelines.

Following certification of the Final EIR and approval of the Proposed Regulation, the State Water Board will file a Notice of Determination with the Office of Planning and Research pursuant to section 15094, subdivision (c) of the State CEQA Guidelines.

1.6 Organization of the Final EIR

The Final EIR consists of: (1) the Draft EIR and associated appendices that were distributed in June 2023 (under separate cover), and (2) the Final EIR and new appendices. The Final EIR is organized as follows:

Chapter 1 Introduction to the Final EIR provides background information and a summary of the proposed regulations, and introduction and overview of the Draft EIR and Final EIR.

Chapter 2 Comments on the Draft EIR and Responses provides a list of commenters on the Draft EIR, contains comments copied from the comment letters received during the public review period, oral comments on the Draft EIR heard at the public hearing, and responses to those comments that raised environmental issues.

Chapter 3 Changes to the Draft EIR presents revisions to the Draft EIR text made in response to comments, or by the State Water Board to amplify, clarify, or make minor modifications or corrections. Changes to the text are signified by strikethroughs where text was removed and by underline where text was added. None of the changes required recirculation prior to adoption.

Chapter 4 References identifies the documents used as sources for the Final EIR (not initially included in the Draft EIR).

Revised Appendix A of the Draft EIR revised regulations.

Revised Appendix C of the Draft EIR corrected well location analysis.

Appendix F comment letters on the Draft EIR and hearing transcript.

2 COMMENTS ON THE DRAFT EIR AND RESPONSES

This chapter contains the full text of comments received from the public agencies that sent comment letters on the Draft EIR during the public review period, which concluded on August 18, 2023, as well as all one oral comment transcribed from the public hearing that occurred on August 2, 2023. Written responses are provided to comments that address environmental issues after the text of the comment, in conformance with section 15088(a) of the State CEQA Guidelines. The letters in their entirety and the transcription of the hearing are included in Appendix F of the Final EIR.

2.1 List of Commenters

The State Water Board received a total of five comment letters and one oral comment that pertained to CEQA. All the commenters are from public agencies and were received before the end of the public comment period which was noon August 18, 2023. The California Department of Fish and Wildlife (CDFW), City of Winters, City of Coachella, and Coachella Valley Water District comment letters are specifically on the Draft EIR. The comment by Twentynine Palms Water District was made during the

public hearing on August 2, 2023, and consisted of comments on both the Draft EIR and the rulemaking generally; the comment addressed in this Final EIR pertains solely to the comment related to CEQA. The State Water Board is taking a conservative approach and is responding here to any comment – whether expressly on the Draft EIR or on the rulemaking generally – that pertains to a potential environmental impact or to a topic that was covered in the Draft EIR such as wildfire or hazardous waste.

Table 1 identifies the numerical designation for each commenter on the Draft EIR, the name of the agency, the date received, and the name of the person that provided the comment. The comment letters and the transcript of the public hearing are reproduced in their entirety in Appendix F.

Table 1. List of Persons, Agencies, and Organizations that Commented on the EIR

Commenter ID	Agency	Date Received	Author/commentor
1	California Department of Fish and Wildlife	8/4/2023	Jeff Drongesen
2	City of Winters	8/1/2023	Kathleen Salguero
3	Coachella Valley Water District	8/17/2023	Joanne Yen Le
4	City of Coachella	8/10/2023	Castulo R. Estrada
5	Mission Springs Water District	8/18/2023	Brian Macy
6	Twentynine Palms Water District	8/2/2023	Yasmeen Nubani

2.2 Organization of This Chapter

Each commenter is given a numerical identifier in Table 1. The City of Winters (Commenter 2), the Coachella Valley Water District (Commenter 3), and the City of Coachella (Commenter 4) provided letters that featured unique introductions but largely identical comments. These were treated as separate comment letters.

This chapter references the number of the commenter and contains the full text of the comment copied and pasted from the comment letter or hearing transcript into this chapter. When one letter has multiple comments, the comments are numbered by the commenter number, a hyphen, and a sequential comment number (commenter ID-comment number). The comments are addressed in this chapter, and any resulting changes, minor modifications, or corrections to the Draft EIR text is presented in Chapter 3.

2.3 Topics of Comments Not Addressed in the Final EIR

Some commenters submitted comments on both environmental impacts and other aspects of the rulemaking unrelated to CEQA. In responding to combined comment letters and oral comments, the State Water Board is addressing the environmental related comments in the Final EIR and addressing the non-environmental related comments in the Final Statement of Reasons. For example, comments pertaining to the estimated costs of the Proposed Regulations are responded to in the Final Statement of Reasons and not in the Final EIR, to the extent that those comments do not relate to environmental impacts or mitigation measures.

2.4 CDFW (Commenter 1) Comments and Responses

2.4.1 CDFW Comment 1-1

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

2.4.2 Response to CDFW Comment 1-1

While CDFW is a trustee agency as defined by CEQA, we do not agree that CDFW is a responsible agency under CEQA for the proposed project, which is the development and adoption of the Proposed Regulations. Although CDFW may be a responsible agency for site-specific compliance projects that are proposed to come into compliance with the regulations, it has no discretionary approval power in the development or adoption of the Proposed Regulations. The State Water Board is the only public agency with the responsibility for carrying out or approving the Proposed Regulations, and there are no responsible agencies for the adoption of the Proposed Regulations.

2.4.3 CDFW Comment 1-2

Section 4.4.4 Impact 4-4 – Light or Glare page 4-4

Issue: Artificial nighttime lighting negatively impacts biological resources.

Specific impact: Mitigation Measure 4.4.4.1 is inadequate in scope to support future compliance projects in avoiding and minimizing impacts associated with artificial nighttime lighting.

Why impact would occur: Future compliance projects such as the installation of water treatment facilities may use artificial nighttime lighting for project construction activities and/or long-term operations.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson, et al. 2013). Many species use photoperiod cues for communication (e.g., bird song) (Miller, et al. 2006), determining when to begin foraging (Stone, et al. 2009), behavioral thermoregulation (Beiswenger, et al. 1977), and migration (Longcore, et al. 2004). Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore, et al. 2004).

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:
CDFW recommends that the SWRCB include the following mitigation measures to minimize impacts from lighting to Biological Resources:

During future compliance project construction and operations over the lifetime of the future compliance project, the future compliance project proponent shall eliminate all nonessential lighting throughout the future compliance project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The future compliance project proponent shall ensure that all lighting for the future compliance project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards). The future compliance project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

2.4.4 Response to CDFW Comment 1-2

The CDFW Comment 1-2 is that nighttime lighting negatively impacts biological resources and recommends measures to minimize impacts from light and glare. Changes to the Draft EIR Mitigation Measure 4-4 were made as recommended by the CDFW; except for the recommendation that future compliance project proponents “shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less”. The State Water Board included this in the measure but qualified it by adding, “if feasible”. Lighting at water system facilities is for security purposes, therefore the State Water Board cannot require the lighting to be less than what the lead agency proposes they need for adequate protection of the public water supply. See revised language in Chapter 3, section 3.5 “Changes to the Aesthetics Section”.

2.4.5 CDFW Comment 1-3

Section 7.4.1.1, Mitigation Measure 7-1(a), Page 7-10

Issue: Mitigation Measure 7-1(a) requires surveys for special status species but does not include requirements on appropriate timing of surveys.

Specific impact: While specific impacts will vary based on future compliance project type and location, mistimed surveys may result in the unmitigated take of special status species.

Why impact would occur: If surveys are completed inappropriately, special status species located onsite might not be detected resulting in future compliance projects impacting special status species.

Evidence impact would be significant: Inappropriate survey methods may result in special status species that are present on a project site going undetected. As a result, appropriate avoidance, and minimization measures to protect special status species may not be implemented, which could result in the unmitigated take of special status species.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise Mitigation Measure 7-1(a) with the following additions in **bold**.

Mitigation Measure 7-1(a): Identify special status species protected by federal, state, and local laws, regulations, policies, and ordinances that may be within the area where the site-specific compliance project would be located by querying the California Natural Diversity Database (CNDDB) and conducting a project site survey. If special status species or their habitats have been identified in the project area during biological inventory of the compliance project site by a qualified biologist prior to construction, comply with applicable federal and state endangered species acts and regulations, and

any local requirements, such as tree preservation policies. Ensure that important fish or wildlife movement corridors or nursery sites are not impeded by project activities. **Surveys shall be conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Some aspects of the future compliance projects may warrant periodic updated surveys for certain sensitive taxa, particularly if the future compliance project is proposed to occur over a protracted time frame, in phases, or if surveys are completed during periods of drought.**

2.4.6 Response to CDFW Comment 1-3

The State Water Board modified Mitigation Measure 7-1(a) as recommended. See Chapter 3 section 3.6 below.

2.4.7 CDFW Comment 1-4

Section 7.4.1.1, Mitigation Measure 7-1(e), Page 7-10

Issue: It is possible for birds to nest on project sites at any time during the year; therefore, CDFW recommends that appropriate nesting bird surveys are conducted prior to project construction activities regardless of the time of year.

Specific impact: Nesting birds and their nest and eggs might be impacted by project construction activities if they are not detected during nesting bird surveys.

Why impact would occur: Future compliance projects, such as the installation of treatment facilities or construction of additional water reservoirs, may result in ground disturbance or vegetation removal that may impact nesting birds. If surveys are not completed for nesting birds, the project may result in unmitigated impacts to nesting birds, nests, or eggs.

Evidence impact would be significant: Take of nesting birds, nests, and eggs are prohibited by sections Fish and Game Code sections 3503, 3503.5 and 3513.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise Mitigation Measure 7-1(e) with the following additions in **bold** and removals in strikethrough:

Mitigation Measure 7-1(e): Limit construction to a seasonal window outside of the time of potential impact. For example, construct the project outside of nesting bird season (March 1st to September 30th) **Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist shall incorporate**

measures to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall implement a plan to avoid disturbing nesting birds. The plan should include measures such as establishing an appropriate no-disturbance nest buffer to be marked on the ground and monitoring. Nest buffers are species and project specific and shall be at least 300 feet for passerines and 500 feet for raptors. Nest buffers may need to be increased during vulnerable nesting stages or if parents show distress. A nest buffer shall be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. The qualified biologist shall monitor active nests and adequacy of the nest buffers daily and established buffers shall remain in place until a qualified biologist determines the young have fledged, are feeding independently, and are no longer using the nest or the compliance project has been completed. The qualified biologist shall have the authority to stop work if nesting pairs exhibit signs of disturbance.

2.4.8 Response to CDFW Comment 1-4

The CDFW recommended Mitigation Measure 7-1(e) be struck out and replaced with modified language to include specific protections for nesting migratory birds. The State Water Board believes the CDFW misunderstood the intent of measure 7-1(e). The intent of measure 7-1(e) is to mitigate impacts to specific special status species by avoiding construction during the seasonal windows when those species are undergoing critical stages of their lifecycles that need to be protected, and we used the example of a nesting migratory bird seasonal avoidance window. The example of a migratory bird nesting season between March 1st and September 30th was meant as an example of a seasonal avoidance window type of measure. Because project-specific CEQA analyses will be required by lead agencies, species specific to project areas and their seasonal avoidance windows will be different depending on the type of project, the area where it is located, and the special-status species involved.

To clarify and preserve the original intent of 7-1(e), we did not strike it out, but the State Water Board added clarifying language to better express the applicability of seasonal avoidance windows for any special status species and their protected lifecycle stages by avoiding construction during a critical seasonal window. The applicability to a particular animal or plant and their seasonal window would need to be determined on a project level basis.

To acknowledge CDFW's recommendations regarding the protection of nesting birds, we added the recommended nesting migratory bird language as a separate, 7-1(l).

See Chapter 3, section 3.6.

2.4.9 CDFW Comment 1-5

Section 7.4.1.1, Mitigation Measure 7-1(g), Page 7-11

Issue: Mitigation Measure 7-1(g) indicates that purchasing mitigation bank credits will compensate for unavoidable habitat losses in advance of development actions. In some areas of California, including the Whitewater River Watershed, mitigation banks are unavailable or do not have appropriate credits available to offset the impacts of a future compliance project. CDFW recommends that offsite permittee-responsible mitigation is also included as an option to offset unavoidable habitat losses.

Specific impact: Future compliance projects associated with the Project, such as construction of new treatment facilities or water storage reservoirs, may result in unavoidable habitat loss that needs to be compensated through the purchase of credits at a mitigation bank or implementation of offsite permittee-responsible mitigation.

Why impact would occur: Future compliance projects may result in unavoidable habitat losses and those impacts should be offset through appropriate compensatory mitigation that may include offsite permittee-responsible mitigation.

Evidence impact would be significant: The significance of impacts would be determined on a project-by-project basis through regulatory processes like the Lake and Streambed Alteration (LSA) Program, CESA take authorization, or a Natural Community Conservation Plan.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise Mitigation Measure 7-1(g) with the following additions in **bold** and removals in strikethrough**:**

Implement mitigation banking consisting of the restoration or creation of habitat undertaken expressly for the purpose of compensating for unavoidable habitat losses (species and wetlands) in advance of development actions. The U.S. Army Corps of Engineers (USACE) has published guidance for determining compensatory mitigation ratios as required for processing of the USACE permits under section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Act; and section 103 of the Marine Protection, Research, and Sanctuaries Act. Mitigation ratios and credits requirements are also established **included in permits issued** by the CDFW and the U.S. Fish and Wildlife Service (USFWS), to compensate for loss of habitat of federal and state listed species. **Alternatively, to compensate for unavoidable habitat losses, implement offsite permittee-responsible mitigation, including the protection of land under a conservation easement or other appropriate legal instrument and provision of endowments to cover the costs of long-term management and monitoring of biological resources on that land, as well as conservation easement monitoring.**

2.4.10 Response to CDFW Comment 1-5

The State Water Board modified Mitigation Measure 7-1(g) as recommended. See Chapter 3 section 3.6 below.

2.4.11 CDFW Comment 1-6

Section 7.4.3 Impact 7-3 – Protected Wetlands, Page 7-12

Issue: Section 7.4.3 does not describe requirements to notify CDFW per Fish and Game Code section 1602.

Specific impact: Future compliance projects, such as construction of treatment facilities or water reservoirs, have the potential to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq.

Why impact would occur: Future compliance projects, such as construction of treatment facilities or water reservoirs, may be required based on the Project as discussed in this DEIR.

Evidence impact would be significant: Fish and Game Code section 1602 identifies the impacts to any river, lake, or stream that would require an entity to notify CDFW.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise section 7.4.3 with the following additions in **bold:**

For reasons similar to those stated in Impact 7-1, compliance with the Proposed Regulations by public water systems may have the potential to have a substantial adverse effect on state or federally protected wetlands (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. Because future compliance projects are unknown at this time, the State Water Board cannot predict what exactly those projects' impacts will be or the precise mitigation measures that will be required to reduce potential impacts to less than significant. Project-level impacts and mitigation measures will be addressed in future site-specific environmental analyses conducted by CEQA lead agencies approving those projects. Mitigation Measures 7-1 and 13-3 may reduce the significance of Impact 7-3 to less than significant. The ability to implement Mitigation Measures 7-1, Mitigation Measures 13-3, or other equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting future compliance projects, not the State Water Board currently. Consequently, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts from future compliance projects. This EIR therefore takes a conservative approach in its post-mitigation significance conclusion and discloses, for CEQA compliance purposes, that Impact 7-3 is potentially significant

and unavoidable. **Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Project proponents that submit a notification to CDFW per Fish and Game Code section 1602, prior to construction and issuance of any grading permit shall either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for their specific project or if the project requires notification under section 1602 of the Fish and Game Code and CDFW determines the project may substantially adversely affect fish and wildlife resources, the project proponent shall obtain a CDFW executed LSA Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

2.4.12 Response to CDFW Comment 1-6

The State water Board agrees that section 7.4.3 does not describe the requirement to notify the CDFW pursuant to Fish and Game Code section 1602. We do not agree it should be added to our findings statement in section 7.4.3 as it is not a CEQA finding. The requirements of Fish and Game Code section 1602 is discussed in the Draft EIR in section 7.2.2 State Laws, specifically in section 7.2.2.2 California Fish and Game Code on page 7-7. The State Water Board added the language recommended to section 7.2.2.2 to expand upon the conditions and underscore the requirements of the section 1602 permit.

We also added the notification requirement to Mitigation Measure 7-1 as 7-1(m) to remind lead agencies to follow the requirements of California law. See section 3.6.

2.4.13 CDFW Comment 1-7

Section 7.4.6 Impact 7-6 – Habitat Conservation Plans, Page 7-13

Issue: Future compliance projects and their consistency with Habitat Conservation Plans.

Specific impact: Section 7.4.6 does not adequately describe processes to ensure that future compliance projects will be consistent with requirements of Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies.

Why impact would occur: Future compliance projects need to discuss any inconsistencies with applicable approved Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies. Future compliance projects that are inconsistent with approved Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies may result in unauthorized impacts to special status species, vegetation communities, and ecological processes among other wildlife resources that are protected under Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies. This could result in an impact to a Plan or Strategy's ability to implement its biological goals and objectives as required by the permits.

Evidence impact would be significant: Future compliance project may not be in consistent with a Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise section 7.4.6 Impact 7-6 – Habitat Conservation Plans with the following additions in **bold:**

For reasons like those in Impact 7-1, compliance with the Proposed Regulations by public water systems may have the potential to conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, **Regional Conservation Investment Strategies**, or other approved local, regional, or state Habitat Conservation Plan. Because future compliance projects are unknown at this time, the State Water Board cannot predict what exactly those projects' impacts will be or the precise mitigation measures that will be required to reduce potential impacts to less than significant. Project-level impacts and mitigation measures will be addressed in future site-specific environmental analyses conducted by CEQA lead agencies approving those projects. Mitigation Measures 7-1 may reduce the significance of Impact 7-6 to less than significant. The ability to implement Mitigation Measures 7-1, or equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting future compliance projects, not the State Water Board currently. Consequently, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts from future compliance projects. This EIR therefore takes a conservative approach in its post-mitigation significance conclusion and discloses, for CEQA compliance purposes, that Impact 7-6 is potentially significant and unavoidable. **Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies. An assessment of the impacts to the Habitat Conservation Plans, Natural Community**

Conservation Plans, and Regional Conservation Investment Strategies as a result of future compliance projects is necessary to address CEQA requirements and will be included in future site-specific environmental analysis conducted by CEQA lead agencies approving those projects.

2.4.14 Response to CDFW Comment 1-7

The State Water Board modified section 7.4.6 Impact 7-6 – Habitat Conservation Plans by adding the recommended language to the section. Mitigation Measure 7-1(h) was also modified to include a statement about coordination with the respective implementing agencies. See Chapter 3 section 3.6 below.

2.4.15 CDFW Comment 1-8

Section 7.4.7, Page 7-14

Issue: Discussion of cumulative impacts is inadequate.

Specific impact: Future compliance projects such as installation of treatment facilities or construction of water reservoirs have the potential to result in cumulative impacts on biological resources such as ephemeral stream habitats, wildlife corridors, sensitive species and natural communities.

Why impact would occur: The future compliance project may necessitate the installation of treatment facilities and/or construction of water reservoirs that may have significant and cumulative impacts on biological resources within a specific area such as Coachella Valley.

Evidence impact would be significant: Construction of treatment facilities, water reservoirs, and other reasonably foreseeable compliance projects may result in cumulative impacts to biological resources.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:

CDFW recommends that the SWRCB revise section 4.4.5 [sic] to include an analysis and discussion of the cumulative direct and indirect impacts of anticipated future compliance projects on riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, habitat connectivity, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats. Section 4.4.5 [sic] currently does not include a discussion of any anticipated cumulative impacts despite the DEIR being able to anticipate the number of public water systems that may need to be modified. Specifically in Coachella Valley, future compliance projects may include the construction of multiple water reservoirs and/or treatment facilities to meet water quality standards addressed in the DEIR. The construction of these water reservoirs and treatment facilities may require the importation of additional water and potentially result in temporary and permanent

impacts to biological resources associated with the construction of these facilities. Future compliance projects may also involve the construction of new wells, which have the potential to cause groundwater drawdown and can negatively impact special status species. For example, new wells may occur in or adjacent to USFWS critical habitat for Peninsular bighorn sheep (*Ovis canadensis*; Coachella Valley Multi-Species Habitat Conservation Plan [CVMSHCP] Covered Species, Fully Protected Species) and groundwater drawdown may result in fewer sources of forage plants that Peninsular bighorn sheep rely on especially during the summer months. Also, the tributaries to the Salton Sea in Coachella Valley contain some of the few remaining populations of desert pupfish (*Cyprinodon macularius*; CVMSHCP Covered Species; State and Federally Endangered). Groundwater declines associated with the construction of new wells have the potential to negatively impact desert pupfish populations and other groundwater-dependent special status species. The cumulative direct and indirect impacts of these future compliance projects in Coachella Valley, among other areas of the state addressed in this DEIR, need to be analyzed per CEQA Guidelines section 15130 and should be discussed in section 4.4.5 [sic] of the DEIR.

2.4.16 Response to CDFW Comment 1-8

The State Water Board included a detailed discussion of cumulative impacts in the Draft EIR in Chapter 3 section 3.3 pages 3-9 to 3-14. The State Water Board identified past, present, and probable future projects that could potentially produce cumulative impacts with the potential impacts that have been identified from the Proposed Regulations. These included existing primary drinking water regulations adopted by the State Water Board, future primary drinking water regulations that the State Water Board is likely to adopt, and compliance projects to meet the existing and future regulations, including consolidations funded by the Safe and Affordable Funding for Equity and Resilience Program at the State Water Board, the Drinking Water State Revolving Fund and related funding programs at the State Water Board. It also included a table identifying the number of sources above the proposed MCL within each county. Likewise, Chapter 7 “Biological Resources” discusses the environmental setting including the location of wells in critical habitat and identifying that many of the affected wells are in the Coachella Valley and Yolo County. Section 7.4.7 also states there is the potential for significant cumulative impacts to biological resources.

As part of Comment 1-8, The CDFW stated that, “future compliance projects such as installation of treatment facilities or construction of water reservoirs have the potential to result in cumulative impacts on biological resources”. Although the State Water Board acknowledged in section 3.2.3.3 of the Draft EIR that increased reliance on surface water could result in impacts to fish and other aquatic and wetland resources that rely upon surface water, it explained in section 2.6.3.3 of the Draft EIR that increasing reliance on surface water was not an option for most to come into compliance with the MCL. Water systems without existing surface water rights, the ability to contract for an additional source of water, or an existing surface water treatment plant are unlikely to

switch to surface water because obtaining surface water rights could be challenging and purchasing water may not be a reliable, long-term solution. In addition, constructing water reservoirs and/or a surface water treatment plant is a much more expensive undertaking than installing treatment for hexavalent chromium at a groundwater well. (See also 2.5.14 of Final EIR, Response to City of Winter's Comment 2-7.)

Comment 1-8 also states, "Future compliance projects may also involve the construction of new wells, which have the potential to cause groundwater drawdown and can negatively impact special status species." The letter expresses a concern with Coachella Valley, specifically where Peninsular bighorn sheep (*Ovis canadensis*) and desert pupfish (*Cyprinodon macularius*) and their critical habitats occur. These potential impacts were identified in the Draft EIR. The Draft EIR identifies on page 3-13 in Table 3-1 that Riverside County, where most of the Coachella Valley is located, is the county with the highest number of known sources with hexavalent chromium above 10 ug/liter. The Draft EIR, did identify one well within critical habitat of the Peninsular bighorn sheep in Riverside County (see Table 7-1 and Figure 7-1 of Draft EIR). However, that well was later discovered to be incorrectly mapped and is not in Peninsular bighorn sheep critical habitat. A change was made to Table 7-1 on page 7-3 to reflect that the well is not located within the critical habitat of the big horn sheep, and is instead located north and center of the Salton Sea in the inhabited part of the valley at map coordinates 33° 38' 18.8"N 116° 11' 28.4"W (Delgado 2023). There are no affected wells in either Peninsular bighorn sheep habitat or near occurrences of desert pupfish.[1] Figure 7-1 shows the affected wells in areas of recorded occurrences of special status species and Figure 7-2 shows the location of affected wells in NCCP/HCPs, including the Coachella Valley Multiple Species NCCP/HCP area. The Draft EIR does not include mention of, or cumulative impacts to, desert pupfish because none of the affected wells are in or near areas where occurrences of pupfish have been identified. Nonetheless, a change was added to Mitigation Measure 7-1(h) providing that: where projects occur in areas covered by a Natural Community Conservation Planning (NCCP) Program or Habitat Conservation Plan (HCP), the project proponent shall coordinate with the respective implementing agency, which could help to ensure any potential impacts to these sensitive areas are minimized to the extent feasible.

Commenter 1 also expressed concerns that new wells located in or adjacent to critical habitat for the Peninsular bighorn sheep could result in fewer plants to forage in the summer, and that tributaries to the Salton Sea contain pupfish and groundwater drawdown could also affect them. As stated above, there are no affected wells in Peninsular bighorn sheep habitat. The Draft EIR identified potential impacts on groundwater supplies in section 13.4.2. That section noted that public water systems would not increase groundwater use as a result of the regulations; however, it recognized that some reasonably foreseeable means of compliance could result in a

[1] Critical Habitat is a designation and does not indicate that the species of note currently occur in the area. The law also only comes into play when there is a federal action.

shift from one source of groundwater to another, putting additional pressure on that new source. To mitigate potential impacts to groundwater supply and basin recharge, section 13.4.2.3 identified mitigation measures. These included:

a) Designing site specific compliance projects to ensure that water requirements are consistent with available local supplies of water.

b) Designing site specific compliance projects to ensure it is consistent with the local groundwater sustainability plan.

c) Installing permeable parking and driving surface material.

d) Avoiding installation of treatment in areas that impact natural recharge of groundwater, and

e) Designing site specific compliance projects to include recharge basins to compensate for new impervious surfaces.

In addition, mitigation measure 13-2 in section 13.4.2.3, was modified to require decommissioning of wells when a new well is installed. This would help ensure that additional groundwater isn't used and just a different area of the aquifer is being tapped to avoid hexavalent chromium. See Chapter 3.7, below. A change was also added to section 7.4.1.1 Mitigation Measures 7-1(j), requiring Project proponents to consider direct and indirect impacts to groundwater dependent ecosystems and species when proposing new wells that would increase groundwater usage in or near groundwater dependent ecosystems. See Chapter 3.6, below.

2.5 City of Winters (Winters) (Commenter 2) Comments and Responses

2.5.1 Winters Comment 2-1

The City of Winters ("City") submits these written comments in response to the State Water Resources Control Board's ("State Water Board") Notice of Availability of a Draft Program Environmental Impact Report ("EIR) for the adoption of a regulation for the maximum contaminant level ("MCL") for hexavalent chromium ("chromium-6"). The City hopes that its written comments will help the State Water Board fully analyze, mitigate, and avoid the potential environmental impacts of the Project in compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.: "CEQA").

The EIR analyzes a proposed primary drinking water standard for chromium-6 that includes a MCL of 10 micrograms per liter (µg/L) or parts per billion (ppb) (the "Project"). The City has serious concerns about both the proposed MCL of 10 ppb and the adequacy of the EIR prepared for the proposed Project. The City is a responsible agency for the proposed Project, as the City operates its own public water system, and the City will be required to comply with the new MCL if adopted as proposed. (State CEQA Guidelines, § 15381.)

The MCL would significantly impact the City, its ratepayers, and the environment. Given the potential impacts of the MCL, the City appreciates the State Water Board's commitment to prepare an EIR for the Project. The City believes, however, that significant revisions are necessary to the EIR in order to bring it into compliance with CEQA.

The City additionally urges the State Water Board to refrain from certifying the EIR or from approving the Project until the Office of Environmental Health Hazard Assessment ("OEHHA") completes its pending revisions to the public health goal ("PHG") for chromium-6. Given the centrality of OEHHA's PHG to the EIR, and in particular to the EIR's analysis of alternatives to the Project, the City believes that the State Water Board cannot comply with CEQA until OEHHA provides clarity on the PHG that will be in effect when the Project is proposed to be implemented two to four years from now.) *Washoe Meadows Community v. Department of Parks & recreation* (2017) 17 Cal.App.5th 277, 287 ["an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR"].)

The City appreciates the opportunity to submit these comments, and the City is hopeful that it can work with the State Water Board to ensure that a valid CEQA document is prepared and that any future MCL for chromium-6 is protective of the public health, the environment, and the City's ratepayers.

2.5.2 Response to Winters Comment 2-1

No response is required for these introductory comments; the State Water Board responds to the issues below as they are more fully detailed by the City in its letter. One issue, however, that is not addressed below is the City's role as a responsible agency. The City states above that it "is a responsible agency for the proposed Project, as the City operates its own public water system, and the City will be required to comply with the new MCL if adopted as proposed." However, the State Water Board does not agree that Winters is a responsible agency under CEQA for the proposed project, which is the development and adoption of the Proposed Regulations. Although Winters may be a lead or responsible agency for any site-specific compliance project that it proposes to come into compliance with the regulations, it has no discretionary approval power in the development or adoption of the Proposed Regulations. The State Water Board is the only public agency with the responsibility for carrying out or approving the Proposed Regulations, and there are no responsible agencies for the adoption of the Proposed Regulations.

2.5.3 Winters Comment 2-2

1. The Project Could Dramatically Impact The City Of Winters, Its Ratepayers, And The Environment.

The State Water Board's proposed MCL for chrornium-6 would significantly impact the City, which derives 100 percent of its water from ground water with naturally occurring chromium-6. The City relies on five groundwater wells to provide water to its residents, and these wells have chromium-6 levels ranging from 7.2 ppb to 17 ppb. For this reason, the City has long been concerned about the establishment of an MCL for chromium-6 that protects public health while being both technologically and economically feasible, as required by law. (Health & Safety Code,§ 116365(a), (b)(3).) A technologically and economically feasible MCL would allow the City to continue to provide a sustainable public water supply to its residents.

The Project, however, proposes an MCL that is neither technologically nor economically feasible for the City. The City is concerned that an unduly stringent MCL of 10 ppb would require the City to construct economically infeasible facilities or to deploy other treatment options at enormous cost.

2.5.4 Response to Winters Comment 2-2

It is not necessary for all systems to be able to easily comply with the regulation for it to be considered "economically feasible." As explained in the Initial Statement of Reasons, economic feasibility turns on whether compliance with the MCL is "capable of being done given 'the management of domestic or private income and expenditure.'" (*California Manufacturers & Technology Assoc. v. State Water Res. Control Bd.*, (2021) 64 Cal. App. 5th 266, p. 282). Importantly, a regulation may be capable of being done even if not every affected entity is capable of compliance. The Court of Appeal in *California Manufacturers and Technology Association* quoted federal cases interpreting the meaning of economic feasibility in the context of regulations promulgated by the Occupational Safety & Health Administration, where the courts have explained that a regulation is not infeasible simply "because it threatens the survival of some companies within an industry" (Ibid., quoting *United Steelworkers of America, AFL-CIO-CLC v. Marshall* (D.C. Cir. 1980) 647 F.2d 1189, 1265), and that "[a] standard is economically feasible if the costs it imposes do not 'threaten massive dislocation to or imperil the existence of, the industry'" (Ibid., quoting *American Iron & Steel Institute v. Occupational Safety and Health Admin.* (D.C. Cir. 1991) 939 F.2d 975, 980). Because of the multitude and variety of public water systems in California, some of which are very small, it is inevitable that the costs of complying with an MCL will vary, and that some systems will struggle due to economies of scale and a lack of financial capacity. This alone – while of concern to the State Water Board and requiring long-term solutions for the realization of the human right to water for all Californians – does not mean that a particular MCL is economically infeasible under the California Safe Drinking Water Act.

2.5.5 Winters Comment 2-3

Both the construction of new facilities and the deployment of treatment options would significantly impact the environment.

The proposed MCL will have enormous adverse economic impacts on the City and its ratepayers, but these impacts are not just economic-they will translate into significant and unavoidable environmental impacts. These impacts must be avoided, and the means to avoid them is by adopting an economically and technologically feasible MCL-i.e., an MCL for chromium-6 greater than the currently proposed MCL of 10 ppm. The City urges the State Water Board to revise and recirculate the EIR to address the City's concerns and to comply with CEQA.

2.5.6 Response to Winters Comment 2-3

An economic or social change by itself shall not be considered a significant effect on the environment." (CEQA Guidelines, § 15382.) An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes, but the focus is to be on the physical changes. (CEQA Guidelines, §15131.) Here, the EIR recognizes that for communities with sources of drinking water above the MCL, compliance with the standard will require some kind of action. The EIR recognizes potential impacts from four different kinds of treatment, and several other alternative means of compliance. Although potential significant impacts are recognized, this is primarily due to the fact that the State Water Board does not have any control over the projects that the public water systems may implement to come into compliance, and whether or not they could or will implement mitigation measures to avoid potential impacts. Most treatment projects could, however, be implemented in such a manner as to avoid impacts.

As a programmatic document, the Draft EIR is not intended to identify impacts related to any specific compliance project. While some projects might entail economic or social changes that, in turn, cause physical changes to the environment, it is too speculative at this time to know those impacts, and therefore, those impacts can only be addressed in the project-level environmental document created to address the impacts of specific projects. In addition, this comment does not identify any physical changes to the environment that the City believes will be caused by economic impacts from the Proposed Regulations. The City says that the Proposed Regulations will result in economic impacts that "will translate into significant and unavoidable environmental impacts," but provides no further specificity. The comment is therefore general in nature and does not raise a significant environmental issue. The Draft EIR describes numerous potentially significant environmental impacts from the Proposed Regulations that may result from future compliance projects undertaken by public water systems. This comment does not identify any environmental impacts not already discussed in the Draft EIR.

2.5.7 Winters Comment 2-4

2. The EIR violates CEQA because it does not provide the detail necessary to inform the public of the Project's potential impacts to the environment.

The California Supreme Court has characterized an EIR as “the heart of CEQA.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

“An EIR is an ‘environmental alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Ibid*.) “The EIR is also intended to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Ibid*.) Because the EIR must be certified or rejected by public officials, it is a document of accountability.” (*Ibid*.) “If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.” (*Ibid*.) The EIR thus “protects not only the environment, but also informed self-government.” (*Ibid*.)

In light of the above-referenced policies,”[w]hen determining whether an EIR’s discussion of potentially significant effects is sufficient, the ultimate inquiry is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Save Our Capitol! V. Department of General Services* (2023) 87 Cal.App.5th 655,670, quoting *Laurel Heights, supra*, 47 Cal.3d at p. 405.)

The EIR here fails to comply with CEQA because it does not include enough detail to enable the public to understand and to consider meaningfully the Project’s potential impacts on the environment. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.) An EIR is intended to serve as an “environmental alarm bell,” but the EIR here sounds more like the boy who cried “wolf!” The EIR finds that the proposed Project will result in a wide range of significant and unavoidable impacts to the environment, but it also declares that this finding may simply be a false alarm-that there isn’t necessarily anything to be worried about. The EIR provides the public with mixed messages, in effect declaring: “The Project could result in environmental disaster. Or maybe everything will be fine. We just don’t know.”

The EIR recognizes that its analysis is not premised on a strong factual foundation. For example, the EIR provides:

- “Because it would be speculative to assume the type, size, and location of potential compliance projects, as well as the type of resources impacted, this EIR cannot quantify the impacts associated with the implementation of any specific project, but does recognize the potential for such impacts, and identifies potential mitigation that could be implemented at site-specific projects to avoid such impacts.” (EIR, p. S-3.)

- “[E]ven where a source of drinking water is known to be contaminated with hexavalent chromium based on data collected under the prior regulation, it would be speculative to guess the location of a future compliance project to address that contamination.” (EIR, p.2-7.)

- "Without attempting to quantify the impacts associated with the implementation of any specific project, the EIR includes a list of potential actions or mitigation measures that could possibly reduce the impact to a less-than-significant level or contribute to doing so. However, because of the programmatic nature of the analysis and because the State Water Board does not have control over how a public water system will ultimately comply with the regulations, including where it would locate site-specific compliance projects, it is uncertain whether the identified mitigation would be effective in reducing the potential impacts for any specific project." (EIR, p. 3-8.)

In short, the EIR's analysis concludes that it does not know what the Project's potential impacts may be, and it does not know whether those impacts could be mitigated to a level of less than significant. This mixed messaging does not promote "informed self-government." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 392.) It does not address the concerns of "an apprehensive citizenry" that looks to the lead agency to determine whether the environmental impacts of the Project have been duly considered. (*Ibid*.) In short, the EIR fails to include "enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.)

For these reasons, the EIR fails to comply with CEQA. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670; *Laurel Heights, supra*, 47 Cal.3d at p. 392.)

2.5.8 Response to Winters Comment 2-4

The City cites to several cases to support its claim that the Draft EIR does not contain sufficient detail to allow for meaningful public understanding and consideration of potential environmental impacts from the Proposed Regulations. All of the cases cited by the City, however, relate to project level EIRs, and not programmatic documents, which is what this document is. As explained in *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, (2008) 43 Cal.4th 1143, 1169:

> "A program EIR, as noted, is 'an EIR which may be prepared on a series of actions that can be characterized as one large project' and are related in specified ways. (Cal. Code Regs., tit. 14, § 15168, subd. (a).) An advantage of using a program EIR is that it can '[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.' (*Id*., § 15168, subd. (b)(4).) Accordingly, a *program* EIR is distinct from a *project* EIR, which is prepared for a specific project and must examine in detail site-specific considerations. (*Id*., § 15161.)." (emphasis in the original)

As noted in the quotations from the Draft EIR cited by the City, it is impossible at this time for the State Water Board to know the type, size, and location of potential compliance projects, as well as the type of resources impacted. The Draft EIR is not able to quantify the impacts associated with the implementation of any specific project.

This is because the State Water Board is unable to know at this point how a public water system will choose to comply with the Proposed Regulations and the location of a future compliance project, what site-specific sensitive resources may be located there, what mitigation measures may be feasible, and what the potential impacts could ultimately be. This is similar to another programmatic EIR prepared by the Central Valley Regional Water Quality Control Board that was upheld by the court of appeal. In *San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Board*, 183 Cal.App.4th 1110 (2010), the Third District Court of Appeal upheld an EIR prepared for the total maximum daily load (TMDL) for salt/boron. There, fifteen options for implementing the TMDL were analyzed based on their feasibility, cost, flexibility, time to implement and likelihood of success, but recognizing that the decision of how to come into compliance was up to the discharger. The court of appeal quoted the trial court's finding that " . . . CEQA analysis cannot reasonably be performed until the . . . dischargers [individually or collectively] choose the methods and infrastructure they will use to manage irrigation return flows in excess of their TMDL load allocations and apply for required permits to develop and operate management facilities." (*Id*. at 1128.)

The Draft EIR contains the level of specificity required by CEQA for a programmatic document. Section 21159 of the Public Resources Code and section 15187 of the CEQA Guidelines require the State Water Board to prepare an environmental analysis of the reasonably foreseeable methods of compliance when it adopts a regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement. Section 15187 of the CEQA Guidelines explains that the agency is "not required to conduct a project-level analysis;" that the agency "may utilize numerical ranges or averages where specific data is not available;" and that "the agency is not required to engage in speculation or conjecture." (CEQA Guidelines, § 15187, subds. (d)-(e).) In determining the degree of specificity required in an EIR, the CEQA Guidelines also provide that the "degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." (CEQA Guidelines, § 15146.) For example, an EIR on a construction project will necessarily be more specific than an EIR on the "adoption or amendment of a comprehensive zoning ordinance or a local general plan. (*Id*., subds. (a)-(b).)

The EIR for the Proposed Regulations is not a project-level analysis. Rather, it programmatically analyzes the potential environmental impacts from the Proposed Regulations, including the indirect impacts from projects undertaken by entities in the future to comply with the regulation. The degree of specificity currently known with regard to those compliance projects is limited for the following reasons, without limitation: 1) the diversity of possible compliance methods, including multiple types of treatment options and alternatives to treatment, that public water systems may undertake (e.g., installing treatment is substantially different in kind from blending sources or drilling a new well); 2) the compliance methods that public water systems may undertake differ in the type of environmental impacts associated with them; 3) the

discretion on the part of public water systems to choose one or more types of viable compliance methods for their particular system (i.e., the State Water Board does not pick compliance methods for public water systems to implement); and 4) notwithstanding the known location of contaminated wells, the lack of specificity with respect to the location of new infrastructure that public water systems may construct for future compliance projects (e.g., where wells might be treated versus abandoned; where treatment might be located if a public water system is treating multiple sources; where a public water system might decide to drill a new well). See Chapter 3 (particularly section 3.1.4) of the Draft EIR for more discussion about the programmatic nature of the Draft EIR and impact analysis.

Program EIR's are commonly used in conjunction with the process of tiering. (See *Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 47 Cal.3d at p. 399, fn. 8.) Tiering is "the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared." (CEQA Guidelines § 15385.) Tiering is proper "when it helps a public agency to focus upon the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe." (CEQA Guidelines, § 15385, subd. (b); see also, Pub. Resources Code, § 21093, subd. (a).) In addressing the appropriate amount of detail required at different stages in the tiering process, section 15152, subdivision (c) of the CEQA Guidelines states that:

> "[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof ..., the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographic scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (CEQA Guidelines, § 15152, subd. (c).)

Courts have explained that "[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, supra, 40 Cal.4th at p. 431, 53 Cal.Rptr.3d 821, 150 P.3d 709.)

Similar to the use of program EIRs with later activities pursuant to section 15168 of the CEQA Guidelines, section 21159.1 of the Public Resources Code and 15188 of the CEQA Guidelines anticipate site specific environmental effects to be addressed in subsequent documentation by lead agencies for future compliance projects. Those sections explain that after a CalEPA agency, such as the State Water Board, certifies an EIR describing the environmental effects of the reasonably foreseeable means of

compliance and adopts a regulation requiring the installation of pollution control equipment or a performance standard or treatment requirement, focused EIRs may be prepared for projects consisting solely of the installation of the pollution control equipment and other components necessary to complete the installation of that equipment. (Pub. Res. Code, § 21159.1; CEQA Guidelines, § 15188.) The focused EIRs can be limited to project-specific significant effects that were not discussed in the previous environmental analysis, essentially tiering off of the first EIR. This is what is anticipated to be done when entities, such as the City, develop projects to comply with the hexavalent chromium MCL. (See Draft EIR, p. 2-17, section 2.9 "Agencies That Will Use This Document.")

This is consistent with what has been permitted in other situations where the details of the specific projects that will be necessary for compliance with a more general plan discussed in an EIR are unknown. For example, in *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143 (2008), the California Supreme Court, in discussing the appropriate amount of detail required of the sources of water that would be used for the CALFED program, noted that because the joint federal and state programmatic environmental impact statement/report (PEIS/R) was a programmatic document, it was not necessary for the EIR to identify specific sources of water with certainty, and instead it was sufficient to evaluate in general terms the potential environmental effects of supplying water from potential sources. (*Id*. at 1171.) "...[T]he sources of water actually used depend on future decisions between willing buyers and sellers. It is therefore impracticable to foresee with certainty specific sources of water and their impacts." (*Id*. at 1172.) Because the degree of specificity involved in the underlying activity that is described in the Draft EIR is limited, the degree of specificity required for the Draft EIR is necessarily limited too.

Nevertheless, the Draft EIR makes a good-faith effort to identify, analyze, and disclose the potential environmental impacts of the Proposed Regulations. The Draft EIR includes known locational information on contaminated sources; identifies the reasonably foreseeable methods of compliance with the Proposed Regulations; describes the technical characteristics of those methods of compliance; considers the environmental settings of locations with contaminated sources; and discusses the potential environmental impacts from compliance projects undertaken by public water systems in the future.

2.5.9 Winters Comment 2-5

3. The EIR abdicates its responsibility to analyze the potential environmental impacts of the Project by finding nearly every impact to be "significant and unavoidable" without reference to any standard of significance.

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources

Code, § 21002.1(a).) To further this purpose, the lead agency must disclose the "analytic route" between its conclusion that an impact may have a potentially significant impact on the environment and its conclusion of whether, and to what extent, the impact can be mitigated. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 654.)

A lead agency does not satisfy its responsibility under CEQA by merely reaching a conclusion regarding whether a proposed project may have a significant and unavoidable impact on the environment. (*Lotus, supra*, 223 Cal.App.4th at p. 654.) Instead, a lead agency must (1) set forth the standard of significance by which it will determine whether a proposed project will have a significant impact on the environment; (2) provide analysis demonstrating whether the proposed project will exceed that standard of significance; (3) propose mitigation to reduce the proposed project's potentially significant impact on the environment; and (4) analyze the extent to which that mitigation will reduce the potentially significant impact. (*Id*. at pp. 655-658; see also Pub. Resources Code, § 21100(b).)

The EIR fails to meet any of the above criteria. For example, in its analysis of whether the proposed Project could violate any air quality standard or contribute substantially to an existing or projected air quality violation, the EIR provides no factual analysis. Instead, the EIR refers the public to its roughly one-page analysis of whether the proposed Project would conflict with or obstruct implementation of any applicable air quality plan. (EIR, p. 6-9.) The EIR's analysis of whether the proposed Project would conflict with or obstruct implementation of the applicable air quality plan, however, is not based on, and does not reference, any threshold of significance. (See EIR. Pp. 6-7 through 6-9.)

Without any threshold of significance to guide its significance determination, the EIR does not and cannot include any factual analysis demonstrating whether the proposed Project will exceed any threshold of significance. Moreover, while the EIR proposes mitigation measures, it does not analyze whether and to what extent this mitigation could reduce the potentially significant impact. The EIR ultimately concludes that the proposed Project may result in a significant and unavoidable air quality impact, but this conclusion is based on conjecture, not facts. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814. 838 [public agency violates CEQA and abuses its discretion when its determination is not supported by substantial evidence]; see also Pub. Resources Code, § 21168.5.)

In sum, the EIR violates CEQA by failing to measure the proposed Project's potential impacts against any threshold of significance, and by further failing to quantitatively analyze whether the mitigation measures identified could reduce the proposed Project's potential impacts to a level of less than significant. The EIR is littered with conclusions of "significant and unavoidable impacts," but the EIR fails to disclose the "analytic route" taken to reach these conclusions. (*Lotus, supra*, 223 Cal.App.4th at p. 654.)

2.5.10 Response to Winters Comment 2-5

The Draft EIR uses standards of significance from Appendix G to the CEQA Guidelines, and in section 15065 of the CEQA Guidelines. As explained in Practice Under the California Environmental Quality Act, "many lead agencies use the standards in Appendix G as a basis for defining standards of significance in an EIR." (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont. Ed. Bar 2d ed. 2008) Significant Environmental Effects § 13.15, p. 13-19 (rev. 3/23).) As an example, Chapter 6 of the DEIR relating to impacts to air quality considers no fewer than six thresholds of significance. The DEIR describes the possible sources of air contaminants from future compliance projects, including from both construction and operation, and proposes mitigation measures that proponents of site-specific compliance projects may undertake to reduce impacts to less than significant.

As noted previously, as a programmatic document, it is impossible at this time for the State Water Board to know what types of projects that the public water systems will implement to come into compliance, what site-specific sensitive resources may be located there, what mitigation measures may be feasible, and what the potential significant environmental impacts could ultimately be. It would be speculative at this time to quantify the air quality impacts from future site-specific compliance projects, and to evaluate how mitigation measures would reduce those impacts quantitatively because compliance projects are not currently known, let alone with a level of detail required to assess quantitatively the emissions of air contaminants. Rather, the Draft EIR makes a good-faith effort to disclose potential impacts to air quality (and other resources) from the reasonably foreseeable methods of compliance and proposes mitigation measures that future project proponents and approving agencies may impose to reduce those impacts. However, because the ability to implement mitigation measures is within the purview of the CEQA lead and responsible agencies, and not the State Water Board at this time, there is inherent uncertainty in the degree of mitigation that may be ultimately implemented to reduce significant impacts, and therefore the Draft EIR considers the impacts from future compliance projects to be potentially significant and unavoidable.

2.5.11 Winters Comment 2-6

4. The EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment.

The EIR must serve as an informational document that will inform public agency decisionmakers and the public generally of the significant environmental effects of the Project, identify possible ways to mitigate the Project's significant effects, and describe reasonable alternatives to the Project. (State CEQA Guidelines, § 15121(a).) To achieve this purpose, the EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment. (State CEQA

Guidelines, § 15382 [‘’economic change related to a physical change may be considered in determining whether the physical change is significant"].)

The cost of compliance with the MCL for chromium-6 would shape the behavior of both water agencies and ratepayers, and the environmental impacts of this reasonably foreseeable behavior must be analyzed in the EIR. To do so, the EIR must analyze and discuss the costs of complying with the MCL, and how activity in response to such costs could potentially impact the environment.

2.5.12 Response to Winters Comment 2-6

Social and economic changes must be addressed under CEQA if they will cause changes in the physical environment. (CEQA Guidelines, § 15131.) But an economic or social change by itself is not considered a significant effect on the environment. (CEQA Guidelines, §§ 15064, subd. (e), 15131, 15382; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019.) In *City of Davis*, the court noted that physical changes in the environment caused by economic and social factors attributable to a project would be an indirect physical change in the environment, and an indirect physical change may be considered only if it is reasonably likely to occur. (*Id*. at 1020; CEQA Guidelines, § 15064, subds. (d)(2) and (d)(3).) A change that is speculative or unlikely to occur is not reasonably foreseeable, and a determination that a project may have significant environmental effects must be based upon substantial evidence. (*Id*.; CEQA Guidelines, § 15064, subd. (f).) The existence of a public controversy is not substantial evidence. (*Id*; CEQA Guidelines, § 15064, subd. (f)(4).) “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support[ed] by facts.” (*Id*; Guidelines, § 15064, subd. (f)(5).)

Although the cost of compliance may influence how the public water systems choose to come into compliance (e.g. treatment via ion exchange versus reduction-coagulation-filtration), the City’s concerns about impacts caused by cost are purely speculative and not supported by reasonable assumptions predicated upon facts or expert opinion supported by facts.

2.5.13 Winters Comment 2-7

The City provides a non-exhaustive list of examples of how behavior responding to the cost of the MCL could result in a potentially significant impact on the environment.

(1) Shift from groundwater usage to surface water usage. While the City does not have this option, the high cost of compliance with an overly stringent MCL could cause water agencies to shift from groundwater usage to surface water usage, and the EIR must analyze the potential environmental impacts of this reasonably foreseeable shift, as further discussed in section 5 of this comment letter below. Notably, Yolo County water

agencies have already made this shift. The shift to surface water usage would have numerous deleterious impacts on the environment, including decreased in-stream flows and adverse impacts to fish and wildlife.

2.5.14 Response to Winters Comment 2-7

As discussed in section 2.6.3.3 of the Draft EIR, it is not expected that systems that do not currently have access to surface water will switch to surface water as a result of the Proposed Regulations. It states, "...it is not reasonably foreseeable that water systems will develop [new] surface water sources as an alternative means of complying with the proposed regulation." In part, this is related to the fact that for many systems the distance from a surface water source prohibits its use. In addition, even for systems that are located near a surface water body, obtaining surface water could be challenging because many streams are fully appropriated by existing water right holders and purchased water may not be a reliable, long-term solution. Second, constructing a surface water treatment plant is a more expensive undertaking than installing a treatment system for hexavalent chromium at a groundwater well. For example, the State Water Board provided in excess of $250 million for the Davis Woodland Water Supply Project, which was driven not just by improving water quality, but also ensuring future reliability of supply to meet future needs and improving the water quality of treated wastewater effluent. (City of Davis 2007, p. 2-8) By comparison, it was estimated that groundwater treatment for a public water system serving about the same number of connections as the Woodland, Davis, and UC Davis systems would be approximately four-million dollars. (See Attachment 5 of SRIA, Cost Estimates for Individual Sources, p. 3, source ID #99.)[2] In addition, surface water treatment is significantly more complex than treatment of groundwater and will result in much higher operation and maintenance costs.

Section 2.6.3.3 of the Draft EIR estimates there are around 30 public water systems that have existing surface water sources that could theoretically rely on increased surface water usage to comply with the Proposed Regulations because they currently use surface water to some degree. The Draft EIR notes that for these systems, it may be possible to increase reliance on surface water and reduce or cease use of groundwater contaminated with hexavalent chromium. The EIR recognizes that if systems with existing surface water treatment are able to switch from reliance on groundwater to use more surface water, there could be potential impacts related to that switch. These impacts were discussed in a number of areas of the Draft EIR, including in sections 3.2.3.3, 4.4.4, 6.4.1, 7.4.1, 12.4.1, 13.4.1, 20.3.3, 22.3.1, 22.3.2, and 26.3, and included the recognition that increased reliance on surface water could impact the amount of water in that surface water body, potentially impacting fish and other aquatic and wetland resources. However, it is too speculative at this point for the State Water Board to be able to know which systems might increase reliance on surface water instead of

[2] City of Davis has 17,320 connections; Woodland has 17,032, and UC Davis has 696.

installing treatment, and no additional discussion is required as the precise nature of any impact on any specific water body is too speculative at this point in time. (See *In re Bay-Delta*, 43 Cal. 4th 1143, 1170 ("Because it is a first-tier, program EIR, the CALFED PEIS/R does 'not analyze site-specific impacts of future projects at proposed locations.'"); *Id*. at 1173 ("[T]his stage of program development did not require a more detailed analysis of the Program's future water sources, nor did it appear practicable.") See also 2.5.22, below, "Response to Winters Comment 2-11."

2.5.15 Winters Comment 2-8

(2) Increased dependency on surface waters would increase the need for water storage. The MCL could spur a wave of reasonably foreseeable water storage and conveyance projects, as water agencies increasingly use surface waters to avoid the costs of compliance with the MCL. The EIR must analyze and mitigate the environmental impacts of these projects, including impacts on air quality, water quality, and biological resources. Moreover, the need for water storage may require flooding large areas of land to store water, and the environmental impacts of transforming the environment in this manner must be analyzed.

2.5.16 Response to Winters Comment 2-8

As explained in Response 2-7, above, it is not likely that increasing use of surface water is a realistic option for systems that do not already have surface water rights. In addition, it is too speculative that an increase in surface water use by public water systems will result in the construction of additional surface water storage and conveyance projects. The cost of constructing additional surface water storage and conveyance projects would dwarf the cost of treating groundwater, and can be highly controversial, making the switch to surface water uneconomical and therefore improbable. For example, the California Water Commission estimates the Sites reservoir could be 4 billion dollars.[3] Therefore, the Draft EIR does not analyze construction of additional surface water storage and conveyance projects because they are not a reasonably foreseeable consequence of the adoption of the Proposed Regulations.

2.5.17 Winters Comment 2-9

(3) The EIR must analyze the reasonably foreseeable environmental impacts of the Project resulting from increased rates to ratepayers. The cost of compliance with a MCL of 10 ppb would shape not only the behavior of water agencies, but also of ratepayers who could face dramatic increases in monthly costs as a result of their water agencies' efforts to comply with the MCL. For example, economically vulnerable ratepayers unable to afford these increased costs may be forced to migrate from a service area with high MCL compliance costs to a service area that either has lower such costs or an

[3] https://cwc.ca.gov/Water-Storage/WSIP-Project-Review-Portal/All-Projects/Sites-Project

area that is better able to distribute such costs among a greater number of ratepayers. This migration is a reasonably foreseeable response to higher water rates, and the environmental effects of such migration must be analyzed in the EIR. These impacts may include (1) rural blight, as ratepayers in smaller service areas with high MCL compliance costs migrate to more metropolitan service areas, where the costs of such compliance can be distributed among a larger population; (2) VMT associated with such migration; (3) air quality and greenhouse gas impacts related to such migration; and (4) substantial unplanned population growth in areas with lower MCL compliance costs and the displacement of substantial numbers of people in areas with high MCL compliance costs.

2.5.18 Response to Winters Comment 2-9

The State Water Board is not aware of any evidence that an increase in water bills will lead to a migration of ratepayers with consequent impacts on the physical environment. The comment cites no evidence to support the claim and is therefore speculative.

As the Initial Statement of Reasons (ISOR) for the Proposed Regulations explains, the impact to people from rate increases is expected to be relatively small: the median monthly cost increases for 94% of the 5.3 million people affected by a hexavalent chromium MCL of 10 ug/L are calculated to be less than $20. (ISOR, p. 51.) People served by small community water systems could face significant rate increases, however.

For example, persons served by the two smallest categories of community water systems – those systems that serve fewer than 100 service connections, and those systems that serve between 100 and 200 service connections – could face an annual increase in their annual drinking water rates of $1,622 and $808, respectively (SWRCB 2023b; Cost Table 9.2A, “Estimated Annual Cost per Service Connection by Water System Size”). In practice, these ratepayers may not experience the estimated rate increases because the economic impact analysis in the ISOR is based on conservative assumptions (ISOR, p. 41). For example, the systems that serve them may pursue less expensive alternatives to centralized treatment, such as point-of-use or point-of-entry treatment or consolidation with a nearby water system (ISOR, p. 41; See also “Hexavalent Chromium Maximum Contaminant Level Consolidation and Alternatives Analysis” (SWRCB 2024) (looking at potential numbers of systems that could potenially consolidate or blend to address hexavalent chromium). If these ratepayers do experience significant rate increases, there is no evidence that they will relocate to a different part of the state. Even if they do, the impact would not be significant because of the small number of people affected and their distribution throughout the state. The two size categories of systems described above serve 15,631 people in the entire state. (SWRCB 2023b; Cost Table 10.1A, “Estimated Total Number of People Served by Water System Size.”) It is improbable that up to 15,631 people moving within the state

would cause rural blight, significant increases in VMT, air quality and greenhouse gas impacts, or substantial unplanned population growth.

In fact, people are more likely to move within the state due to the contamination of their water supply with hexavalent chromium. By requiring public water systems to meet the proposed MCL, the Proposed Regulations would allow people who are concerned about safety of their drinking water to remain in their existing homes, rather than move to the service area of a public water system unaffected by hexavalent chromium. For example, the population of Hinkley, California “has been dwindling for years as the community has struggled with concerns over the cancer causing chromium-6 in residential wells.” (Steinberg, Jim, “Hinkley Continues to Shrink,” March 18, 2015, San Bernardino Sun.)

2.5.19 Winters Comment 2-10

The above-referenced impacts do not appear to be analyzed in the EIR. The City urges the State Water Board to recirculate the EIR to analyze and mitigate these impacts in order to comply with CEQA.

2.5.20 Response to Winters Comment 2-10

As described in the responses to Comments 2-7, 2-8, and 2-9, above, the above-referenced impacts are speculative. There is no evidence to suggest that the impacts identified in the comments would result from the Proposed Regulations. Therefore, the Draft EIR does not analyze them, and recirculation is not required.

2.5.21 Winters Comment 2-11

5. The EIR fails to analyze or mitigate the Project's potential to force water agencies to shift from groundwater to surface water and the potential environmental impacts that may result from this shift.

A lead agency fails to comply with CEQA when its EIR does “not discuss the impact of new surface water diversions, enforceable measures to mitigate those impacts, or the remaining unmitigated impacts." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 [Supreme Court held that lead agency’s failure to properly analyze project’s impacts on surface water violated CEQA]; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App.4th 645, 664 [lead agency violated CEQA where it “fail[ed] to adequately analyze impacts to surface water"].)

In response to the Notice of Preparation (“NOP") of the EIR, many public agencies commented that the proposed Project would cause water agencies to shift from groundwater usage to surface water usage. (See EIR, Appendix B [NOP Comment Letters].) CEQA requires the EIR to analyze the potential environmental impacts of this reasonably foreseeable shift (including impacts relating to decreased in-stream flows

and adverse impacts to fish and wildlife), and to mitigate the impacts of this shift. (See Pub. Resources Code, § 21159(a).)

The EIR identifies “switching to surface water” as a reasonably foreseeable means of complying with the proposed MCL. (See, 7-7-.g., EIR. pp. S-3, I-1, 2-7 through 2-8, 2-15 [recognizing water agencies may “increase their reliance on surface water and reduce or cease using the groundwater supply contaminated by hexavalent chromium"].) The EIR, however, fails to analyze any potential environmental impacts that may result from this increased reliance on surface water. The EIR does not analyze the Project’s potential impact to result in decreased in-stream flows, nor does it analyze potential adverse impacts to fish and wildlife that may result from increased reliance on surface water.

While the EIR recognizes that increased reliance on surface water is a reasonably foreseeable means of complying with the proposed MCL, the EIR fails to analyze any of the potential direct, or reasonably foreseeable indirect, impacts to the environment that may result as a result of this action. This renders the EIR fatally flawed under CEQA, and the EIR must therefore be revised and recirculated to address this issue. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc., supra*, 40 Cal.4th at p. 444.)

2.5.22 Response to Winters Comment 2-11

Section 2.6.3.3 of the Draft EIR recognized that some water systems may choose to switch to surface water that is not contaminated with hexavalent chromium; however, the State Water Board concluded that this would not be an option for many systems. Of the public water systems that the State Water Board had data indicating that they would exceed the MCL for hexavalent chromium, only about 30 public water systems currently use both groundwater and surface water. For these systems, it may be possible to increase their reliance on surface water and reduce or cease using groundwater with hexavalent chromium above the MCL. This is because the infrastructure already exists for these systems to use surface water. However, water systems without existing surface water rights, the ability to contract for an additional source of water, or an existing surface water treatment plant are unlikely to switch to surface water. First, for those that are located close enough to a surface water source to make this an option, obtaining water rights or a long-term contract for surface water could be challenging. Many streams are fully appropriated, and finding a reliable, long-term source of surface water would be challenging. Second, construction and operation of a surface water treatment plant is a more expensive undertaking than installing and operating a treatment system for hexavalent chromium at a groundwater well.

The EIR recognizes that if systems with existing surface water treatment are able to switch from reliance on groundwater to use more surface water, there could be potential impacts from increased use of surface water. These impacts were discussed in a number of areas of the Draft EIR, including in sections 3.2.3.3, 7.4.1, 13.4.1, 22.3.2, and 26.3, and included the recognition that increased reliance on surface water could impact

the amount of water in that surface water body, potentially impacting fish and other aquatic and wetland resources. However, it is too speculative at this point for the State Water Board to be able to know which systems might increase reliance on surface water instead of installing treatment. As noted previously, there are very few systems that rely on both surface and groundwater, and of those systems, it is uncertain which would be able to switch to a heavier reliance on surface water. Without more information available, potential impacts to fish and wildlife are too speculative at this stage in the environmental review process. Once a system decides that it would be relying more heavily on surface water for compliance with the MCL, the specific environmental impacts of that decision can be assessed at that time.

Even the *Vineyard* case cited by the City supports this position that the need to address certain impacts depends on where one is in the planning process when the analysis is being made. In the *Vineyard* case, the California Supreme Court considered when, and with how much certainty, sources of water for a large development must be identified. There the court noted "the burden of identifying likely water sources for a project varies with the stage of project approval involved," and that the level of uncertainty allowed at early stages of planning was different than what was required under law for subdivision approval. (*Id*. at 437 [noting CEQA does not demand such certainty at relatively early planning stage].) The analysis in the Draft EIR related to the potential expansion of surface water use is as detailed as is feasible at this point in time, without knowing which, if any, of the public water systems would increase their reliance upon surface water. As the court noted in *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal. App. 4th 351, 373, "where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."

2.5.23 Winters Comment 2-12

6. The State Water Board, as Lead Agency, must take responsibility to mitigate the Project's potential impacts to the environment.

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. (Pub. Resource Code, § 21002.1(a), 21081(a)(1).) "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.Appp.4th 1018, 1039.)

The EIR here provides a gloomy forecast of environmental degradation, concluding that the Project will result in a significant and unavoidable impact as to nearly every resource analyzed. Yet, the EIR fails to properly mitigate these significant and unavoidable impacts. State CEQA Guidelines section 15126.4 sets forth the State Water Board's responsibility as lead agency to commit to mitigation measures:

> Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.

(State CEQA Guidelines, § 15126.4(a)(1)(8), emphasis added.)

None of the mitigation measures proposed in the EIR comply with the above standards.

First, the State Water Board has not committed itself to any mitigation. The State Water Board has not even considered what steps that it--as opposed to agencies tasked with complying with the proposed MCL--could take to mitigate potential impacts to the environment. For example, compliance with the proposed MCL could result in significant economic burden to responsible agencies, and as various agencies commented in response to the NOP, there are significant impacts to the environment that could result from this economic burden. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].) The State Water Board, however, has not discussed how it could provide funding, grants, or subsidies to responsible agencies to mitigate potential impacts to the environment. State funding is the linchpin to achieve an economically feasible MCL. Without a specific and enforceable commitment from the State Board on funding, the economic feasibility analysis and the EIR are deficient.

Again, the State Water Board has not committed to any mitigation at all. The EIR must be revised so that the State Water Board itself commits to mitigation so that the burden of the State Water Board's proposed Project does not fall squarely on the responsible agencies required to implement the Project. (State CEQA Guidelines, § 15126.4(a)(1)(B).) The State Water Board has an integral part to play in mitigating the impacts of its Project. By not taking responsibility to mitigate impacts that it can control, the State Water Board violates CEQA.

2.5.24 Response to Winters Comment 2-12

The State Water Board is lead agency for adoption of the Proposed Regulations but is not usually the CEQA lead agency for compliance projects. Where a publicly owned public water system undertakes a compliance project, that public water system is the lead agency under CEQA. Where a privately-owned public water system undertakes a compliance project, the lead agency will normally be the public agency with general

governmental powers (such as a city or county), or the agency that acts first. (CEQA Guidelines, § 15051.) The State Water Board normally does not act first on a compliance project because its permits are for the updated operations of the public water system (Health & Saf. Code, § 116525, subd. (a).) Thus, other public agencies will normally act first to approve plans, or issue land use or construction permits for the compliance project. Because the State Water Board is not implementing the compliance projects, and is usually not the CEQA lead agency for compliance projects, it is not able to require implementation of mitigation measures to reduce project-level impacts at the time it adopts the Proposed Regulations. PWS undertaking compliance projects and public agencies approving them as lead agencies will be able to impose site specific mitigation measures.

The City's comment regarding the sufficiency of the mitigation measures again loses sight of the fact that this is a programmatic document, and because of the uncertainty in how public water systems will ultimately decide to comply with the hexavalent chromium MCL, is not intended to address the potential impacts from any specific project. As the court in *Rio Vista Farm Bureau Center v. County of Solano* recognized in addressing the sufficiency of mitigation measures for a programmatic environmental document for a hazardous waste management plan, a general statement of mitigation measures is consistent with the general nature of the plan. "Any further and more detailed statement of mitigation measures at this formative stage in the County's hazardous waste disposal plan would have been neither reasonably feasible nor particularly illuminating." (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal. App. 4th 351, 377.) Here, for each resource category, a number of potential mitigation measures are identified to address the potential impacts from implementation of activities to come into compliance with the hexavalent chromium drinking water standard. However, until a specific project is identified to be implemented in a specific place, it is impossible to know what the potential impacts would be, let alone what potential mitigation measures would address those impacts. As the court in *Rio Vista Farm Bureau* recognized, any vagueness in the mitigation measures described in the environmental document is inherent in the discussion of general, county-wide impacts in a planning program that has not approved a particular site or facility for development. "Thus, many specific mitigation measures can only be 'recommended' until a specific facility is proposed." (*Id*. at 381.) "A broader discussion and implementation of mitigation measures and alternatives is simply not currently reasonably foreseeable." (*Id*. at 382.)

The City suggests that the State Water Board should commit to providing funding in order to mitigate the potential impacts of the regulations. The City's comment, however, does not identify a connection between the cost of compliance by public water systems and environmental impacts from the Proposed Regulations. As the EIR identifies, the potential environmental impacts of the proposed regulations relate to the construction and operation of the potential compliance projects that would be implemented to come into compliance with the drinking water standard for hexavalent chromium. Although the potential costs of such projects may influence how a public water system chooses to

come into compliance, the City has not identified any realistic environmental impact related to the cost of the compliance projects themselves. The DEIR is not required under CEQA to identify mitigation measures for economic or social impacts of the Proposed Regulations. (*City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833 [rejecting trial court's finding that Calif. State University Trustees were required to mitigate impact on fire services by funding construction and staffing of additional fire house, explaining that, "[t]he need for additional fire protection services is not an *environmental* impact that CEQA requires a project proponent to mitigate." (*Id.* at 843 [italics in original])].) A mitigation measure that commits the State Water Board to provide funding for compliance projects would not, therefore, do anything to address the impacts of the compliance projects, which are related to the construction and operation of the compliance projects, and would be the same whether or not the State Water Board provided funding.

2.5.25 Winters Comment 2-13

Second, while the EIR sets forth mitigation measures as to nearly every impact, the EIR does not specify any specific performance standards for any of the identified mitigation measures. (State CEQA Guidelines, § 15126.4(a)(l)(B).)

2.5.26 Response to Winters Comment 2-13

The provision in section 15126.4, subdivision (a)(1)(B) that allows performance standards in lieu of setting out the specific details of a mitigation measure when it is infeasible to include those details only applies where the lead agency has the ability to implement future mitigation measures. As noted above, until there are specific projects proposed by the public water systems, there is no way to determine which mitigation measures would be able to mitigate impacts. As described in the Draft EIR, the number, type, nature, and location of future compliance projects are not currently known. Therefore, it is impossible to know with specificity at this time the impacts from future compliance projects and how those impacts will be mitigated. The issue is not one of impracticality or infeasibility of including the specific details of a mitigation measure in the EIR; rather, the issue is knowing which mitigation measures, generally, would be appropriate at all. Therefore, because of the programmatic nature of the analysis, the EIR takes a conservative approach and recognizes the potential for impacts to the environment, depending on how a public water system decides to come into compliance and where the compliance projects are located. The EIR includes best practices and suggested mitigation measures for public agencies to consider when approving future compliance projects. (See *Rio Vista Farm Bureau Center, supra, 5* Cal. App. 4th at 382 [explaining that specific mitigation measures can only be 'recommended' until a specific project is proposed].)

This situation is distinct from those cases where lead agencies will themselves be implementing the future projects, and, therefore, have the capability to develop and incorporate into future actions performance standards, when it is impractical or

infeasible to include specific mitigation measures during the project's environmental review. (CEQA Guidelines, § 15126.4(a)(1)(B).) For example, in *Center for Biological Diversity v. Department of Fish & Wildlife*, 234 Cal. App. 4th 214 (2015), the Department of Fish and Wildlife (DFW) prepared a programmatic EIR to look at its fish hatchery and stocking activities in various lakes throughout the state. In it, the Department committed to performance standards that it must meet before planting any fish in high mountain lakes. This is distinct from the situation here, where the State Water Board will not be implementing future compliance projects, and therefore cannot commit to performance standards for the projects that public water systems will implement. The State Water Board does not know what specific actions each public water system will take to come into compliance with the regulations, and the State Water Board may not have any opportunity to set or require mitigation measures for those projects. (See 2.5.24 Response to Winters Comment 2-12, explaining how State Water Board will generally not be lead agency for compliance projects.) Similarly, because of this inability to know how the public water system will comply, where the project will be located, what types of sensitive resources are located in the location of the project, and what mitigation measures would be feasible, it is also impossible to set performance standards to be met in lieu of mitigation measures.

2.5.27 Winters Comment 2-14

Nor does the EIR explain why or how implementation of the mitigation measures will substantially lessen the Project's significant and unavoidable impact. The EIR identifies a significant and unavoidable impact, and identifies mitigation measures, but fails to analyze or explain the relationship between the mitigation measures and the significant and unavoidable impact. This defect infects the discussion in nearly every section of the EIR.

2.5.28 Response to Winters Comment 2-14

As explained previously, it is impossible at this time for the State Water Board to know how public water systems will comply with hexavalent chromium standard. Because of that inability to know the specifics of future compliance projects, it is not possible to analyze or explain how the suggested mitigation measures will reduce significant environmental impacts. Because of this, when identifying potential impacts and mitigation measures, the State Water Board took the conservative approach and recognized impacts as being potentially significant and unavoidable. Although it is anticipated that potential significant environmental impacts related to site-specific compliance projects could be avoided or mitigated, the ability to require those changes or that mitigation be implemented is within the capacity of the lead and responsible agencies that will be authorizing the site-specific projects, not with the State Water Board at this time.

2.5.29 Winters Comment 2-15

Third, and related to the point above, the EIR does not identify the types of potential actions that can feasibly achieve the performance standard. (State CEQA Guidelines, § 15126.4(a)(l)(B).) Again, this is because the EIR simply does not identify any performance standards. As a result, the EIR does not explain to what extent or how the mitigation measures will substantially reduce impacts. This defect is fatal to the adequacy of the EIR.

2.5.30 Response to Winters Comment 2-15

As described above in Response 2-13, the Draft EIR does not identify performance standards for mitigation. This is not because the State Water Board is deferring formulation of the specific details of future mitigation measures. Rather, it is not possible at this time to know which mitigation measures, generally, would be appropriate at all. In addition, mitigation measures will generally be devised and implemented by other public agencies acting as CEQA lead agencies for future compliance projects. Accordingly, the EIR need not identify types of potential actions that can feasibly achieve performance standards for mitigation.

2.5.31 Winters Comment 2-16

7. The EIR fails to properly analyze the proposed Project's cumulative impacts.

A proper analysis of a project's cumulative impacts is a "vital informational function" of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (*Ibid*.; State CEQA Guidelines, § 15130(a).) More specifically, the "cumulative impact from several project projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*Ibid*.; State CEQA Guidelines, § 15355(b).)

"Proper cumulative impact analysis is vital because the full environmental impacts of a proposed project cannot be gauged in a vacuum." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources." (*Ibid*.) These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Ibid*.)

To have an adequate discussion of significant cumulative impacts, an EIR must generally begin by setting forth a "list of past, present, and probable future projects

producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(l)(A).)

Here, the EIR fails to properly analyze the proposed Project's cumulative impacts for several reasons.

First, the EIR does not include the necessary "list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(1)(A).) This list should include both (1) past, present, and probably future MCLs for various contaminants that the State Water Board has adopted or plans to adopt; and (2) the various means by which the implementing agencies will implement the MCL for chromium-6 in connection with the proposed Project.

2.5.32 Response to Winters Comment 2-16

Section 3.5.1 of the Draft EIR includes a list of past, present, and probable future projects producing related or cumulative impacts. Section 3.5.1.1 includes 82 previously adopted MCLs, compliance with which requires public water systems to install treatment facilities or implement alternative means of compliance that are similar to the reasonably foreseeable means of compliance with the Proposed Regulations. Section 3.5.1.2 includes probable future drinking water regulations that may similarly result in installation of treatment facilities or implementation of alternative means of compliance, including regulations pertaining to arsenic, perfluorooctanoic acid and perfluoroocatnesulfonic acid, N-Nitroso-dimethylamine, styrene, and cadmium. In addition, section 3.5.1.2 includes contaminants currently under review by the OEHHA, including 1,4-dioxane, trihalomethanes, halo acetic acids, and cyanotoxins, for which MCLs could be adopted in the future. Section 3.5.1.3 includes consolidation projects (a reasonably foreseeable means of compliance with the Proposed Regulations) that are funded or ordered by the State Water Board in connection with its Safe and Affordable Funding for Equity and Resilience Program, including 172 previous consolidations, 11 current voluntary consolidations, and six mandatory consolidations. Section 3.5.1.4 describes projects funded by the State Water Board’s Drinking Water State Revolving Fund and Related Funding Programs, including 504 previous drinking water infrastructure projects, 15 projects funded during the state fiscal year 2018-2019 and 34 projects funded during state fiscal year 2019-2020, and 35 projects on the fundable list for the state fiscal year 2021-2022. The Updated 2022-23 DWSRF Intended Use Plan Fundable List (as of June 30, 2023) includes 80 drinking water construction projects and 31 drinking water planning projects.

2.5.33 Winters Comment 2-17

Second, the State Water Board recognizes that there are existing MCLs for other contaminants, and that the State Water Board is in the process or plans to adopt MCLs for a series of other contaminants, including arsenic, perfluorooctanoic acid and

perfluoroalkyl substances, n- nitroso-dimethylamine, styrene, and cadmium. (https://www.waterboards.ca.go, drinking_water/ certlic/drinkingwater/Regulations.html [setting forth existing MCLs adopted by State Water Board], https://www.waterboards.ca.gov/drinkingwater/certlic/drinkingwater/Regulations.html [setting forth planned future MCLs].) The cumulative economic and environmental impacts of requiring public agencies to comply with these past, present, and probably future MCLs must be analyzed in the EIR. This cumulative impacts analysis is a fundamental prerequisite to CEQA compliance because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at pp. 1214-1215.) “This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment.” (*Ibid*.)

2.5.34 Response to Winters Comment 2-17

Section 3.5.1.2 of the Draft EIR includes probable future drinking water regulations that may similarly result in installation of treatment facilities or alternative means of compliance, including regulations pertaining to arsenic, perfluorooctanoic acid and perfluoroocatnesulfonic acid, N-Nitroso-dimethylamine, styrene, and cadmium. In addition, section 3.5.1.2 includes contaminants currently under review by the OEHHA, including 1,4-dioxane, trihalomethanes, halo acetic acids, and cyanotoxins. The Draft EIR considers the potential environmental impacts from projects undertaken by public water systems to comply with these possible future regulations in Section 4.4.5, Section 5.4.6, section 6.4.6, section 7.4.7, section 8.4.4, section 9.4.3, section 10.4.7, section 11.4.3, section 12.4.9, section 13.5, section 14.3.3, section 15.4.3, section 16.3.4, section 17.4.3, section 18.3.2, section 19.3.3, section 20.3.5, section 21.4.2, section 22.3.6, and section 23.4.5.The Draft EIR does not need to analyze economic impacts of public water systems complying with past, present, and probable MCLs, except to the extent that economic impacts from the Proposed Regulations will cause environmental impacts. (CEQA Guidelines, § 15382.) Here, the commenter does not allege or provide evidence that the Proposed Regulations will cause economic impacts that significantly affect the physical environment, or that such impacts are cumulatively considerable.

2.5.35 Winters Comment 2-18

Finally, the State Water Board has an obligation to not only analyze the cumulative impacts of the Project taken together with past, present, and probable future MCLs for other contaminants, but also an obligation to mitigate those impacts. (*Joy Road Area Forest & Watershed Assn. v. California Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 676.) “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the

environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Ibid*.) Accordingly, the City urges the State Water Board to analyze the Project's cumulative impacts, and to commit to mitigation measures that would reduce cumulative impacts to a level of less than significant. (State CEQA Guidelines, § 15126.4(a)(1)(B).) In particular, the City urges the State Water Board to adopt and implement a sustainable regulatory program that pairs each MCL with specific, dedicated funding programs sufficient to implement and mitigate the impacts of each MCL.

2.5.36 Response to Winters Comment 2-18

Section 3.5.3 of the Draft EIR describes the approach to the cumulative impacts analysis and explains that “[a]s a result of the statewide context of the environmental analysis, the impact conclusions and mitigation measures in the resource-oriented chapters that follow are cumulative by nature, because they describe the potential impacts associated collectively with the full range of reasonably foreseeable compliance responses.” Accordingly, the mitigation measures in section 4.4, section 5.4, section 6.4, section 7.4, section 8.4, section 9.4, section 10.4, section 11.4, section 12.4, section 13.4, section 14.3, section 15.4, section 16.3, section 17.4, section 18.3, section 19.3, section 20.3, section 21.4, section 22.3, and section 23.4 include mitigation measures to address cumulative environmental impacts from the Proposed Regulations. As explained in the Draft EIR and previously above, the authority to require that mitigation rests with agencies that will be authorizing site-specific compliance projects, and not with the State Water Board at this time. Consequently, it is uncertain whether mitigation measures will be implemented, which precludes assurance that cumulative impacts will be avoided. Therefore, the State Water Board took the conservative approach and disclosed, for purposes of CEQA compliance, that the Proposed Regulations could result in a considerable contribution to potentially significant cumulative impacts to the resource categories identified in section 25.1 of the Draft EIR.

The commenter suggests here and elsewhere in its comment letter that State Water Board funding to implement the Proposed Regulations would mitigate the impacts of all MCLs, but there is not an explanation for how such funding would mitigate potential environmental impacts related to the installation and operation of treatment facilities or the alternative means of compliance, such as consolidations. Nevertheless, the State Water Board does provide considerable levels of financial assistance for public water systems to comply with MCLs. In fact, the Draft EIR describes that funding in section 3.5.1.4, and does so in the context of the cumulative impacts analysis.

2.5.37 Winters Comment 2-19

8. The EIR fails to properly analyze alternatives to the proposed Project.

"It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which substantially lessen the significant environmental effects of such projects." (Pub. Resources Code, § 21002.) Accordingly, “CEQA requires an EIR to identify feasible alternatives that could avoid or substantially lessen the project's significant environmental effects.” (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 702; Pub. Resources Code, §§ 2 1002, 21100(b)(4).) Indeed, courts have explained that one of an EIR's “major functions” is to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565.)

As part of this analysis, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (State CEQA Guidelines, § 15126.6(a).) The range of alternatives must provide “enough of a variation to allow informed decision making." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.)

An EIR violates CEQA when the alternatives analyzed therein “do not contribute to a reasonable range of alternatives that fostered informed public participation and decision-making." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.) This occurs when an EIR does not consider any alternative that would feasibly attain most of the project's objectives while also lessening the project's significant impacts on the environment. (*Ibid*.) Accordingly, a public agency violates CEQA when it defines its project objectives so narrowly that it "preclude[s] any alternative other than the Project." (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683,692 [hereinafter, “*WATER*"].) Thus, when a public agency effectively defines a project objective as achieving the proposed project, and dismissively rejects anything other than the proposed project as not meeting project objectives, the EIR “prejudicially prevent[s] informed decision making and public participation." (*Id*. at p. 692.)

Here, the EIR proposes an MCL for chromiurn-6 of 10 ppb, but it dismisses all other alternatives as infeasible and incapable of meeting project objectives. The EIR provides no substantive or quantitative analysis of the other proposed alternatives. Instead, like the lead agency in the *WATER* decision, the EIR “dismissively reject[s] anything other than the proposed project." (*WATER, supra*, 78 Cal.App.5th at p. 692.) And. like the EIR at issue in the *WATER* decision, this approach “transform[s] the EIR’s alternatives section-often described as part of the ‘core of the EIR’-into an empty formality." (*Ibid*.) This is evidenced by the fact that the EIR's "Discussion and Comparison of Alternatives" section is almost entirely devoid of analysis, and spans just over a single page. (See EIR, p. 26-6 through 26-7.) To comply with CEQA, a robust analysis of the Project alternatives is required. (*WATER, supra*. 78 Cal.App.5th at p. 692.)

To provide the public and the decision-makers with a complete assessment of the Project and the alternatives to the Project, the EIR must assess the relationships of each alternative to impacts on the environment and also the technical and economic feasibility of each alternative. The EIR cannot simply dismiss alternatives under CEQA by relying on State Water Board staff's conclusion that an MCL of 10 pbb [sic] is technically and economically feasible and that, therefore, there are no other legally sufficient alternatives to analyze. To the contrary, CEQA requires a deeper assessment and acknowledgement of the interrelationship between the State Water Board's assessment of feasibility under California Health and Safety Code section 116365(a) and its obligations under CEQA to assess alternatives. A full assessment of alternatives must inform the decision-making process under section 116365(a). An MCL may appear feasible in a vacuum but prove to be infeasible when assessed in light of the various impacts it might have on the environment. A fully analyzed alternative may in fact be the one that is truly feasible under section 116365(a) and environmentally superior under CEQA when all impacts are considered. By failing to meaningfully assess alternatives, the State Water Board is not only acting contrary to CEQA but also failing to perform its obligations under section 116365(a).

2.5.38 Response to Winters Comment 2-19

The Draft EIR analyzes project alternatives, including a range of alternative MCL values. Importantly, the Draft EIR examines how alternative MCL values would likely cause fewer environmental impacts. The Draft EIR in section 26.2.3 analyzes nine lower MCL values and 11 higher MCL values and evaluates how many more or fewer sources of drinking water would require treatment or alternative means of compliance compared to the proposed MCL of 10 ppb. This is an important analysis because the number of sources requiring treatment or alternative means of compliance is likely to affect the potential environmental impacts of the Proposed Regulations, as the number of site-specific projects increases. In addition, the Draft EIR analyzes the locations of contaminated sources at each alternative MCL value, considers the number of counties affected statewide, and provides maps showing the locations of contaminated sources for each alternative MCL. (See Appendix E of the Draft EIR.) This analysis is important because it assists the State Water Board and the public in understanding the scope and distribution of potential environmental impacts from the Proposed Regulations compared with alternative MCL values.

The alternative MCL values also vary in the extent to which they meet project objectives. Those objectives, as summarized in section 26.1 of the Draft EIR include:

> Avoiding significant risks to public health from drinking water supplied by public water systems in California.
>
> Reducing cancer and non-cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium.

Complying with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5.

All alternative MCL values would satisfy the third objective of adopting a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5. The extent to which they meet the first two project objectives varies, as the reduction of cancer and non-cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium varies in accordance with the specific MCL value. As shown in the Initial Statement of Reasons (SWRCB 2023a, as cited in the Draft EIR), the theoretical number of excess cancer cases avoided as a result of the Proposed Regulations varies considerably among the alternative MCLs. (SWRCB 2023b Table 26.) At an alternative MCL of 1 ppb, there would be a theoretical reduction of 3,536 excess cancer cases over 70 years. (*Ibid.*) At an alternative MCL of 45 ppb, there would be a theoretical reduction of 14 excess cancer cases over 70 years. (*Ibid.*). The following chart from the ISOR shows number of theoretical excess cancer cases avoided over 70 years for the alternative MCL values considered in the Draft EIR.

Table 26 from Attachment 1 to the ISOR.

MCL (ug/L)	CWS	NTNCWS	TNCWS	Wholesalers	Total	Average per year
1	3378.87	29.37	0.00	128.01	3,536	50.52
2	2716.70	22.25	0.00	96.27	2,835	40.50
3	2266.33	17.50	0.00	70.04	2,354	33.63
4	1927.28	14.25	0.00	48.19	1,990	28.42
5	1663.02	11.71	0.00	31.58	1,706	24.38
6	1451.32	9.86	0.00	18.11	1,479	21.13
7	1275.68	8.42	0.00	7.52	1,292	18.45
8	1126.01	7.20	0.00	2.74	1,136	16.23
9	998.79	6.16	0.00	0.91	1,006	14.37
10	891.86	5.31	0.00	0.52	898	12.82
11	795.60	4.72	0.00	0.33	801	11.44
12	708.46	4.18	0.00	0.14	713	10.18
13	626.95	3.69	0.00	0.08	631	9.01
14	551.40	3.22	0.00	0.08	555	7.92

15	484.13	2.79	0.00	0.07	487	6.96
20	238.82	1.36	0.00	0.04	240	3.43
25	135.55	0.69	0.00	0.02	136	1.95
30	96.09	0.35	0.00	0.00	96	1.38
35	63.41	0.17	0.00	0.00	64	0.91
40	36.45	0.02	0.00	0.00	36	0.52
45	14.16	0.00	0.00	0.00	14	0.20

As shown in the ISOR, alternative MCL values higher than the proposed MCL of 10 ppb would still reduce cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium compared to the status quo, albeit less so than the Proposed Regulations. Accordingly, the alternative MCL values avoid a significant risk to public health while not eliminating that risk entirely or to the extent technologically and economically feasible.

We Advocate Through Environmental Review v. County of Siskiyou (2022) 78 Cal.App.5th 683 is inapposite because here the project objectives, as stated in the Draft EIR, are broad enough to encompass project alternatives, including alternative MCL values. Unlike the facts in the *WATER* case, where the project objectives were so narrowly drawn as to only support the proposed project, the project objectives here are broad enough to support a variety of feasible alternatives. Rather, there is a legal constraint that applies to the Proposed Regulations. That constraint, located in subdivision (a) of section 116365 of the Health and Safety Code, prohibits the State Water Board from adopting an MCL value that is not the lowest technologically and economically feasible value. Accordingly, while the Draft EIR analyzes alternative MCL values, the State Water Board is statutorily constrained in its ability to adopt an alternative MCL value that is not the lowest technologically and economically feasible value, even if that alternative MCL value may entail fewer environmental impacts.(See *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 732–733 [Mitigation measures and alternatives that conflict with agency's legal obligations are infeasible and “need not be analyzed.”])

The ISOR assesses the technical and economic feasibility of alternative MCL values. The City’s comment does not offer any environmental costs or costs of mitigation for the State Water Board to consider when assessing economic feasibility. While the Draft EIR recognizes that the Proposed Regulations may entail significant environmental impacts from future compliance projects by public water systems, it would be speculative and impractical to estimate the economic costs of those impacts or of mitigation measures that may be available to reduce them to less than significance. This is because future

site-specific compliance projects are not yet known, let alone the specific environmental mitigation measures they may need to implement.

Clarifying changes were made to Chapter 26 of the Draft EIR. See Chapter 3, section 3.10 of this Final EIR.

2.5.39 Winters Comment 2-20

9. The EIR lacks stable project objectives, and this renders its Alternatives analysis fundamentally flawed.

An EIR's project description is "an indispensable element of both a valid draft EIR and final EIR". (*Stopthemilleniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) As has often been stated, "an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

Accordingly, "a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading." (*Ibid*.)

A key component of the project description is the "statement of the objectives sought by the proposed project." (State CEQA Guidelines. § 15124(b); *Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

Here, however, the EIR does not provide an accurate and stable statement of the proposed Project's objectives. The key project objective emphasized in the EIR is to "comply[] with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5." (EIR, p. 25-4.) The EIR rejects all alternatives to the proposed MCL of 10 ppb on the basis that "the State Water Board is legally required to adopt a primary drinking water standard that is as close as feasible to the corresponding public health goal" ('PHG') established by OEHHA as required by Health and Safety Code section 116365." (EIR, p. 26-7.) But, as discussed below, it is unclear what OEHHA's PHG for chromium-6 will be when the Project is proposed to go into effect two to four years from now.

In July 2011, OEHHA established a PHG for chromium-6 of 0.02 ppb, representing a de minimis lifetime cancer risk from exposure to chromium-6 in drinking water, based on studies in laboratory animals. Since then, scientific information on the impacts of chromium-6 on human health has advanced substantially. The most recent scientific information on the health effects of human ingestion of chromium-6 in drinking water indicates that MCLs at or above the upper end of the MCLs set forth in the EIR's range of alternatives are fully health protective.

OEHHA's PHG for chromium-6 of 0.02 ppb is subject to imminent change. In October 2016, OEHHA announced that substantial new information warrants a review of the chromium-6 PHG, which to date has not been performed. More recently, in March 2023,

OEHHA announced that it would be “completing the update" of the chromium-6 PHG that it had initiated in 2016.

OEHHA's potential revision of its PHG for chromium-6 has significant CEQA ramifications. Again, the EIR eliminates all project alternatives on the basis that the State Water Board must adopt a drinking water standard for chromium-6 "that is as close as feasible to [OEHHA's] corresponding public health goal” of .02 ppb that is technologically and economically feasible. (See EIR, p. 26-7; see also Health & Safety Code, § 116365(a)-(b).)

The EIR further provides that the project will not go into effect-i.e., that water agencies need not take actions to comply with the MCL-until between two and four years after the State Water Board certifies the EIR and adopts its chromium-6 MCL. (EIR. p. S-1.) This is problematic because in the next two to four years OEHHA could revise its PHG for chromium-6 significantly upward based on new information. This is not unrealistic, as the Environmental Protection Agency’s (“EPA”) drinking water standard for chromium-6 is 100 ppb—10x higher than the drinking water standard that the State Water Board proposes in the EIR. (https://www.epa.gov/sdwa/chromium-drinking-water [while the EPA drinking water standard of 100 ppb is ostensibly for total chromium, the regulation “assumes that a measurement of total chromium is 100 percent chromium-6”].) Notably, the State Water Board is statutorily required to consider the EPA's drinking water standard of 100 ppb in establishing its own MCL. (Health & Safety Code, § 116365(b)(1).)

Under CEQA, this project objective instability renders the EIR’s analysis of project alternatives—and by extension, the EIR itself—fatally defective. For example, OEHHA could within the next two years revise its PHG for chromium-6 from .02 ppb to 30 ppb. If the EIR is certified before this development takes place, then water agencies two years from now may be required to take action with significant and unavoidable impacts to the environment to comply with the EIR’s proposed MCL of 10 ppb, when OEHHA’s PHG for chromium-6 at the time of project implementation could be 30 ppb. This would result in significant and unnecessary impacts to the environment. (See EIR, p. 26-5 [water agencies in 44 counties would have to take action that could have a significant and unavoidable impact with an MCL of 10 ppb; less than half that amount, water agencies in just 16 counties, would need to take similar action with a chromium-6 MCL of 30 bbp] [sic].)

To avoid this circumstance, the City strongly urges the State Water Board to refrain from taking any action towards certifying the EIR or adopting the Project until OEHHA completes its pending update to the chromium-6 PHG.

2.5.40 Response to Winters Comment 2-20

The Draft EIR describes the project objectives consistently. Further, there is no evidence that the project objectives will change. The possibility of OEHHA revising the

PHG does not affect the project objectives because the project objectives do not, themselves, depend on a specific PHG.

Even if OEHHA revises the PHG in the future, the project objectives will remain the same:

- Avoid significant risks to public health from drinking water supplied by public water systems in California.
- Reduce cancer and non-cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium.
- Comply with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code, section 116365.5.

(Draft EIR, section 2.2.)

Even if OEHHA were to revise the PHG for hexavalent chromium in the future, a revision is unlikely to cause a change in the Proposed Regulations. This is because there is evidence that OEHHA is unlikely to revise the PHG for hexavalent chromium to a level higher than the State Water Board's proposed MCL. On November 24, 2023, OEHHA published a draft document describing a proposed health-protective concentration for noncancer effects of hexavalent chromium in drinking water of 5 ppb. That proposed health-protective concentration for noncancer effects of 5 ppb is significantly less than the State Water Board's proposed MCL of 10 ppb. A health-protective concentration for noncancer effects of 5 ppb would be a ceiling for any future change to the PHG. This is because even if OEHHA were to determine a health-protective concentration for cancer effects from hexavalent chromium that is higher than the proposed MCL of 10 ppb, OEHHA would still select the lower value of 5 ppb for the PHG. As explained in OEHHA's November 24, 2023, "Announcement of Availability of a Draft Technical Support Document for Proposed Health-Protective Concentration for Noncancer Effects of Hexavalent Chromium in Drinking Water", "[f]or carcinogens, health-protective water concentrations are determined for both cancer and noncancer effects, and the lowest (most health protective) value is selected as the PHG." Accordingly, OEHHA's publication of a draft health-protective concentration of 5 ppb for noncancer effects from hexavalent chromium indicates that it is unlikely that OEHHA will revise the PHG for hexavalent chromium to a number higher than the proposed MCL of 10 ppb. In addition, OEHHA is also calculating a cancer health protective concentration for hexavalent chromium. Because cancer health protective concentrations are generally much lower than non-cancer health protective concentrations, it is unlikely that the cancer health protective concentration for hexavalent chromium would be higher than the 5 ppb proposed by OEHHA for the non-cancer health protective concentration. In addition, it is rare for a cancer health protective concentration to be revised upward

by a significant order of magnitude. Therefore, the Proposed Regulations are unlikely to change as a result of a future revision to the PHG by OEHHA.

Unlike the situation in *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277 where the lead agency did not articulate a preferred project, the State Water Board's Draft EIR clearly states that the Proposed Regulations include an MCL of 10 ppb. The remote possibility that OEHHA could revise the PHG to above 10 ppb in the future does not mean that the Proposed Regulations include a "broad range of possible projects" that "presents the public with a moving target and requires a commenter to offer input on a wide range of alternatives that may not be in any way germane to the project ultimately approved." (*Id.* at p. 288.) On the contrary, the Draft EIR presents a single preferred project and discusses alternatives to that preferred project, including alternative MCL values.

Even if OEHHA revised the PHG in the future, the possibility of that occurring does not impede public participation in the CEQA process now for the Proposed Regulations. The court in *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277 explained that "there may be situations in which the presentation of a small number of closely-related alternatives would not present an undue burden on members of the public wishing to participate in the CEQA process..." (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288-289.) There is only one set of Proposed Regulations, and that is described in the Draft EIR. Further, the difference between the Proposed Regulations in the context of the existing PHG of .02 ppb and the Proposed Regulations in the context of a hypothetical, higher PHG does not present a burden on members of the public wishing to participate in the CEQA process. The fact that the context for a proposed project could evolve in the future does not deprive the public of the ability to comment on the proposed project now.

There are additional reasons why OEHHA's review of the PHG for hexavalent chromium should not delay development of the Proposed Regulations. First, the State Water Board is statutorily obligated to adopt a primary drinking water standard for hexavalent chromium. (Health & Saf. Code, § 116365.5.). OEHHA's review of the PHG for hexavalent chromium should not hinder this statutory obligation.

Second, if the State Water Board were to delay development of an MCL until OEHHA has reviewed the corresponding PHG, the delay would be perpetual because OEHHA's review of PHGs is conducted on a recurring basis. The California Safe Drinking Water Act requires OEHHA to review each PHG at least once every five years (unless OEHHA determines that there has not been a detection of the corresponding contaminant in the preceding five years), and to revise the PHG as necessary based upon the availability of new scientific data. (Health & Saf. Code, § 116365, subd. (e)(1).). If the State Water Board held off on developing primary drinking water standards whenever there was a chance that OEHHA might revise a PHG, the development of primary drinking water

standards would effectively be stymied, and implementation of the California Safe Drinking Water Act would be grossly undermined.

As shown below in Chapter 3 section 3.3, changes have been made to chapter 1 of the Draft EIR to include OEHHA's publication on November 24, 2023, of the "Draft Technical Support Document for Proposed Health-Protective Concentration for Noncancer Effects of Hexavalent Chromium in Drinking Water."

2.5.41 Winters Comment 2-21

10. The State Water Board should refrain from certifying the EIR until OEHHA completes its update of its chromium-6 public health goal; alternatively, the EIR must be revised and recirculated to comply with CEQA.

The City urges the State Water Board to hold off certification of the EIR or approval of the Project until OEHHA completes its pending update of the chromium-6 PHG. The revised PHG, based on the most recent science available, would then better guide the State Water Board in determining the proper MCL for chromium-6. And, from a CEQA perspective, this would streamline any EIR regarding MCL for chromium-6 by (1) eliminating from consideration the most stringent proposed MCLs, which are the MCLs that will have the most significant environmental impacts; and (2) allowing the State Water Board to prepare an alternatives analysis in the EIR that complies with CEQA. The people of California and the environment will both benefit from a reassessment of the PHG for chromium-6.

In the alternative, if the State Water Board presses forward with the proposed MCL of I0 ppb before OEHHA completes its update of the chromium-6 PHG, then at a bare minimum, the EIR must be revised to address the deficiencies raised herein. The revised EIR must then be recirculated to the public pursuant to State CEQA Guidelines section 15088.5.

11. Conclusion

The City looks forward to working with the State Water Board to ensure that this Project receives the careful review that it deserves. Thank you for your consideration of the City's input.

2.5.42 Response to Winters Comment 2-21

As discussed above in Response to Winters Comment 2-20, the State Water Board is statutorily obligated to adopt a primary drinking water standard for hexavalent chromium, and deferring adoption to the future while OEHHA conducts its recurring review of the PHG for hexavalent chromium would effectively stymie adoption of a drinking water standard necessary for the protection of public health. In addition, as described above, it is unlikely that OEHHA will revise the PHG to above 10 ppb.

The consideration of alternative, more stringent MCLs in the Draft EIR is not a defect that needs elimination or "streamlining"; rather, it informs the public of the environmental impacts from a range of different MCL values. As discussed above in Response to Winters Comment 2-19, the alternatives analysis in the Draft EIR (including as revised, as shown in Chapter 3 of this Final EIR) complies with CEQA.

The Draft EIR does not require recirculation because the conditions requiring recirculation, pursuant to CEQA Guidelines section 15088.5, do not exist. For instance, there is not significant new information consisting of a new significant environmental impact or a substantial increase in the severity of an environmental impact. Neither is there a feasible project alternative or mitigation measure that would clearly lessen the significant environmental impacts of the project, but which the State Water Board declines to adopt. The addition in section 26.3 of the Draft EIR regarding the discussion on the public health impacts of the alternative MCLs (particularly, the extent to which they meet the first two project objectives), is not the addition of a project alternative, or even new information since it includes information from the ISOR. Those changes and others to the Draft EIR consist of information that merely clarifies, amplifies, or makes insignificant modifications in an adequate EIR.

2.6 Coachella Valley Water District (CVWD) (Commenter 3) Comments and Responses

2.6.1 CVWD Comment 3-1

The Coachella Valley Water District (CVWD) submits these written comments in response to the State Water Resources Control Board's (State Water Board) Notice of Availability of a Draft Program Environmental Impact Report (EIR) for the adoption of the proposed maximum contaminant level (MCL) for hexavalent chromium (Cr6) as a primary drinking water standard. The proposed MCL is defined as the "Project" herein. CVWD hopes that its written comments will help the State Water Board fully analyze, mitigate, and avoid the potential environmental impacts of the proposed Project in compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.: CEQA).

The EIR analyzes the Project, which that includes a MCL of 10 micrograms per liter (ug/L) or parts per billion (ppb) for Cr6. CVWD has serious concerns about both the proposed MCL of 10 ppb and the adequacy of the EIR prepared for the proposed Project. CVWD is a responsible agency for the proposed Project, as it is a water district that will be required to comply with the new MCL if adopted as written. (State CEQA Guidelines, § 15381.)

Compliance with the MCL would require significant changes in water management and infrastructure, and would significantly impact CVWD, its ratepayers, and the environment. Given the potential impacts of the MCL, CVWD appreciates the State Water Board's commitment to prepare an EIR for the Project. CVWD believes, however,

that information gained in the EIR process can lead to informed decisions by the State Water Board regarding the MCL and its implementation, and that significant revisions are necessary to the EIR in order to bring it into compliance with CEQA.

CVWD additionally urges the State Water Board to refrain from certifying the EIR or from approving the Project until the Office of Environmental Health Hazard Assessment (OEHHA) completes its pending revision to its public health goal (PHG) for Cr6. Given the centrality of OEHHA's PHG to the EIR, and in particular to the EIR's analysis of alternatives to the Project, CVWD believes that the State Water Board cannot comply with CEQA until OEHHA provides clarity on the PHG that will be in effect when the Project is proposed to be implemented two to four years from now. (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) Cal.App.5th 277, 287 ["an accurate, stable, and finite project description is the *since qua non* of an informative and legally sufficient EIR."].)

2.6.2 Response to CVWD Comment 3-1

No response is required for these introductory comments; the State Water Board responds to the issues below as they are more fully detailed by the City in its letter. One issue, however, that is not addressed below is the City's role as a responsible agency. The City states above that it "is a responsible agency for the proposed Project, as it is a water district that will be required to comply with the new MCL if adopted as written." The State Water Board does not agree that CVWD is a responsible agency under CEQA for the adoption of the Proposed Regulations. Although CVWD may be a lead or responsible agency for any site-specific compliance project that it proposes to come into compliance with the regulations, it has no discretionary approval power in the development or adoption of the Proposed Regulations. The State Water Board is the only public agency with the responsibility for carrying out or approving the Proposed Regulations, and there are no responsible agencies for the adoption of the Regulations.

2.6.3 CVWD Comment 3-2

1. <u>The Project Could Dramatically Impact the Coachella Valley Water District, Its Ratepayers, And the Environment.</u>

CVWD formed in 1918 to protect and conserve local water sources. Since then, CVWD has grown into a multifaceted agency that delivers irrigation and domestic water, collects, and recycles wastewater, provides regional storm water protection, replenishes the groundwater basin, and promotes water conservation. CVWD serves the water needs of more than 109,000 homes and businesses across a service area spanning approximately 1,000 square miles—from the San Gorgonio Pass to the Salton Sea, mostly within the Coachella Valley in Riverside County, but also extending into portions of Imperial and San Diego counties.

The establishment of an MCL for Cr6 directly concerns CVWD, as the Coachella Valley's groundwater, the primary source of domestic water supply, is impacted by naturally occurring Cr6 due to the valley's geology. CVWD has thus long desired that an MCL for Cr6 that is established by the State Water Board have a meaningful opportunity for risk reduction and be technologically and economically feasible, as required by law. (Health & Safety Code, § 116365(a), (b)(3).) A technologically and economically feasible MCL would allow CVWD to continue to provide a sustainable public water supply to its ratepayers.

The Project, however, proposes an MCL that is neither technologically nor economically feasible. Regarding implementation of the proposed MCL, CVWD's water distribution system is repeatedly identified in the EIR as a primary impacted water distribution system in California, affecting the high number of groundwater wells and the higher number of customers. CVWD feels its comments are not only based on impacts to CVWD, but also representative of other Public Water Systems impacted throughout the state. CVWD is concerned that an unduly stringent MCL of 10 ppb would require public agencies across California to construct economically infeasible facilities or to deploy other treatment options at enormous cost. Both the construction of new facilities and the deployment of treatment options would significantly impact the environment.

2.6.4 Response to CVWD Comment 3-2

See section 2.5.4 Response to Winters Comment 2-2.

2.6.5 CVWD Comment 3-3

Moreover, the proposed MCL could result in the shutting down of groundwater wells throughout the State of California and in increased demands on surface water supplies in a time of significant and historic drought. As a result, CVWD's ratepayers—many of whom are economically vulnerable— could see significant increases in their monthly water expenses.

2.6.6 Response to CVWD Comment 3-3

See section 2.5.14 Response to Winters Comment 2-7, section 2.5.16 Response to Winters Comment 2-8, section 2.5.22 Response to Winters Comment 2-11, and section 2.8.6 Response MSWD 5-4.

The notion that a public water system would have to discontinue using a source is probably based on the commenter's interpretation of existing regulations. Under subdivision (h)(2) of section 64432 of title 22 of the California Code of Regulations, the State Water Board can require a water system to discontinue using a water supply with detections ten times above the MCL. The State Water Board considers a water system's existing source capacity when deciding whether to require a water system to discontinue a particular source.

Public water systems have many reasonably foreseeable means of compliance that do not involve reducing a water system's source of supply. The State Water Board knows of only four active sources statewide that are contaminated with hexavalent chromium at 10 times the MCL of 10 ug/l. If a system does not have surface or imported water to offset contaminated well water, the system could install wellhead treatment and continue using the well, drill a replacement well, or tie into or consolidate with another nearby water system.

2.6.7 CVWD Comment 3-4

The proposed MCL may have significant adverse economic impacts on agencies throughout the State of California and their ratepayers, but these impacts are not just economic—they will translate into significant and unavoidable environmental impacts. These impacts must be avoided, and the best means to avoid them is by adopting an economically and technologically feasible MCL. CVWD urges the State Water Board to revise and recirculate the EIR to address CVWD's concerns and to comply with CEQA.

2.6.8 Response to CVWD Comment 3-4

See section 2.5.6 Response to Winters Comment 2-3.

2.6.9 CVWD Comment 3-5

2. <u>The EIR violates CEQA because it does not provide the detail necessary to inform the public of the Project's potential impacts to the environment.</u>

"When determining whether an EIR's discussion of potentially significant effects is sufficient, the ultimate inquiry is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 670, quoting *Laurel Heights*, *supra*, 47 Cal.3d at p. 405.)

CEQA Guidelines sections 15120 to 15132 describe the required contents of an EIR. The EIR is intended to serve as an informational document that provides guidance to public agencies in the decision-making process, and it must be based on substantial evidence. The EIR should be based on adequacy, completeness, and full disclosure, while adequately analyzing impacts that are reasonably feasible to address, including at a minimum direct, indirect, and cumulative impacts. (See State CEQA Guidelines, § 15151.) Section 15126 (a) states:

> *The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical*

changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.

The EIR here fails to comply with CEQA because it does not include enough detail to enable the public to understand and to consider meaningfully the Project's potential impacts on the environment. (*Save Our Capitol!*, *supra*, 87 Cal.App.5th at p. 670.) The EIR finds that the proposed Project will result in a wide range of significant and unavoidable impacts to the environment, but it also declares that this finding may simply be a false alarm—that there isn't necessarily anything to be worried about. Moreover, the EIR recognizes that its analysis is not premised on a strong factual foundation. For example, the EIR provides:

- "Because it would be speculative to assume the type, size, and location of potential compliance projects, as well as the type of resources impacted, this EIR cannot quantify the impacts associated with the implementation of any specific project, but does recognize the potential for such impacts, and identifies potential mitigation that could be implemented at site-specific projects to avoid such impacts." (EIR, p. S-3.)
- "[E]ven where a source of drinking water is known to be contaminated with hexavalent chromium based on data collected under the prior regulation, it would be speculative to guess the location of a future compliance project to address that contamination." (EIR, p. 2-7.)
- "Without attempting to quantify the impacts associated with the implementation of any specific project, the EIR includes a list of potential actions or mitigation measures that could possibly reduce the impact to a less-than-significant level or contribute to doing so. However, because of the programmatic nature of the analysis and because the State Water Board does not have control over how a public water system will ultimately comply with the regulations, including where it would locate site-specific compliance projects, it is uncertain whether the identified mitigation would be effective in reducing the potential impacts for any specific project." (EIR, p. 3-8.)

In short, the EIR's analysis concludes that it does not know what the Project's potential impacts may be, and it does not know whether those impacts could be mitigated to a level of less than significant. This mixed messaging does not promote "informed self-government" as required by CEQA. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) It does not address the concerns of "an apprehensive citizenry" that looks to the lead agency to determine whether the environmental impacts of the Project have been duly considered. (*Ibid*.) In short, the EIR fails to include "enough detail to enable those who did not participate in its

preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.)

For these reasons, the EIR fails to comply with CEQA. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670; *Laurel Heights, supra*, 47 Cal.3d at p. 392.)

2.6.10 Response to CVWD Comment 3-5

See section 2.5.8 Response to Winters Comment 2-4.

2.6.11 CVWD Comment 3-6

3. The EIR abdicates its responsibility to analyze the potential environmental impacts of the Project by finding nearly every impact to be "significant and unavoidable" without reference to any standard of significance.

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1(a).) To further this purpose, the lead agency must disclose the "analytic route" between its conclusion that an impact may have a potentially significant impact on the environment and its conclusion of whether, and to what extent, the impact can be mitigated. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 654.)

A lead agency does not satisfy its responsibility under CEQA by merely reaching a conclusion regarding whether a proposed project may have a significant and unavoidable impact on the environment. (*Lotus, supra*, 223 Cal.App.4th at p. 654.) Instead, a lead agency must (1) set forth the standard of significance by which it will determine whether a proposed project will have a significant impact on the environment; (2) provide analysis demonstrating whether the proposed project will exceed that standard of significance; (3) propose mitigation to reduce the proposed Project's potentially significant impact on the environment; and (4) analyze the extent to which that mitigation will reduce the potentially significant impact. (Id. at pp. 655-658; see also Pub. Resources Code, § 21100(b).)

The EIR fails to meet any of the above criteria. For example, in its analysis of whether the proposed Project could violate any air quality standard or contribute substantially to an existing or projected air quality violation, the EIR provides no factual analysis. Instead, the EIR refers the public to its roughly one-page analysis of whether the proposed Project would conflict with or obstruct implementation of any applicable air quality plan. (EIR, p. 6-9.) The EIR's analysis of whether the proposed Project would conflict with or obstruct implementation of the applicable air quality plan, however, is not based on, and does not reference, any threshold of significance. (See EIR. pp. 6-7 through 6-9.)

Without any threshold of significance to guide its significance determination, the EIR does not and cannot include any factual analysis demonstrating whether the proposed Project will exceed any threshold of significance. Moreover, while the EIR proposes mitigation measures, it does not analyze whether and to what extent this mitigation could reduce the potentially significant impact. The EIR ultimately concludes that the proposed Project may result in a significant and unavoidable air quality impact, but this conclusion is based on conjecture, not facts. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814. 838 [public agency violates CEQA and abuses its discretion when its determination is not supported by substantial evidence]; see also Pub. Resources Code, § 21168.5.)

In sum, the EIR violates CEQA by failing to measure the proposed Project's potential impacts against any threshold of significance, and by further failing to quantitatively analyze whether the mitigation measures identified could reduce the proposed Project's potential impacts to a level of less than significant. The EIR is littered with conclusions of "significant and unavoidable impacts," but the EIR fails to disclose the "analytic route" taken to reach these conclusions. (*Lotus, supra*, 223 Cal.App.4th at p. 654.)

2.6.12 Response to CVWD Comment 3-6

See section 2.5.10 Response to Winters Comment 2-5.

2.6.13 CVWD Comment 3-7

4. <u>The EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment</u>.

The EIR must serve as an informational document that will inform public agency decisionmakers and the public generally of the significant environmental effects of the Project, identify possible ways to mitigate the Project's significant effects, and describe reasonable alternatives to the Project. (State CEQA Guidelines, § 15121(a).) To achieve this purpose, the EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].)

The cost of compliance with the MCL for Cr6 would shape the behavior of both water agencies and ratepayers, and the environmental impacts of this reasonably foreseeable behavior must be analyzed in the EIR. To do so, the EIR must analyze and discuss the costs of complying with the MCL, and how activity in response to such costs could potentially impact the environment.

2.6.14 Response to CVWD Comment 3-7

See section 2.5.12 Response to Winters Comment 2-6.

2.6.15 CVWD Comment 3-8

CVWD provides a non-exhaustive list of examples of how behavior responding to the cost of the MCL could result in a potentially significant impact on the environment.

A. Shift from groundwater usage to surface water usage. The high cost of compliance with an overly stringent MCL could cause water agencies to shift from groundwater usage to surface water usage, and the EIR must analyze the potential environmental impacts of this reasonably foreseeable shift, as further discussed in Section 5 of this comment letter below. The shift to surface water usage would have numerous deleterious impacts on the environment, including decreased in-stream flows and adverse impacts to fish and wildlife.

2.6.16 Response to CVWD Comment 3-8

See section 2.5.14 Response to Winters Comment 2-7.

2.6.17 CVWD Comment 3-9

B. Increased dependency on surface waters would increase the need for water storage. The MCL could spur a wave of reasonably foreseeable water storage and conveyance projects, as water agencies increasingly use surface waters to avoid the costs of compliance with the MCL. The EIR must analyze and mitigate the environmental impacts of these projects, including impacts on air quality, water quality, and biological resources. Moreover, the need for water storage may require flooding large areas of land to store water, and the environmental impacts of transforming the environment in this manner must be analyzed.

2.6.18 Response to CVWD Comment 3-9

See section 2.5.16 Response to Winters Comment 2-8.

2.6.19 CVWD Comment 3-10

C. The EIR must analyze the reasonably foreseeable environmental impacts of the Project resulting from increased rates to ratepayers. The cost of compliance with a MCL of 10 ppb would shape not only the behavior of water agencies, but also of ratepayers who could face dramatic increases in monthly costs as a result of their water agencies' efforts to comply with the MCL. For example, economically vulnerable ratepayers unable to afford these increased costs may be forced to migrate from a service area with high MCL compliance costs to a service area that either has lower such costs or an area that is better able to distribute such costs among a greater number of ratepayers. This migration is a reasonably foreseeable response to higher water rates, and the environmental effects of such migration must be analyzed in the EIR. These impacts may include (1) rural blight, as ratepayers in smaller service areas with high MCL compliance costs migrate to more metropolitan service areas, where the costs of such

compliance can be distributed among a larger population; (2) vehicle miles traveled (VMT) associated with such migration; (3) air quality and greenhouse gas impacts related to such migration; and (4) substantial unplanned population growth in areas with lower MCL compliance costs and the displacement of substantial numbers of people in areas with high MCL compliance costs.

2.6.20 Response to CVWD Comment 3-10

See section 2.5.18 Response to Winters Comment 2-9.

2.6.21 CVWD Comment 3-11

The above-referenced impacts do not appear to be analyzed in the EIR. CVWD urges the State Water Board to recirculate the EIR to analyze and mitigate these impacts in order to comply with CEQA.

2.6.22 Response to CVWD Comment 3-11

See section 2.5.20 Response to Winters Comment 2-10.

2.6.23 CVWD Comment 3-12

5. The EIR fails to analyze or mitigate the Project's potential to force water agencies to shift from groundwater to surface water and the potential environmental impacts that may result from this shift.

A lead agency fails to comply with CEQA when its EIR does "not discuss the impact of new surface water diversions, enforceable measures to mitigate those impacts, or the remaining unmitigated impacts." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 [Supreme Court held that lead agency's failure to properly analyze project's impacts on surface water violated CEQA]; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 664 [lead agency violated CEQA where it "fail[ed] to adequately analyze impacts to surface water"].)

In response to the Notice of Preparation ("NOP") of the EIR, many public agencies commented that the proposed Project would cause water agencies to shift from groundwater usage to surface water usage. (See EIR, Appendix B [NOP Comment Letters].) CEQA requires the EIR to analyze the potential environmental impacts of this reasonably foreseeable shift (including impacts relating to decreased in-stream flows and adverse impacts to fish and wildlife), and to mitigate the impacts of this shift. (See Pub. Resources Code, § 21159(a).)

The EIR identifies "switching to surface water" as a reasonably foreseeable means of complying with the proposed MCL. (See, 7-7-.g., EIR, pp. S-3, 1-1, 2-7 through 2-8, 2-15 [recognizing water agencies may "increase their reliance on surface water and reduce or cease using the groundwater supply contaminated by hexavalent

chromium"].) The EIR, however, fails to analyze any potential environmental impacts that may result from this increased reliance on surface water. The EIR does not analyze the Project's potential impact to result in decreased in-stream flows, nor does it analyze potential adverse impacts to fish and wildlife that may result from increased reliance on surface water.

While the EIR recognizes that increased reliance on surface water is a reasonably foreseeable means of complying with the proposed MCL, the EIR fails to analyze any of the potential direct, or reasonably foreseeable indirect, impacts to the environment that may result as a result of this action. This renders the EIR fatally flawed under CEQA, and the EIR must therefore be revised and recirculated to address this issue. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc.*, *supra*, 40 Cal.4th at p. 444.)

2.6.24 Response to CVWD Comment 3-12

See section 2.5.22 Response to Winters Comment 2-11.

2.6.25 CVWD Comment 3-13

6. The State Water Board, as Lead Agency, must take responsibility to mitigate the Project's potential impacts to the environment.

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. (Pub. Resource Code, § 21002.1(a), 21081(a)(1).) "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.)

The EIR here provides a gloomy forecast of environmental degradation, concluding that the Project will result in a significant and unavoidable impact as to nearly every resource analyzed. Yet, the EIR fails to properly mitigate these significant and unavoidable impacts. State CEQA Guidelines section 15126.4 sets forth the State Water Board's responsibility as lead agency to commit to mitigation measures:

> Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.

(State CEQA Guidelines, § 15126.4(a)(1)(B), emphasis added.)

No mitigation measure proposed in the EIR complies with the above standards.

First, the State Water Board has not committed itself to any mitigation. The State Water Board has not even considered what steps that it—as opposed to agencies tasked with complying with the proposed MCL—could take to mitigate potential impacts to the environment. For example, compliance with the proposed MCL could result in significant economic burden to responsible agencies, and as various agencies commented in response to the NOP, there are significant impacts to the environment that could result from this economic burden. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].) The State Water Board, however, has not discussed how it could provide funding, grants, or subsidies to responsible agencies to mitigate potential impacts to the environment. State funding is the linchpin to achieve an economically feasible MCL. Without a specific and enforceable commitment from the State Board on funding, the economic feasibility analysis and the EIR are deficient.

Again, the State Water Board has not committed to any mitigation at all. The EIR must be revised such that the State Water Board itself commits to mitigation so the burden of the proposed Project does not fall on the responsible agencies required to implement the Project. (State CEQA Guidelines, § 15126.4(a)(1)(B).) The State Water Board has an integral part to play in mitigating the impacts of its Project. By not taking responsibility to mitigate impacts that it can control, the State Water Board violates CEQA.

2.6.26 Response to CVWD Comment 3-13

See section 2.5.24 Response to Winters Comment 2-12.

2.6.27 CVWD Comment 3-14

Second, while the EIR sets forth mitigation measures as to nearly every impact, the EIR does not specify any specific performance standards for any of the identified mitigation measures. (State CEQA Guidelines, § 15126.4(a)(1)(B).)

2.6.28 Response to CVWD Comment 3-14

See section 2.5.26 Response to Winters Comment 2-13.

2.6.29 CVWD Comment 3-15

Nor does the EIR explain why or how implementation of the mitigation measures will substantially lessen the Project's significant and unavoidable impact. The EIR identifies a significant and unavoidable impact, and identifies mitigation measures, but fails to analyze or explain the relationship between the mitigation measures and the significant

and unavoidable impact. This defect infects the discussion in nearly every section of the EIR.

2.6.30 Response to CVWD Comment 3-15

See section 2.5.28 Response to Winters Comment 2-14.

2.6.31 CVWD Comment 3-16

Third, and related to the point above, the EIR does not identify the types of potential actions that can feasibly achieve the performance standard. (State CEQA Guidelines, § 15126.4(a)(1)(B).) Again, this is because the EIR simply does not identify any performance standards. As a result, the EIR does not explain to what extent or how the mitigation measures will substantially reduce impacts. This defect is fatal to the adequacy of the EIR.

2.6.32 Response to CVWD Comment 3-16

See section 2.5.30 Response to Winters Comment 2-15.

2.6.33 CVWD Comment 3-17

7. The EIR fails to properly analyze the proposed Project's cumulative impacts.

A proper analysis of a project's cumulative impacts is a "vital informational function" of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (*Ibid*.; State CEQA Guidelines, § 15130(a).) More specifically, the "cumulative impact from several project projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*Ibid*.; State CEQA Guidelines, § 15355(b).)

"Proper cumulative impact analysis is vital because the full environmental impacts of a proposed project cannot be gauged in a vacuum." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources." (*Ibid*.) These sources appear insignificant when considered individually but assume threatening dimensions when considered collectively with other sources with which they interact." (*Ibid*.)

To have an adequate discussion of significant cumulative impacts, an EIR must generally begin by setting forth a "list of past, present, and probable future projects

producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(1)(A).)

Here, the EIR fails to properly analyze the proposed Project's cumulative impacts for several reasons.

First, the EIR does not include the necessary "list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(1)(A).) This list should include both (1) past, present, and probably future MCLs for various contaminants that the State Water Board has adopted or plans to adopt; and (2) the various means by which the implementing agencies will implement the MCL for Cr6 in connection with the proposed Project.

2.6.34 Response to CVWD Comment 3-17

See section 2.5.32 Response to Winters Comment 2-16.

2.6.35 CVWD Comment 3-18

Second, the State Water Board recognizes that there are existing MCLs for other contaminants, and that the State Water Board is in the process or plans to adopt MCLs for a series of other contaminants, including arsenic, perfluorooctanoic acid and perfluoroalkyl substances, n-nitroso-dimethylamine, styrene, and cadmium. (https://www.waterboards.ca.gov/drinking_water/ certlic/drinkingwater/Regulations.html [setting forth existing MCLs adopted by State Water Board], https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Regulations.html [setting forth planned future MCLs].) The cumulative economic and environmental impacts of requiring public agencies to comply with these past, present, and probably future MCLs must be analyzed in the EIR. These cumulative impacts analysis is a fundamental prerequisite to CEQA compliance because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at pp. 1214-1215.) "This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*Ibid*.)

2.6.36 Response to CVWD Comment 3-18

See section 2.5.34 Response to Winters Comment 2-17.

2.6.37 CVWD Comment 3-19

Finally, the State Water Board has an obligation to not only analyze the cumulative impacts of the Project taken together with past, present, and probable future MCLs for

other contaminants, but also an obligation to mitigate those impacts. (*Joy Road Area Forest & Watershed Assn. v. California Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 676.) “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Ibid*.) Accordingly, CVWD urges the State Water Board to analyze the Project’s cumulative impacts, and to commit to mitigation measures that would reduce cumulative impacts to a level of less than significant. (State CEQA Guidelines, § 15126.4(a)(1)(B).) In particular, CVWD urges the State Water Board to adopt and implement a sustainable regulatory program that pairs each MCL with specific, dedicated funding programs sufficient to implement and mitigate the impacts of each MCL.

2.6.38 Response to CVWD Comment 3-19

See section 2.5.36 Response to Winters Comment 2-18.

2.6.39 CVWD Comment 3-20

8. The EIR fails to properly analyze alternatives to the proposed Project.

"It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which substantially lessen the significant environmental effects of such projects." (Pub. Resources Code, § 21002.) Accordingly, “CEQA requires an EIR to identify feasible alternatives that could avoid or substantially lessen the project's significant environmental effects.” (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 702; Pub. Resources Code, §§ 21002, 21100(b)(4).) Indeed, courts have explained that one of an EIR's “major functions” is to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565.)

As part of this analysis, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (State CEQA Guidelines, § 15126.6(a).) The range of alternatives must provide “enough of a variation to allow informed decision making." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.)

An EIR violates CEQA when the alternatives analyzed therein “do not contribute to a reasonable range of alternatives that fostered informed public participation and decision-making." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.) This occurs when an EIR does not consider any alternative that would feasibly attain most of the

project's objectives while also lessening the project's significant impacts on the environment. (*Ibid*.) Accordingly, a public agency violates CEQA when it defines its project objectives so narrowly that it "preclude[s] any alternative other than the Project." (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683,692 [hereinafter, "*WATER*"].) Thus, when a public agency effectively defines a project objective as achieving the proposed project, and dismissively rejects anything other than the proposed project as not meeting project objectives, the EIR "prejudicially prevent[s] informed decision making and public participation." (*Id*. at p. 692.)

Here, the EIR proposes an MCL for Cr6 of 10 ppb, but it dismisses all other alternatives as infeasible and incapable of meeting project objectives. The EIR provides no substantive or quantitative analysis of the other proposed alternatives. Instead, like the lead agency in the *WATER* decision, the EIR "dismissively reject[s] anything other than the proposed project." (*WATER*, *supra*, 78 Cal.App.5th at p. 692.) And, like the EIR at issue in the *WATER* decision, this approach "transform[s] the EIR's alternatives section—often described as part of the 'core of the EIR'—into an empty formality." (*Ibid*.) This is evidenced by the fact that the EIR's "Discussion and Comparison of Alternatives" section is almost entirely devoid of analysis, and spans just over a single page. (See EIR, p. 26-6 through 26-7.) To comply with CEQA, a robust analysis of the Project alternatives is required. (*WATER*, *supra*, 78 Cal.App.5th at p. 692.)

To provide the public and the decision-makers with a complete assessment of the Project and the alternatives to the Project, the EIR must assess the relationships of each alternative to impacts on the environment and also the technical and economic feasibility of each alternative. The EIR cannot simply dismiss alternatives under CEQA by relying on State Water Board staff's conclusion that an MCL of 10 ppb is technically and economically feasible and that, therefore, there are no other legally sufficient alternatives to analyze. To the contrary, CEQA requires a deeper assessment and acknowledgement of the interrelationship between the State Water Board's assessment of feasibility under California Health and Safety Code section 116365(a) and its obligations under CEQA to assess alternatives. A full assessment of alternatives must inform the decision-making process under Section 116365(a). An MCL may appear feasible in a vacuum but prove to be infeasible when assessed in light of the various impacts it might have on the environment. A fully analyzed alternative may in fact be the one that is truly feasible under Section 116365(a) and environmentally superior under CEQA when all impacts are considered. By failing to meaningfully assess alternatives, the State Water Board is not only acting contrary to CEQA but also failing to perform its obligations under Section 116365(a).

2.6.40 Response to CVWD Comment 3-20

See section 2.5.38 Response to Winters Comment 2-19.

2.6.41 CVWD Comment 3-21

CVWD urges the State Water Board to consider alternative treatment methods in addition to the proposed BATs (ion exchange, RCF, and reverse osmosis). CVWD successfully demonstrated a bench scale study of the addition of stannous chloride to reduce Cr6 concentration to that of well below the proposed MCL of 10 ppb. This treatment method is the most cost-effective option and can be employed immediately when CVWD has gained approval from the Division of Drinking Water District 20 (DDW) to launch a full-scale implementation to reduce Cr6 that is specific to its water systems. The stannous chloride full-scale implementation plan was submitted to DDW in January 2023 but has not yet been approved.

2.6.42 Response to CVWD Comment 3-21

As explained in section 4.3.4 of the ISOR, for stannous chloride to be considered BAT, additional information on the capability of the technology to meet the proposed MCL would be necessary, including information on reoxidation in the distribution system and the ability to meet a potential MCL without exceeding the stannous chloride maximum use level. Currently, the fate of hexavalent chromium when stannous chloride is used is not well understood, and additional evaluation of distribution system water quality is necessary before it can be approved.

The use of stannous chloride with filtration is a form of RCF, which is already a BAT. Systems may use treatment other than BAT with approval from the State Water Board. For those who wish to apply stannous chloride without filtration, additional evaluation of distribution water quality will be required before it is permitted.

2.6.43 CVWD Comment 3-22

9. <u>The EIR lacks stable project objectives, and this renders its Alternatives analysis fundamentally flawed.</u>

An EIR's project description is "an indispensable element of both a valid draft EIR and final EIR." (*Stopthemilleniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) As has often been stated, "an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.) Accordingly, "a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading." (*Ibid*.)

A key component of the project description is the "statement of the objectives sought by the proposed project." (State CEQA Guidelines, § 15124(b); *Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

Here, however, the EIR does not provide an accurate and stable statement of the proposed Project's objectives. The key project objective emphasized in the EIR is to

"comply[] with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5." (EIR, p. 25-4.) The EIR rejects all alternatives to the proposed MCL of 10 ppb on the basis that "the State Water Board is legally required to adopt a primary drinking water standard that is as close as feasible to the corresponding public health goal" ('PHG') established by OEHHA as required by Health and Safety Code section 116365." (EIR, p. 26-7.) But, as discussed below, it is unclear what OEHHA's PHG for Cr6 will be when the Project is proposed to go into effect two to four years from now.

In July 2011, OEHHA established a PHG for Cr6 of 0.02 ppb, representing a de minimis lifetime cancer risk from exposure to Cr6 in drinking water, based on studies in laboratory animals. Since then, scientific information on the impacts of Cr6 on human health has advanced substantially. The most recent scientific information on the health effects of human ingestion of Cr6 in drinking water indicates that MCLs at or above the upper end of the MCLs set forth in the EIR's range of alternatives are fully health protective.

OEHHA's PHG for Cr6 of 0.02 ppb is subject to imminent change. In October 2016, OEHHA announced that substantial new information warrants a review of the Cr6 PHG, which to date has not been performed. More recently, in March 2023, OEHHA announced that it would be "completing the update" of the Cr6 PHG that it had initiated in 2016.

OEHHA's potential revision of its PHG for Cr6 has significant CEQA ramifications. Again, the EIR eliminates all project alternatives on the basis that the State Water Board must adopt a drinking water standard for Cr6 "that is as close as feasible to [OEHHA's] corresponding public health goal" of 0.02 ppb that is technologically and economically feasible. (See EIR, p. 26-7; see also Health & Safety Code, § 116365(a)-(b).)

The EIR further provides that the project will not go into effect—i.e., that water agencies need not take actions to comply with the MCL—until between two and four years after the State Water Board certifies the EIR and adopts its Cr6 MCL. (EIR, p. S-1.) This is problematic because in the next two to four years OEHHA could revise its PHG for Cr6 significantly upward based on new information. This is not unrealistic, as the Environmental Protection Agency's ("EPA") drinking water standard for Cr6 is 100 ppb—10x higher than the drinking water standard the State Water Board proposes in the EIR. (https://www.epa.gov/sdwa/chromium-drinking-water [while the EPA drinking water standard of 100 ppb is ostensibly for total chromium, the regulation "assumes that a measurement of total chromium is 100 percent Cr6"].) Notably, the State Water Board is statutorily required to consider the EPA's drinking water standard of 100 ppb in establishing its own MCL. (Health & Safety Code, § 116365(b)(1).)

Under CEQA, this project objective instability renders the EIR's analysis of project alternatives—and by extension, the EIR itself—fatally defective. For example, OEHHA could within the next two years revise its PHG for Cr6 from 0.02 ppb to 30 ppb. If the

EIR is certified before this development takes place, then water agencies two years from now may be required to take action with significant and unavoidable impacts to the environment to comply with the EIR's proposed MCL of 10 ppb, when OEHHA's PHG for Cr6 at the time of project implementation could be 30 ppb. This would result in significant and unnecessary impacts to the environment. (See EIR, p. 26-5 [water agencies in 44 counties would have to take action that could have a significant and unavoidable impact with an MCL of 10 ppb; less than half that amount, water agencies in just 16 counties, would need to take similar action with a Cr6 MCL of 30 bbp].[sic])

To avoid this circumstance, CVWD strongly urges the State Water Board to refrain from taking any action towards certifying the EIR or adopting the Project until OEHHA completes its pending update to the Cr6 PHG.

2.6.44 Response to CVWD Comment 3-22

See section 2.5.40 Response to Winters Comment 2-20.

2.6.45 CVWD Comment 3-23

10. The State Water Board should refrain from certifying the EIR until OEHHA completes its update of its Cr6 public health goal; alternatively, the EIR must be revised and recirculated to comply with CEQA.

CVWD urges the State Water Board to hold off certification of the EIR or approval of the Project until OEHHA completes its pending update of the Cr6 PHG. The revised PHG, based on the most recent science available, would then better guide the State Water Board in determining the proper MCL for Cr6. And, from a CEQA perspective, this would streamline any EIR regarding MCL for Cr6 by (1) eliminating from consideration the most stringent proposed MCLs, which are the MCLs that will have the most significant environmental impacts; and (2) allowing the State Water Board to prepare an alternatives analysis in the EIR that complies with CEQA. The people of California and the environment will both benefit from a reassessment of the PHG for Cr6.

In the alternative, if the State Water Board presses forward with the proposed MCL of 10 ppb before OEHHA completes its update of the Cr6 PHG, then at a bare minimum, the EIR must be revised to address the deficiencies raised herein. The revised EIR must then be recirculated to the public pursuant to State CEQA Guidelines section 15088.5.

11. Conclusion

CVWD looks forward to working with the State Water Board to ensure that this Project receives the careful review that it deserves. Thank you for your consideration of CVWD's input.

2.6.46 Response to CVWD Comment 3-23

See section 2.5.42 Response to Winters Comment 2-21.

2.7 City of Coachella (Coachella) (Commenter 4) Comments and Responses

2.7.1 Coachella Comment 4-1

The City of Coachella ("City") submits these written comments in response to the State Water Resources Control Board's ("State Water Board") Notice of Availability of a Draft Program Environmental Impact Report ("EIR") for the adoption of a regulation for the maximum contaminant level ("MCL") for hexavalent chromium ("chromium-6"). The City hopes that its written comments will help the State Water board fully analyze, mitigate, and avoid the potential environmental impacts of the Project in compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.: "CEQA").

The EIR analyzes a proposed primary drinking water standard for chromium-6 that includes a MCL of 10 micrograms per liter (ug/L) or parts per billion (ppb) (the "Project"). The City has serious concerns about both the proposed MCL of 10 ppb and the adequacy of the EIR prepared for the proposed Project. The City is a responsible agency for the proposed Project, as the City operates its own public water system, and the City will be required to comply with the new MCL if adopted as proposed. (State CEQA Guidelines, § 15381.)

The MCL would significantly impact the City, its ratepayers, and the environment. Given the potential impacts of the MCL, the City appreciates the State Water Board's commitment to prepare an EIR for the Project. The City believes, however, that significant revisions are necessary to the EIR to bring it into compliance with CEQA.

The City additionally urges the State Water Board to refrain from certifying the EIR or from approving the Project until the Office of Environmental Health Hazard Assessment ("OEHHA") completes its pending revisions to its public health goal ("PHG") for chromium-6. Given the centrality of OEHHA's PHG to the EIR, and in particular to the EIR's analysis of alternatives to the Project, the City believes that the State Water board cannot comply with CEQA until OEHHA provides clarity on the PHG that will be in effect when the Project is proposed to be implemented two to four years from now. (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287 ["an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR"].)

The City appreciates the opportunity to submit these comments, and the City is hopeful that it can work with the State Water Board to ensure that a valid CEQA document is prepared and that any future MCL for chromium-6 is protective of the public health, the environment, and the City's ratepayers.

2.7.2 Response to Coachella Comment 4-1

No response is required for these introductory comments; the State Water Board responds to the issues below as they are more fully detailed by Coachella in its letter. One issue, however, that is not addressed below is the Coachella role as a responsible agency. Coachella states above that it "is a responsible agency for the proposed Project, as it is a water district that will be required to comply with the new MCL if adopted as written." The State Water Board does not agree that the Coachella is a responsible agency under CEQA for the adoption of the Proposed Regulations. Although the Coachella may be a lead or responsible agency for the any site-specific compliance project that it proposes to come into compliance with the regulations, it has no discretionary approval power in the development or adoption of the Proposed Regulations. The State Water Board is the only public agency with the responsibility for carrying out or approving the Proposed Regulations, and there are no other responsible agencies for the adoption of the Regulations.

2.7.3 Coachella Comment 4-2

1. **The Project Could Dramatically Impact The City of Coachella, Its Ratepayers, And The Environment**.

The City of Coachella is located in Riverside County on the eastern edge of the Coachella Valley. The City has a population of approximately 45,000 residents, most of whom are economically disadvantaged. The median household income in the City is approximately $35,000. As discussed further below, the proposed Project could have potentially significant impacts on the environment and on the City's ratepayers, many of whom will not be able to afford the rate increases necessary to offset the costs of compliance with an overly stringent MCL.

The City will be uniquely impacted by the setting of a new MCL because groundwater is the City's only water source. The City operates its own public water system, obtaining its water from six groundwater wells that have a total pumping capacity of approximately 16.9 million gallons per day. This groundwater has naturally occurring chromium-6 that is the result of the valley's geology. For this reason, the City has long been concerned about the establishment of an MCL for chromium-6 that protects public health while being both technologically and economically feasible, as required by law. (Health & Safety Code,§ 116365(a), (b)(3).) A technologically and economically feasible MCL would allow the City to continue to provide a sustainable public water supply to its residents.

The Project, however, proposes an MCL that is neither technologically nor economically feasible for the City. This is not the first time the State Water Board has proposed an MCL of 10 ppb for chromium-6. When the 10 ppb MCL was previously in effect between 2014-2017 (before a court invalidated the MCL), the City quickly came to realize the significant challenges this MCL would have for the City's public water

system. To implement the previous MCL of 10 ppb, the City developed plans to construct and operate a strong base anion exchange system, which would have cost $36.2 million to construct. Implementing this treatment technology to achieve an MCL of 10 ppb would have resulted in a 120 percent increase in average water rates per customer over a five year period. This would have resulted in increases of approximately $53 per month or $636 per year for the City's ratepayers – an increase many ratepayers could not afford then, and an increase which even fewer ratepayers can afford now amidst the challenges of surging inflation.

The City is concerned that an unduly stringent MCL of 10ppb would require the City to construct economically infeasible facilities or to deploy other treatment options at enormous cost.

2.7.4 Response to Coachella Comment 4-2

See section 2.5.4 Response to Winters Comment 2-2.

2.7.5 Coachella Comment 4-3

Both the construction of new facilities and the deployment of treatment options would significantly impact the environment.

The proposed MCL will have enormous adverse economic impacts on the City and its ratepayers, but these impacts are not just economic-they will translate into significant and unavoidable environmental impacts. These impacts must be avoided, and the means to avoid them is by adopting an economically and technologically feasible MCL-i.e., an MCL for chromium-6 greater than the currently proposed MCL of 10 ppb. The City urges the State Water Board to revise and recirculate the EIR to consider these important concerns. CEQA requires the analysis of these impacts, as discussed below.

2.7.6 Response to Coachella Comment 4-3

See section 2.5.6 Response to Winters Comment 2-3

2.7.7 Coachella Comment 4-4

2. The EIR violates CEQA because it does not provide the detail necessary to inform the public of the Project's potential impacts to the environment.

The California Supreme Court has characterized an EIR as "the heart of CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) "An EIR is an 'environmental alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Ibid*.) "The EIR is also intended to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Ibid*.) Because the EIR must be certified or rejected by public officials, it is a document of accountability." (*Ibid*.) "If CEQA is scrupulously followed, the

public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees." (*Ibid*.) The EIR thus "protects not only the environment, but also informed self-government." (*Ibid*.)

In light of the above-referenced policies,"[w]hen determining whether an EIR's discussion of potentially significant effects is sufficient, the ultimate inquiry is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655,670, quoting *Laurel Heights, supra*, 47 Cal.3d at p. 405.)

The EIR here fails to comply with CEQA because it does not include enough detail to enable the public to understand and to consider meaningfully the Project's potential impacts on the environment. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.) An EIR is intended to serve as an "environmental alarm bell," but the EIR here sounds more like the boy who cried "wolf!" The EIR finds that the proposed Project will result in a wide range of significant and unavoidable impacts to the environment, but it also declares that this finding may simply be a false alarm-that there isn't necessarily anything to be worried about. The EIR provides the public with mixed messages, in effect declaring: "The Project could result in environmental disaster. Or maybe everything will be fine. We just don't know."

The EIR recognizes that its analysis is not premised on a strong factual foundation. For example, the EIR provides:

- "Because it would be speculative to assume the type, size, and location of potential compliance projects, as well as the type of resources impacted, this EIR cannot quantify the impacts associated with the implementation of any specific project, but does recognize the potential for such impacts, and identifies potential mitigation that could be implemented at site-specific projects to avoid such impacts." (EIR, p. S-3.)

- "[E]ven where a source of drinking water is known to be contaminated with hexavalent chromium based on data collected under the prior regulation, it would be speculative to guess the location of a future compliance project to address that contamination." (EIR, p.2-7.)

- Without attempting to quantify the impacts associated with the implementation of any specific project, the EIR includes a list of potential actions or mitigation measures that could possibly reduce the impact to a less-than-significant level or contribute to doing so. However, because of the programmatic nature of the analysis and because the State Water Board does not have control over how a public water system will ultimately comply with the regulations, including where it would locate site-specific compliance projects, it is uncertain whether the

identified mitigation would be effective in reducing the potential impacts for any specific project." (EIR, p. 3-8.)

In short, the EIR's analysis concludes that it does not know what the Project's potential impacts may be, and it does not know whether those impacts could be mitigated to a level of less than significant. This mixed messaging does not promote "informed self-government." (Laurel Heights, supra, 47 Cal.3d at p. 392.) It does not address the concerns of "an apprehensive citizenry" that looks to the lead agency to determine whether the environmental impacts of the Project have been duly considered. (*Ibid*.) In short, the EIR fails to include "enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.)

For these reasons, the EIR fails to comply with CEQA. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670; *Laurel Heights, supra*, 47 Cal.3d at p. 392.)

2.7.8 Response to Coachella Comment 4-4

See section 2.5.8 Response to Winters Comment 2-4

2.7.9 Coachella Comment 4-5

3. The EIR abdicates its responsibility to analyze the potential environmental impacts of the Project by finding nearly every impact to be "significant and unavoidable" without reference to any standard of significance.

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1(a).) To further this purpose, the lead agency must disclose the "analytic route" between its conclusion that an impact may have a potentially significant impact on the environment and its conclusion of whether, and to what extent, the impact can be mitigated. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 654.)

A lead agency does not satisfy its responsibility under CEQA by merely reaching a conclusion regarding whether a proposed project may have a significant and unavoidable impact on the environment. (*Lotus, supra*, 223 Cal.App.4th at p. 654.) Instead, a lead agency must (1) set forth the standard of significance by which it will determine whether a proposed project will have a significant impact on the environment; (2) provide analysis demonstrating whether the proposed project will exceed that standard of significance; (3) propose mitigation to reduce the proposed Project's potentially significant impact on the environment; and (4) analyze the extent to which that mitigation will reduce the potentially significant impact. (Id. at pp. 655-658; see also Pub. Resources Code, § 21100(b).)

The EIR fails to meet any of the above criteria. For example, in its analysis of whether the proposed Project could violate any air quality standard or contribute substantially to an existing or projected air quality violation, the EIR provides no factual analysis. Instead, the EIR refers the public to its roughly one-page analysis of whether the proposed Project would conflict with or obstruct implementation of any applicable air quality plan. (EIR, p. 6-9.) The EIR's analysis of whether the proposed Project would conflict with or obstruct implementation of the applicable air quality plan, however, is not based on, and does not reference, any threshold of significance. (See EIR. pp. 6-7 through 6-9.)

Without any threshold of significance to guide its significance determination, the EIR does not and cannot include any factual analysis demonstrating whether the proposed Project will exceed any threshold of significance. Moreover, while the EIR proposes mitigation measures, it does not analyze whether and to what extent this mitigation could reduce the potentially significant impact. The EIR ultimately concludes that the proposed Project may result in a significant and unavoidable air quality impact, but this conclusion is based on conjecture, not facts. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814. 838 [public agency violates CEQA and abuses its discretion when its determination is not supported by substantial evidence]; see also Pub. Resources Code, § 21168.5.)

In sum, the EIR violates CEQA by failing to measure the proposed Project's potential impacts against any threshold of significance, and by further failing to quantitatively analyze whether the mitigation measures identified could reduce the proposed Project's potential impacts to a level of less than significant. The EIR is littered with conclusions of "significant and unavoidable impacts," but the EIR fails to disclose the "analytic route" taken to reach these conclusions. (*Lotus, supra*, 223 Cal.App.4th at p. 654.)"

2.7.10 Response to Coachella Comment 4-5

See Section 2.5.10 Response to Winters Comment 2-5.

2.7.11 Coachella Comment 4-6

4. The EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment.

The EIR must serve as an informational document that will inform public agency decisionmakers and the public generally of the significant environmental effects of the Project, identify possible ways to mitigate the Project's significant effects, and describe reasonable alternatives to the Project. (State CEQA Guidelines, § 15121(a).) To achieve this purpose, the EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].)

The cost of compliance with the MCL for chromium-6 would shape the behavior of both water agencies and ratepayers, and the environmental impacts of this reasonably foreseeable behavior must be analyzed in the EIR. To do so, the EIR must analyze and discuss the costs of complying with the MCL, and how activity in response to such costs could potentially impact the environment.

2.7.12 Response to Coachella Comment 4-6

See Section 2.5.12 Response to Winters Comment 2-6.

2.7.13 Coachella Comment 4-7

The City provides a non-exhaustive list of examples of how behavior responding to the cost of the MCL could result in a potentially significant impact on the environment.

(1) Shift from groundwater usage to surface water usage. While the City does not have this option, the high cost of compliance with an overly stringent MCL could cause water agencies to shift from groundwater usage to surface water usage, and the EIR must analyze the potential environmental impacts of this reasonably foreseeable shift, as further discussed in section 5 of this comment letter below. Notably, Yolo County water agencies have already made this shift. The shift to surface water usage would have numerous deleterious impacts on the environment, including decreased in-stream flows and adverse impacts to fish and wildlife.

2.7.14 Response to Coachella Comment 4-7

See Section 2.5.14 Response to Winters Comment 2-7.

2.7.15 Coachella Comment 4-8

(2) Increased dependency on surface waters would increase the need for water storage. The MCL could spur a wave of reasonably foreseeable water storage and conveyance projects, as water agencies increasingly use surface waters to avoid the costs of compliance with the MCL. The EIR must analyze and mitigate the environmental impacts of these projects, including impacts on air quality, water quality, and biological resources. Moreover, the need for water storage may require flooding large areas of land to store water, and the environmental impacts of transforming the environment in this manner must be analyzed.

2.7.16 Response to Coachella Comment 4-8

See Section 2.5.16 Response to Winters Comment 2-8.

2.7.17 Coachella Comment 4-9

(3) The EIR must analyze the reasonably foreseeable environmental impacts of the Project resulting from increased rates to ratepayers. The cost of compliance with a MCL

of 10 ppb would shape not only the behavior of water agencies, but also of ratepayers who could face dramatic increases in monthly costs as a result of their water agencies' efforts to comply with the MCL. For example, economically vulnerable ratepayers unable to afford these increased costs may be forced to migrate from a service area with high MCL compliance costs to a service area that either has lower such costs or an area that is better able to distribute such costs among a greater number of ratepayers. This migration is a reasonably foreseeable response to higher water rates, and the environmental effects of such migration must be analyzed in the EIR. These impacts may include (1) rural blight, as ratepayers in smaller service areas with high MCL compliance costs migrate to more metropolitan service areas, where the costs of such compliance can be distributed among a larger population; (2) VMT associated with such migration; (3) air quality and greenhouse gas impacts related to such migration; and (4) substantial unplanned population growth in areas with lower MCL compliance costs and the displacement of substantial numbers of people in areas with high MCL compliance costs.

2.7.18 Response to Coachella Comment 4-9

See Section 2.5.18 Response to Winters Comment 2-9.

2.7.19 Coachella Comment 4-10

The above-referenced impacts do not appear to be analyzed in the EIR. The City urges the State Water Board to recirculate the EIR to analyze and mitigate these impacts in order to comply with CEQA.

2.7.20 Response to Coachella Comment 4-10

The above-referenced impacts are speculative. There is no evidence to suggest that these impacts would result from the Proposed Regulations. Therefore, the Draft EIR does not analyze them, and recirculation is not required.

2.7.21 Coachella Comment 4-11

5. The EIR fails to analyze or mitigate the Project's potential to force water agencies to shift from groundwater to surface water and the potential environmental impacts that may result from this shift.

A lead agency fails to comply with CEQA when its EIR does “not discuss the impact of new surface water diversions, enforceable measures to mitigate those impacts, or the remaining unmitigated impacts." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 [Supreme Court held that lead agency's failure to properly analyze project's impacts on surface water violated CEQA]; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645,664 [lead agency violated CEQA where it “fail[ed] to adequately analyze impacts to surface water"].)

In response to the Notice of Preparation (“NOP") of the EIR, many public agencies commented that the proposed Project would cause water agencies to shift from groundwater usage to surface water usage. (See EIR, Appendix B [NOP Comment Letters].) CEQA requires the EIR to analyze the potential environmental impacts of this reasonably foreseeable shift (including impacts relating to decreased in-stream flows and adverse impacts to fish and wildlife), and to mitigate the impacts of this shift. (See Pub. Resources Code, § 21159(a).)

The EIR identifies “switching to surface water” as a reasonably foreseeable means of complying with the proposed MCL. (See, 7-7-.g., EIR, pp. S-3, 1-1, 2-7 through 2-8, 2-15 [recognizing water agencies may “increase their reliance on surface water and reduce or cease using the groundwater supply contaminated by hexavalent chromium"].) The EIR, however, fails to analyze any potential environmental impacts that may result from this increased reliance on surface water. The EIR does not analyze the Project’s potential impact to result in decreased in-stream flows, nor does it analyze potential adverse impacts to fish and wildlife that may result from increased reliance on surface water.

While the EIR recognizes that increased reliance on surface water is a reasonably foreseeable means of complying with the proposed MCL, the EIR fails to analyze any of the potential direct, or reasonably foreseeable indirect, impacts to the environment that may result as a result of this action. This renders the EIR fatally flawed under CEQA, and the EIR must therefore be revised and recirculated to address this issue. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc., supra*, 40 Cal.4th at p. 444.)

2.7.22 Response to Coachella Comment 4-11

See Section 2.5.22 Response to Winters Comment 2-11.

2.7.23 Coachella Comment 4-12

6. The State Water Board, as Lead Agency, must take responsibility to mitigate the Project's potential impacts to the environment.

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. (Pub. Resource Code, § 21002.1(a), 21081(a)(1).) “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.)

The EIR here provides a gloomy forecast of environmental degradation, concluding that the Project will result in a significant and unavoidable impact as to nearly every resource analyzed. Yet, the EIR fails to properly mitigate these significant and unavoidable impacts. State CEQA Guidelines section 15126.4 sets forth the State Water Board's responsibility as lead agency to commit to mitigation measures:

> Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.

(State CEQA Guidelines, § 15126.4(a)(l)(8), emphasis added.)

None of the mitigation measures proposed in the EIR comply with the above standards.

First, the State Water Board has not committed itself to any mitigation. The State Water Board has not even considered what steps that it--as opposed to agencies tasked with complying with the proposed MCL--could take to mitigate potential impacts to the environment. For example, compliance with the proposed MCL could result in significant economic burden to responsible agencies, and as various agencies commented in response to the NOP, there are significant impacts to the environment that could result from this economic burden. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].) The State Water Board, however, has not discussed how it could provide funding, grants, or subsidies to responsible agencies to mitigate potential impacts to the environment. State funding is the linchpin to achieve an economically feasible MCL. Without a specific and enforceable commitment from the State Board on funding, the economic feasibility analysis and the EIR are deficient.

Again, the State Water Board has not committed to any mitigation at all. The EIR must be revised so that the State Water Board itself commits to mitigation so that the burden of the State Water Board's proposed Project does not fall squarely on the responsible agencies required to implement the Project. (State CEQA Guidelines, § 15126.4(a)(1)(B).) The State Water Board has an integral part to play in mitigating the impacts of its Project. By not taking responsibility to mitigate impacts that it can control, the State Water Board violates CEQA.

2.7.24 Response to Coachella Comment 4-12

See Section 2.5.24 Response to Winters Comment 2-12.

2.7.25 Coachella Comment 4-13

Second, while the EIR sets forth mitigation measures as to nearly every impact, the EIR does not specify any specific performance standards for any of the identified mitigation measures. (State CEQA Guidelines, § 15126.4(a)(l)(B).)

2.7.26 Response to Coachella Comment 4-13

See Section 2.5.26 Response to Winters Comment 2-13.

2.7.27 Coachella Comment 4-14

Nor does the EIR explain why or how implementation of the mitigation measures will substantially lessen the Project's significant and unavoidable impact. The EIR identifies a significant and unavoidable impact, and identifies mitigation measures, but fails to analyze or explain the relationship between the mitigation measures and the significant and unavoidable impact. This defect infects the discussion in nearly every section of the EIR.

2.7.28 Response to Coachella Comment 4-14

See Section 2.5.28 Response to Winters Comment 2-14.

2.7.29 Coachella Comment 4-15

Third, and related to the point above, the EIR does not identify the types of potential actions that can feasibly achieve the performance standard. (State CEQA Guidelines, § 15126.4(a)(1)(B).) Again, this is because the EIR simply does not identify any performance standards. As a result, the EIR does not explain to what extent or how the mitigation measures will substantially reduce impacts. This defect is fatal to the adequacy of the EIR.

2.7.30 Response to Coachella Comment 4-15

See Section 2.5.30 Response to Winters Comment 2-15.

2.7.31 Coachella Comment 4-16

7. The EIR fails to properly analyze the proposed Project's cumulative impacts.

A proper analysis of a project's cumulative impacts is a "vital informational function" of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (*Ibid.*; State CEQA Guidelines, § 15130(a).) More specifically, the "cumulative impact from several project projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future

projects.” (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*Ibid*.; State CEQA Guidelines, § 15355(b).)

“Proper cumulative impact analysis is vital because the full environmental impacts of a proposed project cannot be gauged in a vacuum." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) “One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources." (*Ibid*.) These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” (*Ibid*.)

To have an adequate discussion of significant cumulative impacts, an EIR must generally begin by setting forth a "list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(1)(A).)Response 4-14

Here, the EIR fails to properly analyze the proposed Project's cumulative impacts for several reasons.

First, the EIR does not include the necessary "list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." (State CEQA Guidelines, § 15130(b)(1)(A).) This list should include both (1) past, present, and probably future MCLs for various contaminants that the State Water Board has adopted or plans to adopt; and (2) the various means by which the implementing agencies will implement the MCL for chromium-6 in connection with the proposed Project.

2.7.32 Response to Coachella Comment 4-16

See Section 2.5.32 Response to Winters Comment 2-16.

2.7.33 Coachella Comment 4-17

Second, the State Water Board recognizes that there are existing MCLs for other contaminants, and that the State Water Board is in the process or plans to adopt MCLs for a series of other contaminants, including arsenic, perfluorooctanoic acid and perfluoroalkyl substances, n-nitroso-dimethylamine, styrene, and cadmium. (https://www.waterboards.ca.go, drinking_water/ certlic/drinkingwater/Regulations.html [setting forth existing MCLs adopted by State Water Board], https://www.waterboards.ca.gov/drinkingwater/certlic/drinkingwater/Regulations.html [setting forth planned future MCLs].) The cumulative economic and environmental impacts of requiring public agencies to comply with these past, present, and probably future MCLs must be analyzed in the EIR. This cumulative impacts analysis is a fundamental prerequisite to CEQA compliance because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of

several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services." (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at pp. 1214-1215.) “This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment.” (Ibid.)

2.7.34 Response to Coachella Comment 4-17

See Section 2.5.34 Response to Winters Comment 2-17.

2.7.35 Coachella Comment 4-18

Finally, the State Water Board has an obligation to not only analyze the cumulative impacts of the Project taken together with past, present, and probable future MCLs for other contaminants, but also an obligation to mitigate those impacts. (*Joy Road Area Forest & Watershed Assn. v. California Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 676.) “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Ibid*.) Accordingly, the City urges the State Water Board to analyze the Project's cumulative impacts, and to commit to mitigation measures that would reduce cumulative impacts to a level of less than significant. (State CEQA Guidelines, § 15126.4(a)(1)(B).) In particular, the City urges the State Water Board to adopt and implement a sustainable regulatory program that pairs each MCL with specific, dedicated funding programs sufficient to implement and mitigate the impacts of each MCL.

2.7.36 Response to Coachella Comment 4-18

See Section 2.5.36 Response to Winters Comment 2-18.

2.7.37 Coachella Comment 4-19

8. <u>The EIR fails to properly analyze alternatives to the proposed Project</u>.

"It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which substantially lessen the significant environmental effects of such projects." (Pub. Resources Code, § 21002.) Accordingly, “CEQA requires an EIR to identify feasible alternatives that could avoid or substantially lessen the project's significant environmental effects.” (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 702; Pub. Resources Code, §§ 21002, 21100(b)(4).) Indeed, courts have explained that one of an EIR's “major functions” is to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565.)

As part of this analysis, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (State CEQA Guidelines, § 15126.6(a).) The range of alternatives must provide “enough of a variation to allow informed decisionmaking." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.)

An EIR violates CEQA when the alternatives analyzed therein “do not contribute to a reasonable range of alternatives that fostered informed public participation and decision-making." (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 703.) This occurs when an EIR does not consider any alternative that would feasibly attain most of the project's objectives while also lessening the project's significant impacts on the environment. (*Ibid*.) Accordingly, a public agency violates CEQA when it defines its project objectives so narrowly that it "preclude[s] any alternative other than the Project." (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683,692 [hereinafter, “*WATER*"].) Thus, when a public agency effectively defines a project objective as achieving the proposed project, and dismissively rejects anything other than the proposed project as not meeting project objectives, the EIR “prejudicially prevent[s] informed decision making and public participation." (*Id*. at p. 692.)

Here, the EIR proposes an MCL for chromiurn-6 of 10 ppb, but it dismisses all other alternatives as infeasible and incapable of meeting project objectives. The EIR provides no substantive or quantitative analysis of the other proposed alternatives. Instead, like the lead agency in the *WATER* decision, the EIR “dismissively reject[s] anything other than the proposed project." (*WATER, supra*, 78 Cal.App.5th at p. 692.) And. like the EIR at issue in the *WATER* decision, this approach “transform[s] the EIR’s alternatives section-often described as part of the ‘core of the EIR’-into an empty formality." (*Ibid*.) This is evidenced by the fact that the EIR's "Discussion and Comparison of Alternatives" section is almost entirely devoid of analysis, and spans just over a single page. (See EIR, p. 26-6 through 26-7.) To comply with CEQA, a robust analysis of the Project alternatives is required. (*WATER, supra*. 78 Cal.App.5th at p. 692.)

To provide the public and the decision-makers with a complete assessment of the Project and the alternatives to the Project. the EIR must assess the relationships of each alternative to impacts on the environment and also the technical and economic feasibility of each alternative. The EIR cannot simply dismiss alternatives under CEQA by relying on State Water Board staff’s conclusion that an MCL of 10 pbb [sic] is technically and economically feasible and that, therefore, there are no other legally sufficient alternatives to analyze. To the contrary, CEQA requires a deeper assessment and acknowledgement of the interrelationship between the State Water Board's assessment of feasibility under California Health and Safety Code section 116365(a) and its obligations under CEQA to assess alternatives. A full assessment of alternatives

must inform the decision-making process under section 116365(a). An MCL may appear feasible in a vacuum but prove to be infeasible when assessed in light of the various impacts it might have on the environment. A fully analyzed alternative may in fact be the one that is truly feasible under section 116365(a) and environmentally superior under CEQA when all impacts are considered. By failing to meaningfully assess alternatives, the State Water Board is not only acting contrary to CEQA but also failing to perform its obligations under section l 16365(a).

2.7.38 Response to Coachella Comment 4-19

See section 2.5.38 Response to Winters Comment 2-19.

2.7.39 Coachella Comment 4-20

9. <u>The EIR lacks stable project objectives, and this renders its Alternatives analysis fundamentally flawed</u>.

An EIR's project description is "an indispensable element of both a valid draft EIR and final EIR". (*Stopthemilleniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th I, 16.) As has often been stated, "an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.) Accordingly, "a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading." (*Ibid*.)

A key component of the project description is the "statement of the objectives sought by the proposed project." (State CEQA Guidelines. § 15124(b); *Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

Here, however, the EIR does not provide an accurate and stable statement of the proposed Project's objectives. The key project objective emphasized in the EIR is to "comply[] with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5." (EIR. p. 25-4.) The EIR rejects all alternatives to the proposed MCL of 10 ppb on the basis that "the State Water Board is legally required to adopt a primary drinking water standard that is as close as feasible to the corresponding public health goal" ('PHG') established by OEHHA as required by Health and Safety Code section 116365." (EIR, p. 26-7.) But, as discussed below, it is unclear what OEHHA's PHG for chromium-6 will be when the Project is proposed to go into effect two to four years from now.

In July 2011, OEHHA established a PHG for chromium-6 of 0.02 ppb, representing a de minimis lifetime cancer risk from exposure to chromium-6 in drinking water, based on studies in laboratory animals. Since then, scientific information on the impacts of chromium-6 on human health has advanced substantially. The most recent scientific information on the health effects of human ingestion of chromium-6 in drinking water

indicates that MCLs at or above the upper end of the MCLs set forth in the EIR's range of alternatives are fully health protective.

OEHHA's PHG for chromium-6 of 0.02 ppb is subject to imminent change. In October 2016, OEHHA announced that substantial new information warrants a review of the chromium-6 PHG, which to date has not been performed. More recently, in March 2023, OEHHA announced that it would be “completing the update" of the chromium-6 PHG that it had initiated in 2016.

OEHHA's potential revision of its PHG for chromium-6 has significant CEQA ramifications. Again, the EIR eliminates all project alternatives on the basis that the State Water Board must adopt a drinking water standard for chromium-6 "that is as close as feasible to [OEHHA's] corresponding public health goal” of .02 ppb that is technologically and economically feasible. (See EIR, p. 26-7; see also Health & Safety Code, § 116365(a)-(b).)

The EIR further provides that the project will not go into effect-i.e., that water agencies need not take actions to comply with the MCL-until between two and four years after the State Water Board certifies the EIR and adopts its chromium-6 MCL. (EIR. p. S-1.) This is problematic because in the next two to four years OEHHA could revise its PHG for chromium-6 significantly upward based on new information. This is not unrealistic, as the Environmental Protection Agency’s (“EPA”) drinking water standard for chromium-6 is 100 ppb—10x higher than the drinking water standard that the State Water Board proposes in the EIR. (https://www.epa.gov/sdwa/chromium-drinking-water [while the EPA drinking water standard of 100 ppb is ostensibly for total chromium, the regulation “assumes that a measurement of total chromium is 100 percent chromium-6”].) Notably, the State Water Board is statutorily required to consider the EPA's drinking water standard of 100 ppb in establishing its own MCL. (Health & Safety Code, § 116365(b)(1).)

Under CEQA, this project objective instability renders the EIR’s analysis of project alternatives—and by extension, the EIR itself—fatally defective. For example, OEHHA could within the next two years revise its PHG for chromium-6 from .02 ppb to 30 ppb. If the EIR is certified before this development takes place, then water agencies two years from now may be required to take action with significant and unavoidable impacts to the environment to comply with the EIR’s proposed MCL of 10 ppb, when OEHHA’s PHG for chromium-6 at the time of project implementation could be 30 ppb. This would result in significant and unnecessary impacts to the environment. (See EIR, p. 26-5 [water agencies in 44 counties would have to take action that could have a significant and unavoidable impact with an MCL of 10 ppb; less than half that amount, water agencies in just 16 counties, would need to take similar action with a chromium-6 MCL of 30 bbp] [sic].)

To avoid this circumstance, the City strongly urges the State Water Board to refrain from taking any action towards certifying the EIR or adopting the Project until OEHHA completes its pending update to the chromium-6 PHG.

2.7.40 Response to Coachella Comment 4-20

See section 2.5.40 Response to Winters Comment 2-20.

2.7.41 Coachella Comment 4-21

10. The State Water Board should refrain from certifying the EIR until OEHHA completes its update of its chromium-6 public health goal; alternatively, the EIR must be revised and recirculated to comply with CEQA.

The City urges the State Water Board to hold off certification of the EIR or approval of the Project until OEHHA completes its pending update of the chromium-6 PHG. The revised PHG, based on the most recent science available, would then better guide the State Water Board in determining the proper MCL for chromium-6. And, from a CEQA perspective, this would streamline any EIR regarding MCL for chromium-6 by (1) eliminating from consideration the most stringent proposed MCLs, which are the MCLs that will have the most significant environmental impacts; and (2) allowing the State Water Board to prepare an alternatives analysis in the EIR that complies with CEQA. The people of California and the environment will both benefit from a reassessment of the PHG for chromium-6.

In the alternative, if the State Water Board presses forward with the proposed MCL of I0 ppb before OEHHA completes its update of the chromium-6 PHG, then at a bare minimum, the EIR must be revised to address the deficiencies raised herein. The revised EIR must then be recirculated to the public pursuant to State CEQA Guidelines section 15088.5.

11. **Conclusion.**

The City looks forward to working with the State Water Board to ensure that this Project receives the careful review that it deserves. Thank you for your consideration of the City's input.

2.7.42 Response to Coachella Comment 4-21

See section 2.5.42 Response to Winters Comment 2-21.

2.8 Mission Springs Water District (MSWD) (Commenter 5) Comments and Responses

The Mission Springs Water District comment letter is focused on the costs of compliance and is responded to in the Final Statement of Reasons; however, the letter has a section titled: "Additional Comments" with comments numbered 1 through 5.

Additional Comments 2 through 5 refer to environmental impacts and will be addressed below.

2.8.1 MSWD Comment 5-1

Reconsideration of an MCL of 25 ppb to minimize economic hardship and environmental impacts. The 25 ppb is highly regarded as a safe standard by federal standards and the World Health Organization (WHO).

2.8.2 Response to MSWD Comment 5-1

The Draft EIR discussed that a higher MCL would result in fewer environmental impacts than the proposed regulations because there would be fewer water systems that would need to construct and operate compliance projects. To summarize Chapter 26 Alternatives Analysis, section 26.3, pp. 26-6 to 26-7, a higher MCL will result in fewer sources requiring fewer compliance projects and would result in fewer environmental impacts resulting in less surface water use, less hazardous waste, energy use, and greenhouse gas emissions.

However, the EIR also explained in section 26.3 in the third paragraph on page 26-7 that an MCL of 25 ppb would not meet the legal requirement for the MCL to be “as close as feasible” to the public health goal of .02 ug/L.

> “The State Water Board is legally required to adopt a primary drinking water standard at a level that is as close as feasible to the corresponding public health goal placing primary emphasis on the protection of public health. (Health & Saf. Code, § 116365). If the State Water Board finds that the proposed MCL of 10 ug/L is technologically and economically feasible, then any alternative MCL value higher than 10 ug/L would not be ‘as close as feasible’ to the public health goal of .02 ug/L. Therefore, if the State Water Board finds that the proposed MCL of 10 ug/L is technologically and economically feasible, then the alternative MCL values of 11, 12, 13, 14, 15, 20, 25, 30, 35, 40, and 45 ug/L are legally infeasible.”

2.8.3 MSWD Comment 5-2

Consider analyzing potential environmental impacts, such as hazardous waste production from SBA IX and RCF, and update cost estimates associated with the elimination of hazardous waste production.

2.8.4 Response to MSWD Comment 5-2

The Draft EIR does not discuss costs, which are analyzed in the Initial Statement of Reasons and the Standardized Regulatory Impact Assessment. The Draft EIR analyzes and considers the potential environmental impacts from BAT hazardous waste production and elimination. This discussion can be found in Chapter 12 Hazards and

Hazardous Materials, section 12.4 Impacts and Mitigation Measures (pp. 12-4 to 12-14). Section 12.4.1 says, “Compliance with the Proposed Regulations by public water systems may have the potential to create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.” It also discusses this at length under section 12.4.1.2 BAT - Operation and Maintenance Impacts pp. 12-6 to 12-9.

Additionally, vehicle trips to dispose of waste and brine are discussed in Chapter 20 Transportation, specifically in section 20.3.2 Impact 20-2 Vehicle Miles Traveled (pp. 20-4 to 20-5). This section discusses and considers the environmental impacts from increased vehicle miles traveled for the operation and maintenance of the BAT and for disposal of hazardous waste residuals. Section 20.3.5 also considers the cumulative impacts of the increased vehicle miles traveled (pp. 20-7 to 20-8).

The ISOR and SRIA include estimates and considerations of the costs of hazardous and non-hazardous waste disposal from treatment. The SRIA, as Attachment 2 to the ISOR, includes Appendix A “Cost Estimating Methodology”, which includes explanations of the cost estimates for treatment. Section I.3.a.2.A describes the methodology for estimating the cost of treating with strong base ion exchange, including the cost to dispose of clarified brine waste and spent resin (as hazardous waste). Section I.3.a.2.B describes the methodology for estimating the cost of treating with strong base ion exchange, including waste disposal. Section I.3.a.2.C describes the methodology for estimating the cost of treating with RCF, including the disposal of dewatered solids.

2.8.5 MSWD Comment 5-3

Take into consideration that MSWD, as well as many other water purveyors throughout the State of California, do not have surface or imported water to make up for lost well production due to inactivating wells to meet the MCL in such a short compliance timeframe. The lack of a supplemental surface water supply poses an economic hardship and fire protection risk to the disadvantaged communities we serve.

2.8.6 Response to MSWD Comment 5-3

The notion that a public water system would have to discontinue using a source is probably based on the commenter’s interpretation of subdivision (h)(2) of section 64432 of title 22 of the California Code of Regulations. Under that provision, the State Water Board can require a water system to discontinue using a water supply with detections ten times above the MCL. The State Water Board considers a water system’s existing source capacity when deciding whether to require a water system to discontinue a particular source.

Public water systems have many reasonably foreseeable means of compliance that do not involve reducing a water system’s source of supply. There are currently only four active sources that are contaminated with hexavalent chromium at 10 times the MCL of

10 ug/l. If a system does not have surface or imported water to offset contaminated well water, the system could install wellhead treatment and continue using the well, drill a replacement well, or tie into or consolidate with another nearby water system. In addition, it may be possible for a system to discontinue using a well for drinking water, but keep that well on standby for fire protection. See also, section 2.6.6 Response to CVWD Comment 3-3.

2.8.7 MSWD Comment 5-4

Consider statewide drought conditions and the negative impacts that the MCL will have on already stressed local water supplies and disadvantaged community household budgets.

2.8.8 Response to MSWD Comment 5-4

The Draft EIR discusses the potential impacts of the Proposed Regulations on both ground and surface water supplies in drought and non-drought conditions in Chapter 13 “Hydrology and Water Quality” and in Chapter 22 “Utilities and Service Systems”. Additionally, the discussions of cumulative impacts in Chapter 3 “Impact Analysis Approach” and the cumulative impacts sections under each topic-specific chapter address the potential negative impacts of the Proposed Regulations on local water supplies. Most relevant are the cumulative impacts sections in Chapter 13 “Hydrology and Water Quality”, and in Chapter 7 “Biological Resources”.

Impacts on disadvantaged community household budgets are addressed in the ISOR and the SRIA.

2.9 Oral Comment Yasmeen Nubani, Twentynine Palms Water District (TPWD) (Commenter 6) Comments and Responses

2.9.1 TPWD Comment 6-1

Yasmeen Nubani, speaking on behalf of the Twentynine Palms Water District made the following comment at the Board Hearing, “Additionally, we are concerned about the environmental impacts of residual disposal and the subsequent greenhouse gases that will be released from having to conduct treatment and haul those residuals away to another state.”

2.9.2 Response Comment TPWD 6-1

The environmental impacts of residuals disposal and the greenhouse gases produced from vehicle miles traveled to collect and dispose waste was disclosed in the Draft EIR in Chapter 11, “Greenhouse Gas Emissions”, Chapter 12, “Hazards and Hazardous Waste”, and Chapter 20, “Transportation”. The Draft EIR found these impacts to be potentially significant and unavoidable, although existing legal requirements for hazardous waste and mitigation measures exist that may reduce those impacts to less

than significant, as described in the Draft EIR. In addition, some of the reasonably foreseeable means of compliance would not produce hazardous waste at all, such as blending sources or replacing wells.

3 CHANGES TO THE DRAFT EIR

3.1 Changes to List of Tables

On page S-1, the following changes are made to the first sentence:

In 200~~1~~2, the California Legislature required the Department of Health Services to develop a primary drinking water standard for hexavalent chromium by 200~~3~~4.

On page x, the following table reference is added:

Table 26-3 Total Number of Cancer Cases Avoided by MCL Value Over 70 Years

3.2 Changes to Summary Chapter

On page S-3, the following changes are made:

Project-level impacts will vary depending on the size, location, and type of treatment installed, and the environmental resources in and around the project site. It is possible that at a specific site with particularly sensitive environmental resources, the installation of treatment could cause potentially significant impacts as compared to baseline conditions. Although it is anticipated that treatment will be installed within areas that are already disturbed, such as within the footprint of existing well sites, distribution pipes, and treatment works, and that any potentially significant impacts could be mitigated, many of the potential impacts are identified as being potentially significant and unavoidable due to the fact that the State Water Board cannot control the location of the projects, the type of mitigation, or whether mitigation will be required and implemented by the lead agency.

This EIR identifies the following as reasonably foreseeable alternative means of compliance: drilling a new well, switching to surface water, blending sources, treatment with stannous chloride, and purchasing water from, or consolidating with, a nearby water system. The impacts from alternative means of compliance are likely to vary depending on the individual project. Because it would be speculative to assume the type, size, and location of potential compliance projects, as well as the type of resources impacted, this EIR cannot quantify the impacts associated with the implementation of any specific project, but does recognize the potential for such impacts, and identifies potential mitigation that could be implemented at site-specific projects to avoid such impacts.

Potential environmental impacts are related to the reasonably foreseeable means of compliance and alternative means of compliance with the project and are summarized

in Table ES1-1. Refer to Chapters 4 through 23 in this EIR for a complete discussion of each impact.

This EIR analyzes the reasonably foreseeable environmental impacts of the methods of compliance and the reasonably foreseeable alternative means of compliance. Because this EIR is assessing the impacts of reasonably foreseeable future projects, all the impacts in this EIR are indirect impacts and the State Water Board is presenting mitigation measures in this document that may be implemented along with other project specific measures by CEQA lead agencies to reduce impacts to less than significant levels for future compliance projects. It is also reasonably foreseeable that the State Water Board could be a lead agency for compliance projects if the Division of Financial Assistance funds a private entity's compliance project and no other public agency has discretion.

On pages S-3 to S-32, Table ES-1-1 Summary of Impacts and Mitigation Measures is changed to reflect the changes (described below) to Mitigation Measures 4-4, Mitigation Measure 7-1, and Mitigation Measure 13-2.

3.3 Changes to Chapter 1 Introduction and Background

On page 1-1, the following sentence is added to the end of the third paragraph:

On November 24, 2023, OEHHA published a draft document describing a proposed health-protective concentration for noncancer effects of hexavalent chromium in drinking water of 5 ppb.

On page 1-3, the following paragraph is added to the end of the section entitled "Background on Hexavalent Chromium":

As noted above, on November 24, 2023, OEHHA published a draft document describing a proposed health-protective concentration for noncancer effects of hexavalent chromium in drinking water of 5 ppb. That proposed health-protective concentration for noncancer effects of 5 ppb is significantly less than the State Water Board's proposed MCL of 10 ppb. A health-protective concentration for noncancer effects of 5 ppb would be a ceiling for any future change to the PHG. This is because even if OEHHA were to determine a health-protective concentration for cancer effects from hexavalent chromium that is higher than the proposed MCL of 10 ppb, OEHHA would still select the lower value of 5 ppb for the PHG. As explained in OEHHA's November 24, 2023, "Announcement of Availability of a Draft Technical Support Document for Proposed Health-Protective Concentration for Noncancer Effects of Hexavalent Chromium in Drinking Water", "[f]or carcinogens, health-protective water concentrations are determined for both cancer and noncancer effects, and the lowest (most health protective) value is selected as the PHG." Accordingly, OEHHA's publication of a draft health-protective concentration of 5 ppb for noncancer effects from hexavalent chromium indicates that it is unlikely that OEHHA will revise the PHG for hexavalent chromium to a number higher than the proposed MCL of 10 ppb. Therefore, the

Proposed Regulations are unlikely to change as a result of a future revision to the PHG by OEHHA.

3.4 Changes to Chapter 2 Regulatory Setting and Proposed Regulations

On page 2-17, the following paragraph is added to the end of the section entitled "Project Economic Characteristics":

These costs, however, are based on installation of best available technology as required by Health and Safety Code section 116365, subdivision (b)(3), but as noted above in section 2.6, the MCL does not dictate specific methods of compliance, and public water systems may find less expensive methods of compliance than installing BAT. For instance, some water systems may switch to sources of water that are not contaminated or may blend sources of contaminated water with sources of uncontaminated water to deliver drinking water that meets the MCL.

On page 2-17, the following changes are made to the beginning of the second paragraph of the section entitled "Agencies That Will Use This Document":

Because this is a programmatic EIR and does not address the potential impacts of site-specific compliance projects, future projects undertaken by public water systems to meet the requirements of the Proposed Regulations will need to comply with CEQA. Environmental review of those projects will necessarily entail assessment of site-specific impacts and, if necessary, mitigation measures. Public Resources Code section 21159.1 allows the use of focused EIRs for projects that consist solely of installation of pollution control equipment required by specific agencies' rules or regulations and other components necessary to complete installation of equipment, if the agency requiring pollution control prepared an EIR that included an assessment of growth-inducing and cumulative impacts from, and alternatives to, the project. For these focused EIRs the discussion of potential significant environmental impacts is limited to project-specific potentially significant effects on the environment that were not discussed in the environmental analysis in the EIR prepared for the rule or regulation. In addition, the focused EIR does not have to discuss growth-inducing or cumulative impacts, and the discussion of alternatives can be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

3.5 Changes to Chapter 4 Aesthetics

On page 4-5, the following changes are made to section 4.4.4.1 Mitigation Measures 4-4:

a) Follow local lighting ordinances.

b) ~~Schedule hours of operation to reduce light and glare.~~ During project construction and operations over the lifetime of the project, to the extent feasible the project

proponent shall eliminate all nonessential lighting throughout the project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk.

c) ~~Design outdoor lighting to aim downward onto the project site and not glare skyward or onto adjacent parcels.~~ Ensure that all lighting for the future compliance project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards).

d) To the extent feasible, compliance project proponents shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

3.6 Changes to Chapter 7 Biological Resources

On page 7-3, the following changes are made to Table 7-1 Affected Wells Within Critical Habitats, section 7.1 Environmental Setting:

TABLE 7-1 AFFECTED WELLS WITHIN CRITICAL HABITATS

Well(s) No.	Water System	USFWS Critical Habitat Species of Concern	County
5664-1	3310001	Coachella Valley milk-vetch, Coachella Valley fringe-toed lizard	Riverside
~~6805-1~~	~~3310001~~	~~Peninsular bighorn sheep~~	~~Riverside~~
24, 29, 37	3310008	Coachella Valley milk-vetch	Riverside
1	3500552	California tiger salamander	San Benito
1, 4	3910018	Delta smelt	San Joaquin
7	3810702	Delta smelt	San Joaquin
2	4400758	California red-legged frog	Santa Cruz
1	4400763	California red-legged frog	Santa Cruz
1	4400774	Zayante band-winged grasshopper	Santa Cruz
3, 18	4410011	Santa Cruz tarplant	Santa Cruz

1, 2	4800804	Delta smelt	Solano
11	5610017	Southwestern willow flycatcher	Ventura
1	5700552	Delta smelt	Yolo

On page 7-7, the following changes are made to section 7.1 Environmental setting:

The California Fish and Game Code regulates the taking of special status mammals, birds, fish, reptiles, and amphibians, as well as natural resources including waters and wetlands of the state. It includes the Streambed Alteration Agreement regulations (Fish & G. Code §§ 1600- 1616) and CESA, as well as provisions for legal fishing and hunting, and tribal agreements relating to the take of native wildlife. Any project impact to state-listed species within or alongside a project site would mandate a permit under the CESA.

Also, if a project ~~recommends~~ proposes altering a state-defined wetland or a streambed, then a Streambed Alteration Agreement would be mandatory from the CDFW. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Project proponents that submit a notification to CDFW per Fish and Game Code section 1602, prior to construction and issuance of any grading permit shall either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for their specific project, or if the project requires notification under section 1602 of the Fish and Game Code and CDFW determines the project may substantially adversely affect fish and wildlife resources, obtain a CDFW executed LSA Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

On pages 7-9 to 7-10, the following changes are made to section 7.4.1 Impact 7-1 Candidate, Sensitive, and Special Status Species:

Compliance with the Proposed Regulations by public water systems may have the potential to have a substantial adverse effect, either directly or indirectly through habitat modifications, on any species identified as candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by the CDFW or USFWS.

Construction of reasonably foreseeable means of compliance could have potentially significant impacts on candidate, sensitive, or special-status species. Although installation of treatment facilities to comply with the Proposed Regulations would likely take place within the existing footprint of treatment facilities, and adjacent to the existing well and distribution facilities, implementation of alternative means of compliance, such as construction of an intertie or consolidation with another system, could impact previously undisturbed areas that could pose a potentially significant impact to biological resources. Construction activities related to the reasonably foreseeable means of compliance, such as the installation of treatment, could disturb land, cause noise or vibrations that could disturb special status animal species, or affect special status plants and/or critical habitat. In addition to construction, there could also be personnel coming onsite monthly for monitoring, and operation and maintenance of the facilities, including changing out media for treatment works. However, operation and maintenance of facilities is less likely to cause environmental impacts than initial construction.

Operation and maintenance activities of the reasonably foreseeable means of compliance could also have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. For example, if a public water system were to comply with the Proposed Regulations by switching to using more surface water, this could have an impact on candidate, sensitive, or special status fish species. Less water in streams could adversely affect fish habitat, including causing stream temperatures to rise. If there is increased extraction of groundwater as a result of future compliance projects, that could also negatively impact special status fish and wildlife species and groundwater dependent ecosystems through drawdown of the water table. In addition, as described in section 4.4.4 above, security lighting at new facilities could contribute to nighttime light pollution. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation, which may adversely impact candidate, sensitive, or special status species.

On pages 7-10 to 7-12, the following changes are made to section 7.4.1.1 Mitigation Measures 7-1:

Examples of recognized and accepted measures that are routinely required by regulatory agencies include:

a) Identify special status species protected by federal, state, and local laws, regulations, policies, and ordinances that may be within the area where the site-specific compliance project would be located by querying the **California Natural Diversity Database** (CNDDB) and conducting a project site biological survey. If special status species or their habitats have been identified in the project area during biological inventory of the

compliance project site by a qualified biologist prior to construction, comply with applicable federal and state endangered species acts and regulations, and any local requirements, such as tree preservation policies. Ensure that important fish or wildlife movement corridors or nursery sites are not impeded by project activities. Surveys shall be conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Some aspects of the future compliance projects may warrant periodic updated surveys for certain sensitive taxa, particularly if the future compliance project is proposed to occur over a protracted time frame, in phases, or if surveys are completed during periods of drought.

b) When special status species have been identified in the project area, conduct pre-construction surveys prior to the commencement of construction to identify whether the species are currently inhabiting the project site. If species are identified, species specific avoidance protection measures are required.
c) Environmental Awareness Training: Prior to the commencement of site grading, an environmental monitor should conduct environmental awareness training for all construction personnel. The environmental awareness training should include discussions of the special-status species and nesting birds that may occur in the project area. Topics of discussion could include descriptions of the species' habitats, general provisions and protections afforded by CEQA and the federal and state ESAs, measures implemented to protect special-status species, review of the project boundaries and special conditions, the environmental monitor's role in project activities, lines of communication, and procedures to be implemented in the event a special-status species is observed in the work area.
d) Designate environmentally sensitive areas and erect temporary construction fencing and signs to protect the areas from vehicle and foot traffic.
e) Limit construction to a seasonal window outside of the time of potential impact for specific species and specific behaviors as appropriate, such as hibernation periods, mating, and nesting seasons. For example, construct the project outside of nesting bird season (March 1st to September 30th).
f) Retain a qualified biologist to act as an environmental monitor to ensure compliance with biological resources mitigation measures. Monitoring could be conducted full time during the initial disturbances (site clearing) and be reduced to twice a week following initial disturbances or a frequency and duration determined by the water system in consultation with the USFWS, the CDFW, and the lead agency, if not the water system. The monitor's responsibilities could include:
    1 ensuring that procedures for verifying compliance with environmental mitigations are implemented;
    2 establishing lines of communication and reporting methods;
    3 preparing compliance reporting;

4 conducting construction crew training regarding environmentally sensitive areas and protected species;
5 facilitating the avoidance of special status plants and habitats;
6 maintaining authority to stop work;
7 outlining actions to be taken in the event of non-compliance.

g) Implement mitigation banking consisting of the restoration or creation of habitat undertaken expressly for the purpose of compensating for unavoidable habitat losses (species and wetlands) in advance of development actions. The USACE has published guidance for determining compensatory mitigation ratios as required for processing of the Department of Army permits under Section 404 of the Clean Water Act, Section 10 of the Rivers, and Harbors Act; and Section 103 of the Marine Protection, Research, and Sanctuaries Act. Mitigation ratios and credits requirements are also ~~established~~ included in permits issued by the CDFW and the USFWS, to compensate for loss of habitat of federal and state listed species. Alternatively, to compensate for unavoidable habitat losses, implement offsite permittee-responsible mitigation, including the protection of land under a conservation easement or other appropriate legal instrument and provision of endowments to cover the costs of long-term management and monitoring of biological resources on that land, as well as conservation easement monitoring.
h) Prepare and implement, or comply with existing, habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. Where projects occur in areas covered by a Natural Community Conservation Planning (NCCP) Program or Habitat Conservation Plan (HCP), the project proponent shall coordinate with the respective implementing agency.
i) Prohibit construction activities during the rainy season with requirements for seasonal weatherization and implementation of erosion prevention practices.
j) Comply with all applicable limits on water diversion and use, including but not limited to Fish and Game Code section 5937 and water right permitting, water conservation, and endangered species requirements. When the Project proposes new wells that would increase groundwater usage in or near groundwater dependent ecosystems, Project proponents shall consider direct and indirect impacts to groundwater dependent ecosystems and species.
k) Prepare a site design and development plan that avoids or minimizes disturbance of habitat and wildlife resources, as well as prevents stormwater discharge that could contribute to sedimentation and degradation of local waterways. Depending on disturbance size and location, a National Pollutant Discharge Elimination System construction permit may be required from the State Water Board.
l) Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal

or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist shall incorporate measures to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall implement a plan to avoid disturbing nesting birds. The plan should include measures such as establishing an appropriate no-disturbance nest buffer to be marked on the ground and monitoring. Nest buffers are species and project specific and shall be at least 300 feet for passerines and 500 feet for raptors. Nest buffers may need to be increased during vulnerable nesting stages or if parents show distress. A nest buffer shall be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. The qualified biologist shall monitor active nests and adequacy of the nest buffers daily and established buffers shall remain in place until a qualified biologist determines the young have fledged, are feeding independently, and are no longer using the nest or the compliance project has been completed. The qualified biologist shall have the authority to stop work if nesting pairs exhibit signs of disturbance.

m) Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Project proponents that submit a notification to CDFW per Fish and Game Code section 1602, prior to construction and issuance of any grading permit shall either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for their specific project or if the project requires notification under section 1602 of the Fish and Game Code and CDFW determines the project may substantially adversely affect fish and wildlife resources, the project proponent shall obtain a CDFW executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

Because future compliance projects are unknown at this time, the State Water Board cannot predict what exactly those projects' impacts will be or the precise mitigation measures that will be required to reduce potential impacts to less than significant. Project-level impacts and mitigation measures will be addressed in future site-specific

environmental analyses conducted by CEQA lead agencies approving those projects. The ability to implement Mitigation Measures 7-1 and 4-4, or equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting future compliance projects, not the State Water Board currently. Consequently, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts from future compliance projects. This EIR therefore takes a conservative approach in its post-mitigation significance conclusion and discloses, for CEQA compliance purposes, that Impact 7-1 is **potentially significant and unavoidable**.

On page 7-12, the following changes are made to section 7.4.3 Impact 7-3 – Protected Wetlands:

For reasons similar to those stated in Impact 7-1, compliance with the Proposed Regulations by public water systems may have the potential to have a substantial adverse effect on state or federally protected wetlands (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. Because future compliance projects are unknown at this time, the State Water Board cannot predict what exactly those projects' impacts will be or the precise mitigation measures that will be required to reduce potential impacts to less than significant. Project-level impacts and mitigation measures ~~will~~ must be addressed in future site-specific environmental analyses conducted by CEQA lead agencies approving those projects. Mitigation Measures 7-1, ~~and~~ 13-3, and compliance with the requirements of California Fish and Game Code 1602 may reduce the significance of Impact 7-3 to less than significant. The ability to implement Mitigation Measures 7-1, Mitigation Measures 13-3, or other equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting future compliance projects, not the State Water Board currently. Consequently, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts from future compliance projects. This EIR therefore takes a conservative approach in its post-mitigation significance conclusion and discloses, for CEQA compliance purposes, that Impact 7-3 is **potentially significant and unavoidable**.

On pages 7-13 to 7-14, the following changes are made to section 7.4.6 Impact 7-6 – Habitat Conservation Plans:

Section 15125(d) of the CEQA Guidelines requires that a CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies. An assessment of the impacts to the Habitat Conservation Plans, Natural Community Conservation Plans, and Regional Conservation Investment Strategies as a result of future compliance projects is necessary to address CEQA requirements and will be included in future site-specific environmental analysis conducted by CEQA lead agencies approving those projects.

For reasons like those in Impact 7-1, compliance with the Proposed Regulations by public water systems may have the potential to conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, Regional Conservation Investment Strategies, or other approved local, regional, or state habitat conservation plan. Because future compliance projects are unknown at this time, the State Water Board cannot predict what exactly those projects' impacts will be or the precise mitigation measures that will be required to reduce potential impacts to less than significant. Project-level impacts and mitigation measures will be addressed in future site-specific environmental analyses conducted by CEQA lead agencies approving those projects. Mitigation Measures 7-1 and 13-2 may reduce the significance of Impact 7-6 to less than significant. The ability to implement Mitigation Measures 7-1, 13-2, or equally effective and feasible measures, is within the purview of the CEQA lead agencies and responsible agencies approving or permitting future compliance projects, not the State Water Board currently. Consequently, there is inherent uncertainty in the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts from future compliance projects. This EIR therefore takes a conservative approach in its post-mitigation significance conclusion and discloses, for CEQA compliance purposes, that Impact 7-6 is potentially significant and unavoidable.

On page 7-14, the following changes are made to section 7.4.7:

Implementation by public water systems of reasonably foreseeable means of compliance with the Proposed Regulations may contribute to cumulative impacts to biological resources from other projects occurring in the state. In particular, and as discussed in section 3.5, other drinking water projects that are like the reasonably foreseeable means of compliance have occurred and are likely to occur in the future. For instance, public water systems will continue to install treatment and obtain new sources of water supply to address other drinking water contaminants regulated under the California Safe Drinking Water Act and, in some cases, financed by the State Water Board's financial assistance programs. Likewise, public water systems will continue to consolidate with assistance from the State Water Board's SAFER program. These infrastructure projects have the potential to adversely affect biological resources. Due to the number of public water systems (currently around 7,000) and their distribution throughout the state, the cumulative impact on biological resources from the Proposed Regulations may be considerable in the context of these other projects. In addition, projects that are unrelated to the State Water Board's drinking water programs may impact biological resources in the vicinity of site-specific projects to comply with the Proposed Regulations. Depending on the location, the cumulative impact on biological resources may be significant. For example, as shown above in Figure 7-2, the areas with high numbers of contaminated drinking water wells within the boundaries of habitat conservation plans (HCPs) or Natural Community Conservation Planning (NCCP) Programs may be vulnerable – in the absence of mitigation measures – to the cumulative impacts from future compliance projects and other drinking water

infrastructure projects. As described above and illustrated in Figure 7-2, most drinking water wells with average hexavalent chromium levels above the proposed MCL and located within the boundaries of an HCP or NCCP Program are located in either the Coachella Valley or Yolo County. As a result, cumulative impacts to candidate, sensitive and special status species; sensitive natural communities (including groundwater dependent desert communities); protected wetlands; species movement and migration; and conflicts with those plans and programs could occur in these areas absent mitigation.

The Proposed Regulations' contribution to this significant impact could be cumulatively considerable due to the development of new drinking water infrastructure that could affect biological resources. Implementation of the project-level mitigation measures recommended in this chapter – including, in particular, Mitigation Measures 7-1 – would effectively reduce the incremental contribution from the Proposed Regulations to a less-than-considerable level. Nevertheless, the ~~but~~ authority to require that mitigation will rest with agencies that will be authorizing site-specific projects, and not with the State Water Board at this time. Consequently, it is uncertain whether mitigation measures would be implemented, which precludes assurance that significant impacts would be avoided. Therefore, the State Water Board takes the conservative approach and discloses, for purposes of CEQA compliance, that the Proposed Regulations could result in a considerable contribution to a significant cumulative impact on biological resources.

3.7 Changes to Chapter 13 Hydrology and Water Quality

On page 13-15, the following changes are made to section 13.4.2.3 Mitigation Measures 13-2:

The following are recommended mitigation measures to protect groundwater supply and basin recharge:

a) Design site specific compliance project to ensure that its water requirements are consistent with available local supplies of water.

b) Design site specific compliance project to ensure it is consistent with the local groundwater sustainability plan.

c) Install permeable parking and driving surface material.

d) Avoid installation of treatment in areas that impact natural recharge of groundwater.

e) Design site specific compliance project to include recharge basis to compensate for new impervious surfaces.

f) Decommission wells taken out of service, unless it is being used as a monitoring or standby well.

3.8 Changes to Chapter 22 Utilities and Service Systems

On page 22-4, the following changes are made to the third paragraph of section 22.3.1 Impact 22-1 – Relocation or Construction of New Utility Facilities

There is speculation that wastewater treatment facilities could also be indirectly affected by the Proposed Regulations and require upgrades to equipment to address hexavalent chromium. The argument has been made that because some regional water quality control boards have adopted into their water quality control plans language that prospectively incorporates MCLs as water quality objectives that wastewater treatment plants would have to treat to the MCL. However, most of the water entering a wastewater treatment plant will have been treated by a public water system. Although some untreated groundwater contaminated with hexavalent chromium could infiltrate into the wastewater treatment plant, this should be a small amount compared to the wastewater that came from homes.[17] Therefore, it is unlikely wastewater treatment plants will have difficulty meeting the new hexavalent chromium MCL.

POTWs discharging to inland surface waters and enclosed bays and estuaries already must meet the continuous and maximum concentrations for hexavalent chromium of 16 ug/L and 11 ug/L to protect freshwater aquatic life in California. (40 CFR § 131.38 "Establishment of numeric criteria for priority toxic pollutants for the State of California.") The establishment of an MCL of 10 ug/L is not inconsistent with those requirements, and would not require an expansion of treatment. In part, this is because consistent with the State Water Board's "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," water quality-based average monthly effluent limits are typically set at concentrations lower than the water quality standard driving the limit. For example, the NPDES permit for the City of Lompoc requires the City to test their effluent for hexavalent chromium once per quarter and meet an average monthly limit of 8.1 ug/L and a maximum daily limit of 16. This would be consistent with the MCL, for which compliance would be assessed based on a running annual average of 10 ug/L.

On page 22-6, the following changes are made to the second paragraph of section 22.3.2 Impact 22-2 Water Supply Impacts:

The Proposed Regulations could, however, impact water supplies available to serve reasonably foreseeable future development during normal, dry, and multiple dry years. For example, existing regulations authorize the State Water Board to require that public water systems discontinue the use of a source if the concentration of the inorganic chemical exceeds ten times the MCL. (Cal. Code Regs., tit. 22, § 64432, subd. (h)(2).) Several public water systems are known to have levels of hexavalent chromium that exceed that threshold, and there is a possibility that after systems start monitoring more will be identified. This could cause the system to not have sufficient water supplies available to serve its customers. However, this would be a temporary impact because the public water system could continue to use the source after treatment is installed. In

addition, public water systems with no other options could receive permission to continue to use the source (*Id.*)

3.9 Changes to Chapter 24 Mandatory Findings of Significance

On page 24-2, the following change is made to section 24.2.2 Impact 24-2 Cumulatively considerable impacts:

Cumulative impacts and mitigation measures are discussed in chapter 3.5 and in individual resource chapters. A summary of the resource categories that could experience significant and unavoidable cumulative impacts is set out in section 25.1. Potentially significant cumulative impacts were identified for all resource chapters but population and housing, recreation, and public services.

3.10 Changes to Chapter 25 Other CEQA Considerations

On page 25-1, the following changes are made to section 25.1 Summary of Cumulative Impacts:

Cumulative impacts and mitigation measures are discussed in chapter 3.5 and in individual resource chapters. As discussed above, cumulative impacts to the following resources may be significant and unavoidable:

- Aesthetics
- Agricultural and Forest Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- ~~Population~~
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

The following resource chapters did not find cumulative impacts:

- Population and Housing

- Public Services
- Recreation

3.11 Changes to Chapter 26 Alternatives Analysis

On page 26-2, the following changes are made to the third paragraph of section 26.2.2:

Alternative #2 would meet the objectives of the Proposed Regulations, to the extent that stannous chloride reduction proves to be an effective, safe, and reliable treatment technology. Its adoption would allow the State Water Board to comply with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium. To the extent that stannous chloride reduction proves to be an effective, safe, and useful treatment technology, it will reduce cancer and non-cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium, and it will avoid significant risks to public health from drinking water supplied by public water systems in California. To the extent that stannous chloride reduction is shown to be ineffective or poses a risk to public health, its use will not be permitted by the State Water Board's Division of Drinking Water.

On page 26-3, the following change is made to the first line:

~~Table~~ Alternative #2, it is plausible that more water systems would decide to treat with stannous chloride reduction if they can demonstrate its effectiveness and safety for their system.

On page 26-4, the following change is made to the first paragraph following Table 26-1:

As Table 26.1 shows, at higher alternative MCL values, fewer public water systems would have to install treatment or implement alternative means of compliance. Accordingly, a higher MCL value would likely have less environmental impact due to compliance projects by affected public water systems than the proposed MCL value of 10 ug/L. Yet at higher MCL values, the treatment of sources that would still be above the alternative MCL compared with the proposed MCL of 10 would generally not entail fewer environmental impacts because the difference in impacts of treating to different MCLs is minimal. While it is possible that filter media would be changed less frequently at higher MCLs, the impacts from installing treatment or implementing alternative means of compliance are generally consistent in their environmental impacts when compared between difference MCLs.

As the number of contaminated sources differs at each alternative MCL value, geographical differences emerge, too. Table 26.2 shows the number of counties with contaminated sources at each alternative MCL value.

Beginning on page 26-6, the following is added to the beginning of section 26.3 Discussion and Comparison of Alternatives:

All alternative MCL values would satisfy the third objective of adopting a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5. The extent to which they would meet the first two project objectives varies, as the reduction of cancer and non-cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium varies in accordance with the specific MCL value, as shown in the Initial Statement of Reasons. As shown in the Initial Statement of Reasons or ISOR (SWRCB 2023a), the theoretical number of excess cancer cases avoided as a result of the Proposed Regulations varies considerably among the alternative MCL values. (ISOR, Attachment 1, Table 26.) (The ISOR was not able to quantify the non-cancer risk reduction due to limits in the science of noncancer effects. (SRIA, p. 9.).) At an alternative MCL of 1 ppb, there would be a theoretical reduction of 3,536 excess cancer cases over 70 years. (ISOR, Attachment 1, Table 26.) At an alternative MCL of 45 ppb, there would be a theoretical reduction of 14 excess cancer cases over 70 years. (*Ibid.*). The following chart from the ISOR (Attachment 1, Table 26) shows number of theoretical excess cancer cases avoided over 70 years for the alternative MCL values considered in the Draft DEIR.

Table 26-3. Total Number of Cancer Cases Avoided by MCL Value Over 70 Years

MCL (ug/L)	CWS	NTNCWS	TNCWS	Wholesalers	Total	Average per year
1	3378.87	29.37	0.00	128.01	3,536	50.52
2	2716.70	22.25	0.00	96.27	2,835	40.50
3	2266.33	17.50	0.00	70.04	2,354	33.63
4	1927.28	14.25	0.00	48.19	1,990	28.42
5	1663.02	11.71	0.00	31.58	1,706	24.38
6	1451.32	9.86	0.00	18.11	1,479	21.13
7	1275.68	8.42	0.00	7.52	1,292	18.45
8	1126.01	7.20	0.00	2.74	1,136	16.23
9	998.79	6.16	0.00	0.91	1,006	14.37
10	891.86	5.31	0.00	0.52	898	12.82
11	795.60	4.72	0.00	0.33	801	11.44
12	708.46	4.18	0.00	0.14	713	10.18
13	626.95	3.69	0.00	0.08	631	9.01
14	551.40	3.22	0.00	0.08	555	7.92
15	484.13	2.79	0.00	0.07	487	6.96
20	238.82	1.36	0.00	0.04	240	3.43
25	135.55	0.69	0.00	0.02	136	1.95
30	96.09	0.35	0.00	0.00	96	1.38
35	63.41	0.17	0.00	0.00	64	0.91
40	36.45	0.02	0.00	0.00	36	0.52
45	14.16	0.00	0.00	0.00	14	0.20

As shown in the ISOR, alternative MCL values higher than the proposed MCL of 10 ppb would still reduce cancer public health risks from human consumption of drinking water contaminated with hexavalent chromium compared to the status quo, but less so than

the Proposed Regulations. Accordingly, the alternative MCL values reduce – but do not entirely avoid – a significant risk to public health, while not eliminating that risk entirely or to the extent technologically and economically feasible.

4 REFERENCES

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