North of the River Municipal Water District

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HR2W
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Subject: Achieving the Human Right to Water: OEHHA's Draft Assessment of the State's Community Water Systems

On behalf of North of the River Municipal Water District, we would like to thank you for the opportunity to submit the following comments about the Office of Environmental Health Hazards Assessment (OEHHA) Assessment of the State's Community Water Systems. North of the River Municipal Water District represents 35,000 residents, in a community that is severely disadvantaged and comprised of a large percentage of seniors on fixed incomes.

Fundamentally, we share the concern raised by academic experts engaged by OEHHA to review the draft Assessment, regarding the need to clearly understand and articulate the proposed use of the Assessment tool, and what action is to come from applying it.

Overall, we are disappointed that the Assessment is narrowly focused on addressing deficiencies supposedly inherent to lower income communities. Through that narrow focus, the tool misses the opportunity to measure California's overall efforts in meeting the Human Right to Water in broader 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 governments.

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) (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.

1. **Need for Metric Related to State Agencies**

CalMutuals and CWSA believe that the Human Right to Water is threatened by the actions of the state in advancing regulation without realistic and economically feasible plans for implementation, sluggish processes that delay in distribution of funding to address concerns, and failure to incorporate emergency preparedness efforts underway.

The OEHHA Assessment ignores the role that the California State Government plays 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 communities with significant numbers of senior citizens, and older, smaller communities. Matters have worsened when the legislature has acted in frustration with these deficiencies. This is because stringent public notifications associated with thoroughly vetted maximum contaminant levels (MCLs) are being applied to notification levels entailing voluntary responses by purveyors. Such regulations clearly affect perceptions of water quality, and accessibility when wells are abandoned because communities can't afford the remedies. This was the basis of the Sacramento Superior Court's ruling invalidating the MCL for Hexavalent Chromium in 2017.

A metric is therefore needed to measure the role and effectiveness of state agencies charged with regulating water and emergency response. Illustrating this deficiency is the recent impact of sudden regulatory findings in 2019 by OEHHA and the Division of Drinking Water (DDW) for perfluoroalkyl substances and polyfluoroalkyl substances (PFOS/PFOA). State actions are affecting access, and affordability to safe drinking water in a manner that demonstrates that having a regulation without guidance or financial support is, in and of itself, not protective of public health and does not further the human right to water.

In Pico Rivera, California, for example, the announcement by DDW of revised notification levels for PFOS and PFOS in September 2019, created a public panic that compromised consumer confidence in local water supplies. This has occurred in the absence of guidance and support from DDW or OEHHA for water suppliers or the news media, about the communication of risk to the public and other public agencies, upon announcing revised notification levels (NLs) for PFOS/PFOA. DDW has also not targeted funding for disadvantaged communities, such as Pico Rivera, that have no alternative supply other than the groundwater that local residents are growing to distrust because of the blunt actions by the State. This is leading to consumer decisions that compromise the human right to water through increased reliance on bottled water that is less regulated than tap water, and hurtful to the oral health of children.

While the State Water Resources Control Board (SWRCB) has funds to distribute for 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 application's approval or denial. Again, it is imperative that OEHHA include a metric 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.

Emergencies driven by earthquakes, fires, and, more recently, power outages by the energy utilities, have impacted the availability of water for basic human needs and sanitation. In fact, AB1666 (Friedman) and SB606 (Hertzberg) specifically require state agencies to make recommendations to the legislature for assuring the resiliency of water systems by categories that distinguish between larger water suppliers, and those with less than 3,000 connections overseen by the counties. This work is underway in part through an advisory panel at the Department of Water Resources called the County Drought Advisory Group (CDAG). The preparedness and response levels by the Office of Emergency Response, water and air regulators and their mutual cooperation with local emergency responders is crucial as a metric in assuring the human right to water. Sadly, such mutual cooperation has been lacking, as several water suppliers have reported that inspectors from various air quality management districts have punctured emergency back-up generator compressors with drills, thereby disabling them, when they have been found not to meet the latest air board requirements. Such actions could have devastating consequences in situations where the damaged power generators have not been replaced by the time an area is affected by a natural disaster.

2. **Data Overstates Drinking Water Issues Which Overshadows Small System Needs**

While we understand that the assessment is an issue-spotting exercise and is therefore critical in its approach, OEHHA's "glass half empty" mindset diverts attention from where the need really exists, to getting attention for the report itself. Proving this point is that the report contains data indicating that two-thirds of the water systems in the state did not have a single MCL violation over the nine-year period studied. (p. 36.) Excluding total coliform violations, about 86 percent of the systems had no MCL violations during the entire study period (p. 43.). This, coupled with other data in the report, strongly supports the fact that there are not wide-spread water quality problems in California. This fundamental fact gets lost in the report. The fact is that there are a relatively small number of California's total population dependent on water systems in California (usually small systems) that have chronic non-compliance issues. A narrower focus on those systems would be more cost-effective than general statements about the non-compliance issue, particularly where doing so suggests the existence of wide-spread water quality problems that simply do not exist.

3. **The Data Related to the Assessment May be Outdated**

The time period for this assessment is 2008-2016. (p. 6). The levels of some contaminants in drinking water have decreased during this time period. Given the timing and frequency of the cited exceedances of MCLs, it would be useful to determine whether this information is relevant to current drinking water concentrations or not. For example, some MCLs for the selected contaminants were adopted just before, or, during the study period, such as perchlorate (2007) and arsenic (2008). Data for these contaminants may indicate higher exposures and non-compliance because California MCLs take effect immediately and many water systems need additional time to come into compliance. More recent data would more accurately reflect current exposures for such recently enacted thresholds.

4. The Tool Over-Estimates Water Quality and Accessibility Problems and Under-Estimates Water Affordability Problems

On balance, OEHHA's draft tools and overall assessment tend to over-estimate water quality and accessibility problems and under-estimate water affordability problems. To the extent this assessment is used as a planning tool, it is likely to lead to dilution or misallocation of resources to address hypothetical water quality and accessibility problems at a statewide scale at the expense of actual localized affordability problems.

We share the concern expressed by the academic experts engaged by OEHHA that the report does not fully address the accessibility issue of small systems, often in disadvantaged communities (and unincorporated areas) associated with lack of direct representation and lack resources needed, including but not limited to resources to develop and implement grants.

5. Methodology Penalizes Suppliers that Report Data & Inconsistent Data and Indicator Selection

The methodology for contaminant selection is inconsistent. The subject contaminants were selected because information regarding those contaminants was available and MCLs for them were already in place (p. 11). Other contaminants (e.g., radium) were not included on the list because sufficient information or an MCL was not available. It is possible that real public health issues are being ignored simply because the data are not available and other chemicals with exposures that are controlled and minimized are penalized for having appropriate information.

For example, hexavalent chromium was excluded because it does not currently have an MCL, yet 1,2,3-trichloropropane was included despite the fact that the MCL for this contaminant was adopted ***after*** the study period (2017). Given the design features of this assessment tool, use of occurrence data collected in advance of a compliance obligation will inevitably show greater exposure and artificially depress water quality indicators for some systems. Use of this data will also drive the composite score down, suggesting more extensive water quality problems than may actually exist. This inconsistency calls into question the overall methodology.

The report also contains an indicator called, "Data Availability," which OEHHA acknowledges is a qualitative measure of water quality data gaps. (p. 24-27.) This indicator is included in the algorithm for assessing water quality. The existence of data gaps is a measure of whether comprehensive data is available. It is not in any way a measure of water quality. As such, OEHHA should not include this indicator in any calculation of water quality.

In the water quality section of the report, OEHHA also considers seven indicators, some of which are substantially similar. In the accessibility section of the report, OEHHA uses only three indicators, at least one of which "uses a combination of information." (p. 49.) OEHHA should adopt a consistent approach, either using a relatively large number of indicators that are later reconciled in a scoring algorithm or a relatively small number of indicators that combine information. This inconsistency calls the overall methodology into question. In particular, the

use of a large number of indicators for water quality appears indicative of OEHHA's greater familiarity with that topic and the use of a smaller number of indicators for accessibility appears to indicate OEHHA's general lack of familiarity with that topic. We urge OEHHA to withdraw the report and work with the water community to develop more consistent indicators for accessibility and affordability.

Another example is provided by Water Quality Indicators 3 (Maximum Duration of High Exposure) and 7 (Maximum Duration of Non-Compliance), which both focus on chronic non-compliance and appear to be substantially similar. In that regard, we note that Figure 8 (p. 22) and Figure 14 (p. 37) appear to be identical. Employing duplicative indicators will tend to bias system and composite scores downward, indicating more extensive water quality problems than may actually exist. OEHHA should consider eliminating indicators that are substantially similar to other indicators.

6. Assessment of Health Effects Is Casual With Potentially Unfounded Provocative Statements

CalMutuals and the CWSA share the recommendations made by academic experts to revise the section of the report focused on health effects, with a greater focus on helping the public understand the differential health impacts of different contaminants, what contaminants are able to be removed, and what treatment technologies are available. Further, we agree with the academic experts that it is critical to take steps to ensure the tool does not unintentionally and without cause lead to consumers losing confidence in the water supply.

The report cites situations in which a contaminant could cause acute health effects, defined as "death or illness," as a result of a single short period of exposure to drinking water (p. 18.) This obviously is an extremely serious matter and could lead to significant adverse public reaction. However, from our knowledge, such "acute health effects" are relatively rare. If OEHHA is aware of situations where short periods of exposure to drinking water from a purveyor(s) has caused death or illness, those situations should be documented and the cause of such death and illness should be thoroughly investigated, as such situations constitute public emergencies warranting immediate action. However, it is difficult in the abstract to conclude such acute health effects result from water quality issues where no specifics in the report are mentioned. Moreover, it is possible that such situations have arisen with recent catastrophic fires in which case the metric lacks a measure for evaluating the response of state agencies and local emergency responders in applying remedies to prevent further harm.

However, if OEHHA is not aware of such specific situations that resulted in acute health effects, this language and similar language should be removed from the report. Citing "death and illness" is provocative and highly charged and leads readers to conclude that tap water in California is generally unsafe and dangerous to drink. We do not believe that is the case for the overwhelming majority of water suppliers throughout California.

Also, the OEHHA report indicates that 24% of the state's water systems "face some of the biggest water quality challenges." (p. 43.) This statement is provocative and misleading.

Essentially stating that one-quarter of the state's water systems have "big" water quality problems is simply not true and will serve to undermine the public's confidence in the drinking water purveyed in California. We urge OEHHA to refrain from overstating and misleading the public about the quality of the state's drinking water.

7. Affordability Issues Minimized

The report states that the Affordability Component does not take into account sewer and wastewater bills. (p. 96.) Because the Human Right to Water is actually a right to safe, accessible and affordable water and *sanitation*, this information is critical to determining actual affordability. We urge OEHHA to withdraw the report and devote resources to advancing the analysis of affordability before releasing it.

There are several key drivers of the increased water costs that California water utilities are experiencing, including infrastructure renewal and replacement and regulatory compliance costs. The report acknowledges that "the sustainable financial capacity of water systems, or the adequacy of revenue streams and their management to cover ongoing and long-term infrastructure maintenance, capital costs and upgrades necessary to maintain adequate water quality" are a core aspect of water affordability, but are not captured in this assessment (p. 63). We concur with feedback from the academic experts engaged by OEHHA that the tool is missing critical affordability metrics at the utility level.

OEHHA also notes the current trend of water rates increasing faster than inflation (p. 93). Unlike several of the water quality and water affordability indicators that suggest hypothetical or potential problems, the available data indicate that water affordability is a critical real problem that is getting worse over time. This report provides an opportunity to collect and present data that will lead to an understanding of what is leading to these water affordability issues. Affordability indicators could be developed to provide information regarding the cost drivers, including the costs and benefits associated with those cost drivers. This information could then be used to analyze costs and to engage in serious reflection as to whether some of the initiatives driving water costs advance the goals of the Human Right to Water, or not. It is clear that the water community and the regulatory community will need to work together if water is to be both safe and affordable.

The report states that the Affordability Component has no subcomponents. (p. 65.) We believe it is appropriate to add some indicators to the Affordability Component. Chief among such potential additions is a comparison of water charges to a defined baseline year (e.g., 2000). Many people on fixed incomes have settled expectations as to how much to budget for life's various necessities. When the cost of water goes up 50% (or more), it requires making cuts in other areas of a household budget. The total cost of water (and a comparison) to total income is one indicator. However, the change in the cost of water is also important. We urge OEHHA to work with water economists to determine additional metrics relevant to the Affordability Component so that this important issue can be better addressed in the report.

8. Potentially Eclipses Legislatively Mandated Water Supplier Ratings

While the OEHHA report references legislatively mandated supplier needs assessments arising from the passage of AB1666 (Friedman), SB606 (Hertzberg) and SB200(Monning), it makes little effort to correlate the OEHHA ratings with the legislature's goals and intent. OEHHA should withdraw its report until the Department of Water Resources finalizes its water supplier ratings for emergency and drought water supply resiliency which is being developed with broad stakeholder input for presentation with recommendations to the State Legislature; and the State Water Resources Control Board finalizes the needs assessment it is developing in connection with implementation of SB200. Importantly, that needs assessment is specifically intended to advance the Human Right to Water in communities with distressed water systems. Seemingly, these three reports should complement each other in connection with water quality and other Human Right to Water issues.

Conclusion:

OEHHA's assessment of water suppliers' success in accomplishing the Human Right to Water lacks clarity about who the tool is for, what it is trying to do and what actions are desired from its use and reference. The assessment does not comprehensively address the overall factors that determine access and affordability of water. Other factors that merit further attention in the assessment include the state's regulatory impacts (positive and negative), the capacity of emergency responders, and consistency with legislative initiatives focused on water quality, access and affordability. Given that OEHHA's Assessment of Water Suppliers was not legislatively mandated, but requested by the SWRCB for reasons that are unclear and not informed by a broad group of stakeholders, OEHHA should withdraw the assessment until the legislatively mandated assessments discussed above are completed, and the Human Right to Water can be properly aligned with the results of those reports and be tied to achievable goals.

Thank you for the opportunity to provide the preceding comments.

Sincerely yours,

Douglas Nunneley
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North of the River Municipal Water District