COACHELLA VALLEY WATER DISTRICT
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August 17, 2023

**VIA MAIL AND EMAIL AT 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. <u>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.</u>

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

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

The cost of compliance with the MCL for Cr6 would shape the behavior of both water agencies and ratepayers, and the environmental impacts of this reasonably foreseeable behavior must be analyzed in the EIR. To do so, the EIR must analyze and discuss the costs of complying with the MCL, and how activity in response to such costs could potentially impact the environment. 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-nitroso-dimethylamine, styrene, and cadmium. (https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Regulations.html [setting forth existing MCLs adopted by State Water Board], https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Regulations.html [setting forth planned future MCLs].) The cumulative economic and environmental impacts of requiring public agencies to comply with these past, present, and probably future MCLs must be analyzed in the EIR. These cumulative impacts analysis is a fundamental prerequisite to CEQA compliance because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services." (*Bakersfield Citizens for Local Control*, *supra*, 124 Cal.App.4th at pp. 1214-1215.) "This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*Ibid*.)

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

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

Here, however, the EIR does not provide an accurate and stable statement of the proposed Project's objectives. The key project objective emphasized in the EIR is to "comply[] with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5." (EIR, p. 25-4.) The EIR rejects all alternatives to the proposed MCL of 10 ppb on the basis that "the State Water Board is legally required to adopt a primary drinking water standard that is as close as feasible to the corresponding public health goal" ('PHG') established by OEHHA as required by Health and Safety Code section 116365." (EIR, p. 26-7.) But, as discussed below, it is unclear what OEHHA's PHG for Cr6 will be when the Project is proposed to go into effect two to four years from now.

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

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

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

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

Under CEQA, this project objective instability renders the EIR's analysis of project alternatives—and by extension, the EIR itself—fatally defective. For example, OEHHA could within the next two years revise its PHG for Cr6 from 0.02 ppb to 30 ppb. If the EIR is certified before this development takes place, then water agencies two years from now may be required to take action with significant and unavoidable impacts to the environment to comply with the EIR's proposed MCL of 10 ppb, when OEHHA's PHG for Cr6 at the time of project implementation could be 30 ppb. This would result in significant and unnecessary impacts to the environment. (See EIR, p. 26-5 [water agencies in 44 counties would have to take action that could have a significant and unavoidable impact with an MCL of 10 ppb; less than half that amount, water agencies in just 16 counties, would need to take similar action with a Cr6 MCL of 30 bbp ].)

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

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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