TPWD
TWENTYNINE PALMS WATER DISTRICT

January 31, 2019

HR2W
Attn: Carolina Balazs
Office of Environmental Health Hazard Assessment
1515 Clay Street, 16th Floor
Oakland, CA 94612

Subject: OEHHA's "Framework and Tool for Evaluating California's Progress in Achieving the Human Right to Water"

On behalf of the Community Water Systems Alliance (CWSA), we would like to thank you for the opportunity of submitting the following comments about the Office of Environmental Health Hazards Assessment (OEHHA) draft "Framework and Tool for Evaluating California's Progress in Achieving the Human Right to Water" ("Tool"). CWSA is a statewide initiative of well operated and viable water districts and municipal water utilities serving disadvantaged and income limited communities in California.

Overall, the draft Tool takes a very narrow approach with a set of metrics related to water quality, accessibility and affordability, that are based on the narrow premise that the task of fulfilling the HRTW is a matter of addressing deficiencies supposedly inherent to lower income communities. The tool misses the opportunity to measure California's success in meeting the Human Right to Water in other circumstances when access to safe drinking water is impaired; as well as missing an opportunity to measure the effectiveness of responses to those other circumstances by state and local government. This may be instructive in also determining factors for success in meeting the Human Right to Water where poverty is the leading factor.

The Human Right to Water is For Everyone's Benefit

As stated in OEHHA's draft report released on January 3, 2019, the Human Right to Water Act (HRTWA) (Assembly Bill (AB) 685)(Eng), established a state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes. The OEHHA report describes an analytical process it refers to as a Human Right to Water Tool ("Tool") that ignores the role that the state and federal governments at times play in creating regulations that are economically infeasible not only for communities of color and lower income categories, but also for other communities and demographics with limited ability to generate revenue for expensive compliance measures

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such as seniors, and older, smaller communities. This factor clearly affects perceptions of water quality, and accessibility when wells are abandoned because communities can't afford the remedies. This was the basis of Sacramento Superior Court's ruling invalidating the MCL for Hexavalent Chromium in 2017. Water suppliers are also having to deal with increased regulations and complying with new statutory requirements, rarely with the ability to recover such mandated costs from the state.

While the State Water Resources Control Board has funds to distribute as grants and loans for water quality compliance needs, it does not assemble the resources in the form of a plan when contaminant standards are set. In fact, systems serving communities that are 100 percent disadvantaged and others have reported wait times as long as 4 years for notification of a grant/loan applications' approval or denial. During the week of January 14, 2019, dozens of Safe Drinking Water grant/loan recipients reported notifications from the Division of Financial Assistance under the State Water Board advising them that a massive accounting software failure has rendered them unable to process any billings, reimbursements or issue new grant contracts for the foreseeable future. It is imperative that OEHHA include a metrics for the State Water Board and the Department of Water Resources' ability to deploy grants and assistance under a variety of circumstances that affect progress in meeting the human right to water.

Access to Safe Drinking Water Can Be Impaired By Factors Other Than Poverty & Race

Lacking access to safe drinking water is triggered by obstacles other than proverty affecting water quality, access and affordability. While poverty is a prolonged condition, a person of any income class may suffer from a lack of drinking water due to a sudden crisis such as the recent fires in 2018, as well as floods and earthquakes that can leave entire neighborhoods without access to drinking water. Yet, there is no measurement in the Tool for gaging how the government deploys current financial and technical resources to satisfy the HRTW under those emergency conditions. Understanding this dynamic is important in the allocation of resources under all circumstances, be they driven by emergencies or poverty. The Tool is completely silent on such measurement.

In fact, with passage of SB1263, the State of California has hamstrung rural communities in trying to get access to water in accordance to the Human Right to Water, including in instances when local supplies have gone fallow due to contamination. The law now prohibits a city from issuing building permits for the construction of a new residential development where a source of the water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility. Many residents, including low-income residents, will no longer be able to find rentals or purchase property that are within range of major centers of employment. Existing homeowners in undeveloped areas are being left stranded with properties that have lost their value. Ominously, existing homeowners will be left vulnerable to illegal water market operators should their water needs grow because of construction on their properties to meet the needs of new young or elderly family members.

Lacks Metric for Measuring Disparities in Distribution of Resources To Meet HRTW Goals

The HRTWA is intended for all residents of California regardless of color, and economic class, across a spectrum of factors that could threaten and impair access to safe drinking water. The Tool fails to provide a metric for evaluating the equity in the distribution of existing infrastructure spending, efficiency, and emergency response versus addressing poverty in the distribution of potential aid, grants and loans among all types of resident classifications and water systems. We recommend that OEHHA consult with the Los Angeles Department of Water and Power (LADWP) which in 2017 approved a tool called the "Equity Metrics Data Initiative" (EMDI) that tracks how LADWP spends ratepayer funds across Los Angeles. EDMI helps to ensure that residents/taxpayers, across all types of demographic, economic, geographic, and other meaningful distinctions of need, are equitably treated. This includes the equitable and efficient deployment of services such as infrastructure maintenance, customer service/emergency response times, low-income rate assistance distribution and water quality (e.g., replacement of lead in the distribution system).

Conclusion:

Given its important but narrow focus on criteria affecting disadvantaged communities as a measure in meeting the human right to water, we believe that the Tool in its present form is not ready for providing an adequate measure of progress in addressing the implementation of the Human Right to Water in any current legislative or regulatory process.

A more expansive approach that includes other situations and the government's record of response, could lend itself to establish measurements that may warrant emergency declarations when the deployment of state resources to meet the human right to water are failing. Such a declaration may warrant intervention by the Governor in addressing the chronic failure of agencies administering grants and loans to those facing challenges under their human right to water, by creating a taskforce of cabinet level secretaries to resolve existing deficiencies. Such a declaration among other actions may also open previously unavailable grant and loan opportunities.

Thank you for the opportunity to provide the preceding comments.

Sincerely yours,

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