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 Habitat Conservation Planning Branch  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 4, 2023

Governor's Office of Planning & Research

August 4 2023

Ms. Kimberly Niemeyer  
 State Water Resources Control Board  
 P.O. Box 100  
 Sacramento, CA 95812-0100

**STATE CLEARINGHOUSE**

SUBJECT: ADOPTION OF A REGULATION FOR THE HEXAVALENT CHROMIUM  
 MAXIMUM CONTAMINANT LEVEL (PROJECT)  
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
 SCH# 2021110099

Dear Ms. Niemeyer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the State Water Resource Control Board (SWRCB) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

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.

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** SWRCB

**Objective:** The objective of the Project is to propose adoption of a primary drinking water standard for hexavalent chromium under the California Safe Drinking Water Act. The proposed regulation includes setting maximum contaminant levels for hexavalent chromium. Primary Project activities include monitoring drinking water for levels of hexavalent chromium and public water systems will need to comply with the set standards for hexavalent chromium levels using the best available technologies such as reduction/coagulation/filtration, ion exchange, and reverse osmosis. However, water systems are not limited to using the best available technologies. Other methods of reducing the levels of hexavalent chromium may include, and is not limited to, blending, drilling new wells, utilizing surface water, purchasing water, consolidating with other water systems, or treating water with stannous chloride.

**Location:** Statewide

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the SWRCB in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report (EIR) is appropriate for the Project.

### COMMENT 1:

#### 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).

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**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.

**COMMENT 2:**

**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 \(CNDRD\)](#) 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**

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**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.**

**COMMENT 3:**

**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 ~~strike through~~:

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.**

**COMMENT 4:**

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

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**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 ~~strike through~~:

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.**

**COMMENT 5:**

**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.

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**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.**

**COMMENT 6:**

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

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**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**

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**included in future site-specific environmental analysis conducted by CEQA lead agencies approving those projects.**

**COMMENT 7:**

**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 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 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 of the DEIR.



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## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during future compliance project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: [https://wildlife.ca.gov/Data/CNDDDB/Submitting\\_Data](https://wildlife.ca.gov/Data/CNDDDB/Submitting_Data). The types of information reported to CNDDDB can be found at the following link: [https://www.wildlife.ca.gov/Data/CNDDDB/Plants\\_and\\_Animals](https://www.wildlife.ca.gov/Data/CNDDDB/Plants_and_Animals)

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

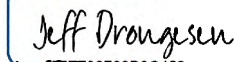
## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the SWRCB in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Karen Carpio at [CEQA@wildlife.ca.gov](mailto:CEQA@wildlife.ca.gov).

Sincerely,

DocuSigned by:



Jeff Drangesen, Chief

Habitat Conservation Planning Branch

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Kim Freeburn  
Environmental Program Manager  
Inland Desert Region  
[R6CEQA@wildlife.ca.gov](mailto:R6CEQA@wildlife.ca.gov)

## REFERENCES

- Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.
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August 4, 2023

VIA E-MAIL AND U.S. MAIL

Courtney Tyler, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Comment Letter re Draft Environmental Impact Report For Adoption of a Regulation for the Hexavalent Chromium Maximum Contaminant Level**

Dear Courtney Tyler,

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 (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 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 revision 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

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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.

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

The State Water Board's proposed MCL for chromium-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. 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. 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.)

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“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.)

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- 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.)

**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

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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.)

**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"].)

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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. 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) 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.

(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.

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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.

**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.)

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**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)(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

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determining whether the physical change is significant"J.) 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.

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).) 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.

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.

## **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).)

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“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 chromium-6 in connection with the proposed Project.

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](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/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.*)

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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.

**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

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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 chromium-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 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).

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". (*Stopthemillenniumhollywood.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.)

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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

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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 ppb].)

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.

**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 10 ppb before OEHHA completes its update of the chromium-6 PHG, then at a bare minimum, the

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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.

Sincerely,

Kathleen Salguero Trepá, City Manager

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# COACHELLA VALLEY WATER DISTRICT

*Established in 1918 as a public agency*

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ASSISTANT GENERAL MANAGER  
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August 17, 2023

**VIA MAIL AND EMAIL AT [COMMENTLETTERS@WATERBOARDS.CA.GOV](mailto:COMMENTLETTERS@WATERBOARDS.CA.GOV)**

Courtney Tyler,  
Clerk to the Board  
State Water Resources Control Board  
PO Box 100,  
Sacramento, CA 95812-2000

**Subject:** Comment Letter re Draft Environmental Impact Report for Adoption of a Regulation for the Hexavalent Chromium Maximum Contaminant Level

Dear Ms. Tyler,

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) 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”].)

CVWD appreciates the opportunity to submit these comments, and CVWD seeks to coordinate with the State Water Board to ensure that a valid CEQA document is prepared and that any future MCL for Cr6 is protective of the public health, the environment, and CVWD’s ratepayers.

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

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.

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.

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. 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.

“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.)

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, despite being referred to as a first tier programmatic 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.)

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 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. 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.
- 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.
- 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.

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.

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.)

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.

Second, while the EIR sets forth mitigation measures as to nearly every impact, the EIR does not specify any performance standards for any of the identified mitigation measures. (State CEQA

Guidelines, § 15126.4(a)(1)(B).) 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.

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.

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.

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-nitrosodimethylamine, styrene, and cadmium. ([https://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/Regulations.html](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](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.*)

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.

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).

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.

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." (*Stophemillenniumhollywood.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 ].)

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.

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

Courtney Tyler, Clerk of the Board  
State Water Resources Control Board  
August 17, 2023  
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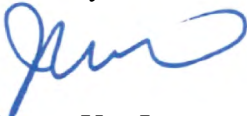
science available, would then better guide the State Water Board in determining the proper MCL for Cr6. And, from a CEQA perspective, this would streamline any EIR regarding MCL for Cr6 by (1) eliminating from consideration the most stringent proposed MCLs, which are the MCLs that will have the most 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.

Sincerely,



Joanne Yen Le  
Director of Environmental Services

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JL: mf\WP\Enviro Svcs\Director of ES\2023\Aug\Comment Ltr For DEIR Cr6 MCL  
File: 0022.21, 0022.114.32



August 10, 2023

**VIA E-MAIL AND U.S. MAIL**

Courtney Tyler, Clerk to the Board  
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**Re: Comment Letter re Draft Environmental Impact Report For Adoption of a Regulation for the Hexavalent Chromium Maximum Contaminant Level**

Dear Courtney Tyler,

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 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 revision 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.

**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 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 and 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 10 ppb would require the City 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.

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 analysis of these impacts, as discussed below.

**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.)

**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.)

**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. 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) 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.

(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.

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.

**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.)

**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.)

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.

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).) 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.

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.

#### **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 chromium-6 in connection with the proposed Project.

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](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](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. 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.*)

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.

## **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 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 chromium-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 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 Board is not only acting contrary to CEQA but also failing to perform its obligations under Section 116365(a).

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.” (*Stopthemillenniumhollywood.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 ppb].)

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.

**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 10 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.

Sincerely,

A handwritten signature in blue ink that reads "Cástulo R. Estrada". The signature is written in a cursive style with a blue color.

Cástulo R. Estrada – Utilities Manager



Date: August 18, 2023

Clerk to the Board Ms. Jeanine Townsend  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Sent via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**RE: Comment Letter – Hexavalent Chromium**

Dear State Water Resources Control Board:

Mission Springs Water District (MSWD) submits these written comments to the State Water Resources Control Board (SWRCB). MSWD is located approximately 90 miles east of Los Angeles in Riverside County. Desert Hot Springs, along with nine other cities in the region, comprises a geographical area commonly known as “The Coachella Valley.” MSWD’s main customer base is the City of Desert Hot Springs, the fastest growing city in the Coachella Valley with approximately 40,000 residents. The City of Desert Hot Springs is a severely disadvantaged community, with many residents struggling to meet their monthly expenses.

MSWD is a member of the Association of California Water Agencies (ACWA) and fully supports all comments submitted by ACWA. MSWD believes the proposed regulation does not provide an accurate estimate of the cost of compliance nor does MSWD believe the SWRCB has assured utilities that funding assistance will be available and sufficient. Below is a summary of MSWD’s preliminary cost estimates specific to our service area.

**Cost Impacts to MSWD and Ultimately its Customers**

In order to comply with the proposed maximum contaminant level (MCL) of 10 ppb, MSWD will have no choice but to implement either strong base anion exchange (SBA IX) or reduction coagulation filtration (RCF) treatment as approved best available technologies (BAT) designated by the SWRCB. At the proposed MCL, at least five (5) of MSWD’s thirteen (13) wells may require treatment, although it could be as high as eight (8) when considering wells that have historically demonstrated concentrations of 8.0 ppb or 80% of the proposed MCL.

Capital Costs for Treatment, Land, Buildings, and Well Replacement: \$32-\$40 Million.  
Using RCF cost tables from the Initial Statement of Reasons (ISOR) and previous estimates for SBA IX, MSWD’s estimate includes costs to acquire additional land necessary for SBA IX or RCF wellhead treatment installations. It also includes the cost of additional new well drilling and wellhead treatment to replace existing wells above the proposed MCL that do not have adequate property to build BAT treatment facilities.



Annual Operating, Maintenance, and Brine/Backwash Water Disposal Costs: \$1.3 - \$2 million annually.

Using RCF cost tables from the ISOR and previous estimates for SBA IX, the MSWD cost estimate includes additional full-time employees for treatment facility maintenance and operations. For SBA IX, MSWD would be required to contract with vendors to effectively manage, treat, and dispose of the hazardous brine waste produced by the SBA IX wellhead treatment. This hazardous waste management would require expensive offsite trucking, possibly to an out of state location. For RCF, MSWD would be required to handle, or pay for the local wastewater system to handle and backwash water/sludge.

### **Concerns with SWRCB Underestimate of Cost Impacts**

MSWD maintains affordability concerns to comply with the proposed Cr(VI) MCL and believes DDW's estimates for MSWD to comply dramatically underestimate the expected real costs. Reviewing the [ISOR Attachment 5: Cost Estimates for Individual Sources](#) and comparing with MSWD knowledge and results, MSWD deduces from the system criteria columns (e.g. "System Type"=CWS, "Approx. Service Connections in PWS"=13,000, "Approx. Population of PWS"=37,000) that "Source Estimate ID Number" values of 145, 264, 300, 458, and 459 correspond to MSWD Wells 29, 37, 27, 31, and 24, respectively.

The ISOR Attachment 5 includes total capital costs of \$3,782,684 for each of those 5 wells – dramatically lower than what would be expected for the MSWD wells that range in capacity from 1,100 to 1,700 gpm.

Using those known flow rates for MSWD wells, capital costs for the DDW-analysis selected RCF treatment costs would be expected be between \$4,446,482 (1,000 gpm) and \$5,739,023 (2,000 gpm) according to the Standardized Regulatory Impact Assessment (SRIA) (SWRCB-DDW-21-003, December 13, 2022).

This one aspect of the cost analysis alone represents an up to 50% increase over the ISOR stated costs. These discrepancies raise concerns for how the SWRCB will be able to financially support severely disadvantaged communities like MSWD when the ISOR Errata (July 31, 2023) describes the estimated amount of financial assistance necessary to cover those costs of compliance as 9% (not 1% as originally estimated before the Errata) of the available funding assistance from the State Water Boards Division of Financial Assistance.

### **Additional Comments**

Additionally, MSWD would like to highlight the following requests specific to our customers:

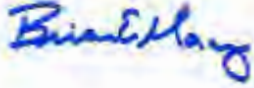
1. Consider updating overall capital and operational cost estimates and reassess the MCL based on updated cost analysis, land requirements, building requirements, and brine/backwash water disposal requirements to meet the MCL, and not just sewer discharge for backwash water.
2. Reconsideration of an 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).
3. 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.
4. 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.

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

MSWD's comments presented in this letter are based on our staff's prior experience, and we encourage SWRCB to consider this information during the development of the proposed MCL.

Sincerely,



Brian Macy, PE  
Interim General Manager  
Mission Springs Water District



PUBLIC MEETING  
BEFORE THE  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
ADMINISTRATIVE PROCEDURE ACT )  
PUBLIC HEARING TO RECEIVE )  
PUBLIC COMMENTS ON PROPOSED )  
MAXIMUM CONTAMINANT LEVEL )  
FOR HEXAVALENT CHROMIUM AND )  
DRAFT ENVIRONMENTAL IMPACT )  
REPORT )  
\_\_\_\_\_ )

SIERRA HEARING ROOM  
JOE SERNA, JR. - CALEPA BUILDING  
1001 I STREET  
SACRAMENTO, CALIFORNIA 95812

WEDNESDAY, AUGUST 2, 2023

9:30 A.M.

Reported by:

Peter Petty

1 afternoon. Thanks for the patience.

2 MS. NUBANI: Thank you for the opportunity  
3 to make comments to the Board. My name is Yasmeen  
4 Nubani. I am commenting on behalf of Twentynine  
5 Palms Water District.

6 For context, they're a special district  
7 located in the California high desert area. These  
8 are about 18,000 residents, a hundred percent of  
9 which are classified as a disadvantaged community.  
10 Further, 75 percent of those people are classified  
11 as severely disadvantaged, which makes the cost of  
12 water a constant concern for our district.

13 We have only one source of water, which is  
14 groundwater from a basin, a groundwater basin. And  
15 we currently treat naturally occurring arsenic and  
16 fluoride from our wells.

17 We have gained national recognition for  
18 our treatment plant that utilizes regenerable  
19 materials to keep the cost rate low for our  
20 customers.

21 However, our paramount concern lies with  
22 the affordability and economic feasibility of  
23 treating hexavalent chromium. We have the one well  
24 that would be out of compliance with the proposed  
25 MCL. It is currently testing at about 16 parts per

1 billion. And that well serves a portion of our  
2 service area that does not have an easily available  
3 alternative supply of water and it's too far away  
4 from our existing treatment plant to be able to  
5 stack treatment.

6           Additionally, that well has had a \$1  
7 million investment in the past three years to  
8 redrill and reinforce the well's reliability  
9 already.

10           So, the cost of treating this well or in  
11 the alternate case shutting down the well and  
12 securing a new water source may well exceed the  
13 prior investment and feasibility of the district to  
14 do so, which will result in high stranded cost for  
15 our district.

16           Additionally, we are concerned about the  
17 environmental impacts of residual disposal and the  
18 subsequent greenhouse gases that will be released  
19 from having to conduct treatment and haul those  
20 residuals away to another state.

21           We live in a desert community that not  
22 only champions water conservation, but cares really  
23 deeply for our surrounding environment,  
24 particularly being in very close proximity to  
25 Joshua Tree National Park.

1           We understand and appreciate the efforts  
2 the Division of Drinking has put into attempting to  
3 quantify the complexities of the proposed MCL  
4 affordability. However, in light of the recent  
5 errors in calculating the average cost of treatment  
6 per household, we do ask that DDW further extend  
7 the comment period to an additional 30 days, as  
8 many of our colleagues have done before myself, on  
9 the proposed MCL.

10           And to also take another look at  
11 evaluating the cost impacts that will follow after  
12 adoption of the MCL.

13           We do feel that the current calculations  
14 may not accurately reflect the burdens that will be  
15 placed on our community and are really concerned  
16 that there might not be enough support provided to  
17 address them.

18           We believe it's crucial to strike a  
19 balance between ensuring water quality and the  
20 affordability of water for small and economically  
21 vulnerable communities like ours.

22           Thank you very much for your time and  
23 consideration of my comments.

24           BOARD CHAIR ESQUIVEL: Thank you, Ms.  
25 Nubani. I appreciate your patience here. I know

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of November, 2023.

A handwritten signature in cursive script, appearing to read "Barbara Little", is written over a horizontal line.

Barbara Little  
Certified Transcriber  
AAERT No. CET\*\*D-520