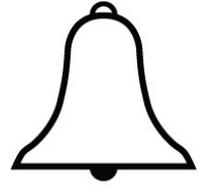


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Santa Margarita Water District

February 19, 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 HRTW” Framework and Tool for Evaluating California’s Progress in Achieving the HRTW”

On behalf of Santa Margarita Water District (“SMWD”), thank you for the opportunity to comment on 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”). The SMWD serves 165,000 residents in Orange County.

Overall, the draft Tool takes a very narrow approach with a set of metrics related to water quality, accessibility and affordability. These are based on the narrow premise that the task of fulfilling the Human Right To Water (“HRTW”) is a matter of addressing deficiencies supposedly inherent to lower income communities. It misses the opportunity to measure California’s success in meeting the HRTW in other circumstances when, for example, access to safe drinking water is impaired. It is also 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 HRTW where poverty is the leading factor.

The HRTW is For Everyone’s Benefit

As stated in OEHHA’s draft report released on January 3, 2019, the HRTW Act (HRTWA) 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 HRTW 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 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. 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.

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While the State Water Resources Control Board (“SWRCB”) 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 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 HRTW.

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 poverty 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 gauging 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 the passage of SB 1263, the State of California has constrained rural communities in trying to get access to water in accordance to the HRTW, 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 is within the 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. EMDI 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 HRTW, 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 HRTW 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 HRTW 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 HRTW, by creating a task force of cabinet-level secretaries to resolve existing deficiencies. Such a declaration among other actions may also open previously unavailable grant and loan opportunities.

Again, thank you for the opportunity to provide comments. If you have questions, comments or further interest in this concept, please feel free to reach out to me at 949-459-6590 or at danf@smwd.com

Sincerely,

SANTA MARGARITA WATER DISTRICT

A handwritten signature in blue ink, appearing to read "Daniel R. Ferons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel R. Ferons
General Manager