



Bringing
Water
Together

February 19, 2019

Submitted via the online [OEHHA Comment Submittal Portal](#)

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

RE – Public Comments on the Draft Report, *A Framework and Tool for Evaluating California's Progress in Achieving the Human Right to Water*

Dear Ms. Balazs:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide public comment on the Office of Environmental Health Hazard Assessment (OEHHA) draft report entitled, *A Framework and Tool for Evaluating California's Progress in Achieving the Human Right to Water* (Draft Report). ACWA would like to thank OEHHA staff for granting our request to extend the public comment deadline from February 4 to February 19, 2019. This extension in time allowed us to analyze the Draft Report in detail and develop the following comments.

I. Draft Framework: Approach and Overview

Comment 1: The draft framework and proposed tool for evaluating California's progress in achieving the human right to water can be improved with input from the water community.

ACWA represents more than 450 public water agencies that collectively supply 90 percent of the water delivered in California for domestic, agricultural, and industrial uses. ACWA's public agency members that provide drinking water take the responsibility of providing safe drinking water very seriously. Ensuring a safe drinking water supply by complying with all relevant state and federal standards is the highest priority of these agencies.

ACWA and its member agencies have reviewed the Draft Report in detail and have policy, technical and process concerns. ACWA is concerned that the public water agencies and other water systems responsible for providing safe drinking water to the public were not consulted in the development of the Draft Report. We believe such a framework and tool should be developed in partnership with the water community. The water community has a vested interest in the outcomes of the evaluation of water systems in a statewide tool and therefore

requests continued opportunities to meet with OEHHA staff throughout the current development and future phases of refining the proposed tool.

Comment 2: The Draft Report should clarify the relationship between the OEHHA draft framework and proposed tool and other statewide efforts evaluating similar information.

The OEHHA Draft Report was released the same day as the State Water Resources Control Board released another draft report regarding options for implementation of AB 401 (Dodd, Statutes of 2015) entitled, *Options for Implementation of a Statewide Low-Income Water Rate Assistance Program* (AB 401 Implementation). In both documents, the introduction sections direct readers to review both draft reports. However, the two draft documents are unclear of the relationship between the two proposals.

The State Water Board also recently started another stakeholder process to develop a statewide drinking water needs assessment (Needs Assessment). State Water Board staff held two workshops in January to identify safe drinking water needs in water systems with the intent of looking at water quality data and the technical, managerial and financial capacity of water systems. Currently, the State Water Board hosts another public platform called the 'Human Right to Water Portal' that identifies water systems with current drinking water violations.

The Draft Report states that the framework *"...can be used as a tool to track changes and needs across the state's community water systems"* (emphasis added, Page 2). It is confusing to have multiple state agencies creating multiple and different tools that relate to the same information. At a minimum, the Draft Report should clarify the relationship between the proposed OEHHA framework and tool, AB 401 Implementation, the Needs Assessment, the Human Right to Water Portal and any other statewide efforts evaluating similar information. By clarifying how the framework is intended on being used in alignment with these other statewide efforts, stakeholders and the public can better understand the intent and purpose of the Draft Report and its relation to these other important efforts.

Comment 3: The scoring approach should highlight scenarios where there are failing systems with real concerns. The Draft Report should further articulate how the proposed composite scores would be calculated and how the standalone indicators and composite scores work together.

The Draft Report outlines 13 indicators that fall under the 3 components of water quality, water accessibility and water affordability. The Draft Report proposes each indicator will receive a value and then a composite score will be developed for each component. However, it is unclear how either an indicator value or a composite score for each component will identify the specific issues a water system may face. Generally, a composite score approach does not lead to a narrative for describing the vulnerabilities faced by a water system or even the relative level of an indicator. Additional explanation of the indicator values and composite scores should be clearly stated in the framework to inform the development of the proposed tool.

The Draft Report states, *"...a system's deficiencies in any given single component should not be outweighed or downplayed by more favorable performance in the other components"* (Page 8). Discounting favorable performance of one component for another component's negative performance seems counter-intuitive for a tool that is intended to be informative. We

understand from the public webinar that OEHHA's intent with the draft framework and tool is to prioritize failing systems with real concerns, not to evaluate all water systems. This should be clarified in the next version of the framework document. To ensure productive use of the framework and tool, OEHHA should further reconsider how the indicator values and composite scores will inform technical, managerial or financial solutions for a failing system, which are anticipated to be implemented through other programs and efforts.

Comment 4: The Draft Report should not send inconsistent messages regarding drinking water safety, accessibility and affordability to decision-makers, water systems, and the public.

The Draft Report sends inconsistent messages to three key audiences of the draft framework and proposed tool: decision-makers, water systems and the public they serve. It is critical that the proposed indicators in the tool be presented to include clear and comprehensive statements and disclaimers that provide the tool's audiences with information regarding the purpose, relevance and significance of the results.

On page 7, the Draft Report states that "*...decision-makers may wish to assess water systems across components, to better understand the relationship between various water delivery and service characteristics.*" If the outcomes of the tool will be utilized to inform decision-makers and the public, both the framework and tool need to be developed in a manner that delivers information clearly and accurately. As such if specific indicators need disclaimers regarding the analysis of a trend versus real-time data that would be helpful to include in the narrative of the framework and shown in the tool. In Figure 10, the chart summarizes an example of indicator values for three systems, with dark blue boxes representing greater concern, medium blue boxes representing moderate concern, and light blue boxes representing little to no concern. This method of messaging assumes some level of concern for each indicator by not establishing a value or representation for a fully-compliant system with no concerns.

ACWA is very concerned that the Draft Report, in particular how systems will be scored, does not reflect the critical fact that over 98 percent of Californians are served safe drinking water that meets the standards established by the federal Safe Drinking Water Act (SDWA)¹. If the proposed indicator values and composite scores are low for a water system in the proposed OEHHA tool, yet a system is compliant with drinking water standards under the SDWA regulated by the State Water Board, there is potential for confusion in the message conveyed from the outcome of the tool.

Public water systems are currently required to prepare annual consumer confidence reports (CCRs) that provide detailed, system-specific information on water quality and health impacts (Health and Safety Code Section 116470(a)). Additionally, many water systems are required to provide additional information in triennial public health goal reports (Health and Safety Code Section 116470(b)). These existing resources provide focused, reliable and understandable drinking water information directly to the public. Given the wide-spread public availability of this information, OEHHA should take additional time to improve how the overall tool results will be messaged. This is an area where the water community can work with OEHHA staff to analyze several example systems to clarify how the scoring will apply and how to convey the outcomes of the tool with appropriate disclaimers.

¹ Based on the Annual Compliance Report published by the State Water Board in July 2018.

II. Component 1: Water Quality

Comment 5: The Water Quality component should be retitled to Safe Drinking Water.

With the enactment of the Human Right to Water policy (AB 685, Statutes of 2012), the state set forth that “...every human being has the right to safe, clean, affordable, and accessible water adequate for **human consumption, cooking, and sanitary purposes**” (emphasis added). The underlying purpose of the policy is to provide water for human consumptive purposes, which must be potable or drinkable. In the water industry, water quality can also refer to non-potable water (i.e., water quality levels of untreated water in rivers or streams). ACWA suggests the ‘Water Quality’ component be retitled to ‘Safe Drinking Water’ to more accurately describe the intent of this section and to align with the Human Right to Water policy.

Comment 6: The indicators for the safe drinking water should be based on compliance with standards consistent with state and federal laws.

The Draft Report outlines two subcomponents, including exposure and non-compliance, under component 1. The Draft Report states in footnote 5 that “most human right to water efforts, such as the United Nations’ Joint Monitoring Program, only evaluate water quality in relation to compliance with regulatory standards” (Page 9). Current state and federal laws require water systems to comply with testing methodologies, requirements, and reporting standards to be in compliance with drinking water maximum contaminant level (MCLs) or standards for specific contaminants. The Draft Report should be consistent with the requirements of these laws and contain indicators based on compliance with regulatory standards. For example, ACWA appreciates that the exposure indicator should be based on MCL standards. However, the exposure indicator is duplicative when there is also a non-compliance indicator.

a. Clarify where water systems test for drinking water standards.

ACWA has concerns with the narrative in the Draft Report regarding where water sampling occurs by water systems. Figure 4 on page 10 shows an example water system, depicting where a water system tests for drinking water violations and where the distribution system serves water at household taps or faucets. The Draft Report identifies that exposure levels “...are determined by water quality at the tap” (Page 9). However, public water systems test for drinking water standards within the water system, and not at individual, household taps. The Draft Report acknowledges that data regarding water quality at the tap is “not widely available” (Page 10). The exposure narrative should be consistent with the state’s regulatory requirements. As such, high potential exposure should not be identified as water quality exposure at the tap, when the calculations are based on a running annual average within the water system service area.

b. Accurately develop indicators based on drinking water standards and updated monitoring data.

ACWA suggests that in order to accurately share information related to drinking water standards, relevant indicators must be based on the most recent drinking water monitoring data consistent with state and federal laws. For example, for some systems, of the 19 contaminants

listed in Table 1 on page 12, some are tested by wholesale water agencies that provide water to individual water systems. ACWA recommends that OEHHA use all available data, including wholesaler drinking water testing and compliance information, when evaluating water systems, otherwise an individual water system may receive a low score for missing or insufficient data. Additionally, the Draft Report states that for Water Quality Indicator 4, in relation to the 19 contaminants in Table 1, “...*this indicator evaluates the extent of system water quality sampling data for 14 contaminants for which a system must have conducted water quality monitoring*” (Page 15). If this is the case, then water systems should only be evaluated under this component based on those specified 14 contaminants.

c. Correct reference to MCL violations for consistency with state and federal laws.

Throughout component 1, a consistent revision should be made based on state and federal drinking water laws regarding the discussion of MCL standards. Public water systems must conduct quarterly monitoring samples for most contaminants. Compliance with an MCL is determined by a running annual average, if any one sample would cause the annual average to exceed the MCL, the system is immediately in violation. The Draft Report should use consistent language, such as in exceedance of the MCL, not at the MCL. This should be corrected throughout the document, and in particular on page 13.

d. Align overall timeframe with current drinking water monitoring compliance data.

The proposed timeframe for analyzing data in the Draft Report is projected from 2008 to 2016. This tool should be integrated with current compliance efforts by water agencies to monitor drinking water data. We have concerns with the proposed nine year period, based on the fact that a system may be scored poorly based on a prior violation record but has subsequently treated and resolved the violation. The proposed timeframe would capture such violations as part of the water system record and potentially inaccurately portray a system as non-compliant, even if the issue has been resolved. ACWA does not believe that a water system should still receive a low score due to prior violations being included based on the timeframe for the dataset. ACWA recommends there be a way to remove a low score by identifying if a system has successfully resolved a violation by taking corrective actions. Providing a historical snapshot of violations within a nine year timeframe is not an accurate way to evaluate current drinking water violations and would be misleading to the public. It is important that the public who may be viewing this tool have clarity on when a violation occurred, its severity and duration. Without this context, there could be confusion. ACWA is available to discuss examples with OEHHA staff of how frequently drinking water testing occurs and what an appropriate timeframe should be, consistent with water system compliance.

e. Focus on systems with persistent violations when analyzing water data availability.

In order to develop a tool that is most helpful in identifying solutions for water systems with critical needs, ACWA suggests systems with persistent violations be prioritized for evaluation (in relation to Water Quality Indicator 4). In order to start addressing the needs of communities that face drinking water concerns, persistent violations should be evaluated first compared to systems with one-time compliance concerns. Again, this supports Comment 3 of developing a tool that highlights scenarios where there are failing systems that have real problems.

III. Component 2: Water Accessibility

Comment 7: The vulnerability assumptions outlined in the Water Accessibility component should be re-evaluated to determine whether they are valid.

ACWA suggests that OEHHA re-evaluate several of the proposed vulnerability assumptions in the Water Accessibility component and verify the proposed indicators with the water community. For example, the physical vulnerability subcomponent outlines several assumption, such as *“A system with only one well is more vulnerable to a water outage than a system with dozens of wells...”* and that *“...groundwater-reliant systems with fewer wells are more vulnerable to supply-based outages than either surface water systems with multiple intake points, or combined systems”* (Page 19). These assumptions discount the operational intricacies of water systems throughout the state, such as systems that have interties with neighboring systems. Demand and supply information is documented by water systems in Urban Water Management Plans and drought risk assessment plans, and such data should be used to verify accessibility information under this component for an accurate record of water supply and demand assessments. ACWA would suggest revision to the above-mentioned assumptions under this component. We are available to discuss examples of what documentation water systems record, regarding water supply and demand related to the accessibility of water.

Additionally, under the institutional vulnerability subcomponent, the Draft Report would state that the managerial capacity of a water system depends on various factors such as *“...a water system’s number and type of staff”* (Page 21). This is an incorrect assumption, as there are water systems with a small staff size that are fully operational and sustainable. OEHHA staff should take additional time to further verify the validity of the Water Accessibility component with the water community to identify what information is needed when analyzing the physical and institutional vulnerabilities of water systems.

IV. Component 3: Water Affordability

Comment 8: The Water Affordability component should be consistent with existing statewide water use and affordability standards in presenting accurate water affordability information. OEHHA should utilize the indoor water use efficiency standards in state law consistently across the state reports regarding water affordability to ensure consistency in measuring success.

ACWA appreciates OEHHA staff for the inclusion of an equivalency of gallons per person per day (GPCD) as it relates to indoor water use. The state policy for human right to affordable water relates to indoor uses – human consumption, cooking and sanitary purposes. However, ACWA has concerns that the OEHHA Draft Report uses 38 GPCD in a four-person household (Footnote 22 on Page 25).

Recent state water use efficiency laws enacted in 2018 set standards for indoor residential water use of 55 GPCD until 2025, 52.5 GPCD from 2025 to 2030, and 50 GPCD beginning in 2030. These state per-capita-indoor-water-use-efficiency standards are to be used by local water suppliers to develop water use objectives on a service-area basis. For consistency purposes, the state should utilize the indoor water use efficiency standards from state law in the final version

of the framework. ACWA has provided this comment to the State Water Board in regards to AB 401 Implementation. The state should use a consistent measure of affordability across multiple state tools and programs. The basis for the OEHHA framework and proposed tool should be consistent with the Human Right to Water policy by being consistently calculated for efficient indoor water use (e.g. 55 GPCD).

a. Inclusion of the proposed affordability indicators is premature.

The indicators currently proposed in the Water Affordability component are based on median household income levels, county poverty levels, and deep county poverty levels. These thresholds are each different from the threshold identified by statute for the development of a plan for a low-income water rate assistance program, which identifies a statewide affordability program to support low-income households, defined as *“a household with income that is equal to or no greater than 200 percent of the federal poverty guideline level”* (AB 401, Statutes of 2015). The State Water Board is currently evaluating whether that threshold make sense. The State Water Board will be providing recommendations to the Legislature, and subsequent legislation is likely. In the draft report on AB 401 Implementation, the State Water Board is seeking feedback if they should change their proposed affordability threshold, where *“...shrinking eligibility to households earning up to 150% of the FPL would reduce program costs, while expanding eligibility to households earning up to 250% of the FPL would raise program costs [and]...the Board looks forward to receiving feedback...”* (Page 7). It is premature to be developing indicators regarding affordability when the state is evaluating how to assess and address affordability.

Further, OEHHA staff should take additional time to engage with the water community to further discuss the complexities of water affordability throughout the state of California. For example, the relative cost to transport water across the state to more densely-populated areas where there is human need is an inherent cost of water. ACWA appreciates how the Draft Report articulates through a hypothetical system example that strategies to address the affordability challenges *“...should be explored with care”* and that *“a simple decrease in rates could potentially compromise the system’s high water quality”* (Page 38). The water community can provide additional examples of these complexities on water affordability issues with OEHHA staff.

V. Current and Future Stakeholder Processes

Comment 9: The water community requests additional stakeholder meetings to provide examples and data when setting up the framework for evaluating water systems.

As presented in the January 23 OEHHA webinar on the Draft Report, OEHHA staff are soliciting public comment to finalize the Draft Report. After finalizing the framework, the next anticipated step is to develop a draft report on the proposed tool. Future public workshops were discussed as part of the process on the webinar. ACWA requests additional stakeholder meetings with OEHHA staff to provide examples or data to help refine the current proposed framework and in the early development phase of the draft tool report. ACWA would like to collaborate with OEHHA to plan such stakeholder meetings and encourage an on-going dialog between OEHHA and public water agencies. One consideration for when the tool is initially prepared is to launch

the tool as a pilot and to allow for a stakeholder process to analyze and make refinements to the tool prior to a final version being released.

Comment 10: The water community requests a more robust, collaborative stakeholder process in advance of the development of future phases of a revised framework and tool.

As referenced in the Appendix A entitled, *Future Indicators under Consideration*, should there be future revisions the framework and tool, OEHHA should engage a more robust, collaborative stakeholder process. For example, one item presented as a future indicator is water shutoffs. Shutoffs are a complicated process and could occur for a multitude of reasons, including a customer intentionally not paying their water bills, which may not relate to a customer's ability to pay in regards to water affordability. As such, a more robust, collaborative process will allow stakeholders to provide early input, data and examples to evaluate the feasibility of proposed future indicators for consideration. Additionally, there could be a stakeholder process for continued review and refinement, such as every 5 years there could be an opportunity to revisit the overall concepts of the framework and tool in regards to relevance and application.

Thank you for the opportunity to provide comments on the Draft Report. We look forward to continuing to engage with OEHHA staff on this important framework and tool. I am available to discuss ACWA's comments at (916) 441-4545 or at melissas@acwa.com.

Sincerely,

A handwritten signature in black ink that reads "Melissa Sparks-Kranz". The signature is written in a cursive, flowing style.

Melissa Sparks-Kranz
Regulatory Advocate

cc: The Honorable Lauren Zeise, Ph.D., Director, OEHHA
Mr. Allan Hirsch, Chief Deputy Director, OEHHA
Mr. John Faust, Ph.D., Branch Chief of Community and Environmental
Epidemiology Research, OEHHA
Ms. Cindy Tuck, Deputy Executive Director for Government Relations, ACWA