



October 18, 2016

Dear Ms. Townsend,

Thank you for the opportunity to provide comments on the 2016 Water Quality Enforcement Policy (Policy). Overall, we are happy with the framework staff has laid out for enforcement actions against water quality violators. However, there are a few areas where we believe the Policy can be strengthened or clarified.

The most overarching comment we have is in regards to the lack of focus on the Human Right to Water (HRtW). The Human Right to Water is a central tenant to the decision process of whether or not to bring an enforcement action. In 2012 the Legislature passed AB 685 (Eng) which amended water code 106.3 to say, "...every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." Since its passage the State Water Board, and several of the Regional Boards, have adopted their own resolutions stating the Board will consider the, "... human right to water in all activities that could affect existing or potential sources of drinking water." The human right to water applies to all Californians, regardless of their geographic location within the state or their socioeconomic status. The Policy only briefly mentions the Board's HRtW resolution within the "Environmental Justice and Disadvantaged Communities" section. The HRtW must be a central tenant which is applied to all relevant enforcement decisions and thus stated as a consideration throughout the Policy, rather than only a narrowly-focused subsection.

### **The Human Right to Water**

As the HRtW is such an important aspect of our State's water policy, guidance should be included in this Policy as to how violations relating to the HRtW will be prioritized and addressed. Below we provide some areas which should be developed further within the Policy.

### **A violation relating to the Human Right to Water should be defined to provide clarity for enforcement actions**

We propose the following definition: A violation relating to the Human Right to Water for the purposes of this Policy is one where the violation results, or threatens to result, in the denial of one's human right to water. This includes, but is not limited to, violations for contamination of drinking water sources, the deliverance of contaminated drinking water supplies to customers, or failure of a system to inform customers of a contaminated water supply.

**Enforcement actions should be prioritized, to the extent that is possible and reasonable, around addressing actions that result in violations relating to the HRtW**

Whether a water quality violation impedes or threatens to impede one's human right to water should play a large role in prioritizing violations. Violations to the HRtW pose serious public health risks to the residents of this State. While some communities may have the ability to weather the impacts of a contaminated water supply, through increased testing, outreach, or by using an alternative supply, many other communities do not have that capacity. Additionally, it should not be residents who are bearing the cost of contaminated water supplies. However, we recognize that at times the violators are the water systems themselves for not treating or noticing their customers of a violation. In these instances we agree with the proposed alternatives provided by the Policy, including requiring a compliance project and also helping the system find additional funding sources in order to come into compliance.

**When a water system has a violation, considerations in regards to affordability to the rate payers should also play a large role in how enforcement actions are carried out**

We thank staff for the explicit consideration of the potential for large fines to cause water rates to soar beyond what is affordable to the ratepayers. It is the unfortunate truth that regulated systems often pass off any fines levied upon them to their customers, and in areas where there are high numbers of low-income residents this poses a significant issue and public health risk. Unaffordable rates violate the HRtW, and thus creative solutions are often necessary in these situations. Staff lays out alternatives such as informal enforcement mechanisms such as compliance projects. These are often more productive than levying heavy fines at ensuring the customers of the system gain access to safe drinking water. Especially when compliance projects are paired with financial assistance through helping the failing system find available funding sources. Often times the cause of the violation arises from an inability (technically, managerially, or financially) to fix the problem. If a system is unable to raise rates or the ratepayers are unable to pay the higher rates, existing water quality violations can continue to go unresolved. However, we recognize that just because a water system serves a DAC does not necessarily mean the system has an inability to pay the fine or fund any necessary improvements to the system. Water systems which have the funds available to make necessary improvements should expend their own capital so systems which do not have the financial ability to be in compliance are able to benefit from state assistance. Staff should request financial statements of a system as proof of inability to pay before providing additional assistance, and additionally should, to the extent possible, monitor violating systems to ensure they do not pass off the additional costs onto ratepayers when there are sufficient surplus funds available.

Affordability should be determined by ensuring rates do not exceed 2% of the median household income of the rate base. This number is consistent with US EPA's threshold of 2-2.5% which is for water and wastewater bills, and is found within literature and other states' programs<sup>1</sup>.

**Violations relating to the HRtW should be tracked, recorded, and made publicly available in a reasonably accessible manner**

Since violations to the HRtW pose such serious public health risks, these violations need to be made public in a way that will ensure as many potentially impacted people are informed of what has occurred, and what is being done to resolve the matter. We ask that the Board direct staff to look into how such violations could be integrated into existing databases.

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<sup>1</sup> <http://pacinst.org/app/uploads/2013/01/water-rates-affordability.pdf>

## The 50% cap on ECAs and SEPs

We are pleased to see the inclusion of an exemption from the 50% cap on ECAs as applied to DACs with a financial hardship. While we understand that SEPs are covered by a separate guidance document, we would like to see a similar exemption be applied for DACs which propose to complete a SEP. In particular, SEPs which propose to address the HRtW in DACs should be allowed to allocate more than 50% of the fines in the region. We would like to work with staff to look into a revision of the SEP policy to allow for such a reduction.

## Clarifying questions

- Under “Case Prioritization for Individual Entities” the Policy states “Whether the violations have continued over an unreasonably long period after being brought to the entity’s attention and are reoccurring.” “Unreasonably long period” is ambiguous, and what constitutes a long period of time for one violation may be within reason for another. Furthermore, there are certain violations, in particular violations which endanger human health or the environment, where compliance needs to be achieved as soon as practical. We suggest adding further clarification to the language, such as, “Whether the entity’s violation is of a less serious nature and thus not causing immediate or near-term harm to any beneficial uses or users, and has not continued over an unreasonably long period.... This does not apply to violations which relate to the human right to water, as remediation for such violations must begin immediately after being brought to the entity’s attention.”
- Definition of “rural counties”: The Policy’s list of rural counties leaves out the entire San Joaquin Valley. Since being within a rural county is one of two possible criteria for determining whether a POTW serving a small community with a financial hardship is eligible for a compliance project rather than a fine, the use of this definition is concerning. The purpose of a requiring a compliance project in lieu of a fine is to allow the violator to apply the cost of the violation to a project which would put them in compliance. If a district has 10,000 customers they are more likely to have the economies of scale than say a district which has 500 (or fewer) customers.
- The link included in the Policy to the CalEPA Environmental Justice Strategy document is broken (page 3).

Sincerely,



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