CALIFORNIA STATE

WATER RESOURCES CONTROL BOARD

DIVISION OF DRINKING WATER

VOTING ITEM NO. 6

In the Matter of:)
)
Voting Item No. 6 on)
Maximum Contaminant Level)
For Hexavalent Chromium)
)
_____)

CONSIDERATION OF A PROPOSED RESOLUTION

ADOPTING A MAXIMUM CONTAMINANT LEVEL (MCL)

FOR HEXAVALENT CHROMIUM AND CERTIFYING FINAL ENVIRONMENTAL

IMPACT REPORT

VIA VIDEO AND TELECONFERENCE

WEDNESDAY, APRIL 17, 2024

10:52 A.M.

Reported by:

Chris Caplan

APPEARANCES

BOARD

Joaquin Esquivel, Chair

Dorene D'Adamo, Vice Chair

Nichole Morgan, Board Member

Laurel Firestone, Board Member

Sean Maguire, Board Member

STAFF

Courtney Tyler, Board Clerk

Darrin Polhemus, Deputy Director, Division of Drinking Water

Bethany Robinson, Regulatory Development Unit, Division of Drinking Water

Melissa Hall, Regulatory Development Unit, Division of Drinking Water

Michael Lauffer, Chief Counsel

Kim Niemeyer, Office of Chief Counsel

Unidentified Interpreter

Unidentified Technical Support

ALSO PRESENT

Dr. Frank Figueroa, City of Coachella

Castulo Estrada, Coachella Valley Water District & City of Coachella

APPEARANCES

ALSO PRESENT (cont'd.)

Robert Chacanaca, Community Water Center

Ana Maria Perez, Community Water Center

Maraid Jimenez, Interpreter for Ana Maria Perez

Silverio Perez, Community Water Center

Pedro Enriquez, Interpreter for Silverio Perez

Saul Reyes, Community Partner with Community Water Center

Kala Babu, Community Water Center

Andrea Abergel, Manager of Water Policy, California Municipal Utilities Association

Joanne Le, Director of Environmental Services, Coachella Valley Water District

Nick Blair, ACWA

Angela Islas, Water Projects Coordinator with Central California Environmental Justice Network

Dr. Nataly Escobedo Garcia, Leadership Counsel for Justice and Accountability

Mayra Hernandez

Sherri McCarthy, American Chemistry Council

Andria Ventura, State Water Action

Roberto Ramirez, Community Partner with Community Water Center

Michelle Chester, Somach Simmons & Dunn on behalf of the Central Valley Clean Water Association

APPEARANCES

ALSO PRESENT (cont'd.)

Debbie Mackey, Executive Officer, Central Valley Clean Water Association

Tim Worley, Community Water Systems Alliance

Matthew Shragge, Twentynine Palms Water District

Katie Little, California League of Food Producers

Susan Allen, California Association of Mutual Water Companies

Sarah Johnson, Joshua Basin Water District

Jared Voskuhl, California Association of Sanitation Agencies

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P R O C E E D I N G S

WEDNESDAY, APRIL 17, 2024

CHAIR ESQUIVEL: We'll now move on to item number six, which is an item from our Division of Drinking Water regarding a proposed hexavalent chromium maximum contaminant limit and certification of final Environmental Impact Report

I do want to note: we do have a court reporter, and we have Spanish language interpretation services for this item, including a simultaneous broadcast in Spanish.

If you are present in the meeting room here and require Spanish interpretation, please raise your hand and a headset will be provided to you. For Zoom participants, to listen or comment in English or Spanish, select the language interpretation channel by clicking on the globe icon in your meeting controls at the bottom of your screen. There you can choose English or Spanish, and mute original audio. Also, to see the presentation in Spanish or English, click on the view options at the top of your screen, and select presentation in English to see the presentation in English, and presentacion in Espanol to see this presentation in Spanish.

I now invite up one of our interpreters to share these instructions in Spanish to help everyone get set up.

Good morning. Good to see you again. Thank you

for being here with us.

INTERPRETER: Good morning. Thank you, Chair Esquivel. We'll repeat that for the benefit of our Spanish-speaking audience.

(Instructions are given in Spanish)

Thank you, Chair Esquivel. Back to you.

CHAIR ESQUIVEL: Thank you as well. Really appreciate it.

Now I'll hand things over to -- I think Darrin Polhemus will lead us off. Good to see you.

MR. POLHEMUS: Yeah. Thank you, Chair Esquivel, board members.

Good morning. I'm Darrin Polhemus. I'm Deputy Director for the Division of Drinking Water.

Very briefly, before we get into our presentation this morning, I do want to thank the entire team that worked on this. I know this is longer than we all wanted to take before we brought this back before the Board, but I can assure you that that was time all busily spent in trying to make sure that we addressed every conceivable comment and thought associated with this. So it's been deliberated extensively, and worked on the whole time before we came back. So I'm very happy to be here and give this presentation this morning.

So I am joined with Kim Niemeyer from OCC in

support, and Bethany Robinson will give our presentation, and Melissa Hall, head of our Regulatory Unit.

So with that, I will turn it over to Bethany.

MS. ROBINSON: Thank you.

This presentation is for the proposed hexavalent chromium maximum contaminant level, and specifically for the regulation, adoption, and certification of the final Environmental Impact Report, or EIR.

Next slide.

This slide has an overview of the proposed resolution, which would adopt the proposed regulations, certify the final Programmatic Environmental Impact Report, and adopt the California Environmental Quality Act, or CEQA, findings and Statement of Overriding Considerations. Most of this will be covered in detail in later slides, so I'll be quick here.

The hexavalent chromium regulations include a maximum contaminant level, or MCL, of 10 micrograms per liter; a detection limit for purposes of reporting, or DLR, of 0.1 micrograms per liter; and EPA methods 218.6 and 218.7 as the approved analytical methods. The best available technology, or BAT, that have been identified are ion exchange; reduction coagulation filtration, or RCF; and reverse osmosis. The regulations also include modifications to public notifications and Consumer

Confidence Reports, as well as a size-based compliance schedule of two to four years, and requirements for compliance plans and operations plans.

Next slide.

This slide shows a brief overview of the proposed regulations development.

We held six public workshops from April 2020 to April 2022 that covered a range of topics; a white paper on economic feasibility; draft treatment costs; CEQA scoping; and an administrative draft of the regulation, which was released in March of 2022. The notice of proposed rulemaking was published on June 16, 2023, and the Administrative Procedure Act Public Hearing was held August 2, 2023. Two notices were released that announced additional public comment periods for changes to the proposal and addition of materials to the record, ending in December 2023 and March 2024, respectively.

Today, the Board is considering the adoption of these proposed regulations, which must be submitted to the Office of Administrative Law by June 15.

Next slide.

Before discussing the regulation in detail, I want to cover the applicability of the regulation. This regulation applies to California Public Water Systems, or PWS, under the California Safe Drinking Water Act.

Specifically, Health and Safety Code § 116555 requires any person owning a public water system to ensure compliance with primary drinking water standards. Both reporting requirements -- both the proposed maximum contaminant level and the related monitoring and reporting requirements constitute primary drinking water standards, and these regulations will be added to Title 22 of the California Code of Regulations, or CCR, Division 4, Chapter 15, which covers domestic water quality and monitoring regulations. In developing the proposed regulation, the Human Right to Water has been considered.

Next slide.

Diving into the regulation details, a maximum contaminant level, or MCL, is a standard limiting the concentration of a chemical in drinking water. In other words, it's the maximum permissible level. It's based on Health and Safety Code § 116365, which requires MCLs to be set at a level that is as close as technologically and economically feasible to the corresponding public health goal or PHG. The proposed MCL for hexavalent chromium is 10 micrograms per liter.

Next slide.

This is a map of drinking water sources in California that exceed the proposed MCL. Hexavalent chromium is present in groundwater throughout the state,

and has been detected in 53 of California's 58 counties. In groundwater, it can be naturally occurring or resulting from industrial activities.

Next slide.

The detection limit for purposes of reporting, or DLR, is the designated minimum level at or above which analytical findings must be reported for regulatory compliance. In other words, this is the concentration we measured down to, and it provides a consistent definition of non-detect. The proposed DLR for hexavalent chromium is 0.1 micrograms per liter, and the analytical methods proposed to measure hexavalent chromium are EPA methods 218.6 and 218.7.

Next slide.

Health and Safety Code § 116370 requires the State Water Board to adopt a finding of the best available technology, or BAT, for hexavalent chromium when the proposed MCL is adopted using treatment technologies that have been proven effective under full-scale field applications. Best available technologies are adopted to identify which treatment technologies are currently available to consistently and reliably remove the contaminant to a concentration below the proposed MCL, and does not preclude permitting other technologies. The BAT included in this regulation are ion exchange; reduction

coagulation filtration, or RCF; and reverse osmosis.

Next slide.

This table shows the proposed compliance schedule. System size is on the left and ranges from 10,000 or more service connections to fewer than 1,000 service connections. The compliance dates range from two to four years after the effective date of the regulation, which is expected to be October 1, 2024. The largest systems will get a two-year schedule, the middle-sized systems will get a three-year schedule, and the smallest systems will get a four-year schedule.

This compliance schedule was included for several reasons. First, the expected dominant treatment technologies, RCF and ion exchange, typically require more tailoring to source water chemistry, which may lead to lengthier timelines to accommodate for design and pilot studies. Second, supply chain delays for items such as steel pressure vessels may occur, and may be exacerbated if all water systems had the same compliance date. Third, larger public water systems usually have more resources, whether that be money or staff, with which to comply with the MCL, and may be able to mobilize and implement treatment more quickly than smaller systems. And last, smaller public water systems may be able to learn from the treatment refinements or other cost savings discovered by

the larger systems, which could reduce costs to the systems with the smallest rate payer basis.

Next slide.

Compliance plans have been included for public water systems that exceed the MCL before their compliance date. These plans are proposed to ensure that the additional time granted by the compliance schedule will be used effectively. The compliance plans must be submitted within 90 days of an MCL exceedance and include both the proposed method of compliance and the projected dates for plan submission and treatment construction. In addition, if the system is proposing treatment, the plan must include a pilot study and a projected date for completion of an operations plan. Once approved, the compliance plan must be implemented. It can, however, be amended.

Next slide.

An operations plan will be required for any public water system proposing a new or modified treatment process for hexavalent chromium removal. These operations plans are necessary to safely operate a treatment plant, and they must include the following when they are applicable: a performance monitoring program; a unit process equipment maintenance program; how and when each unit process is operated; procedures used to determine chemical dose rates; reliability features; and a treatment

media inspection program. An operations plan must be approved by DDW before treated water is served.

Next slide.

The proposed regulations also include language for the Consumer Confidence Reports, which are annual drinking water reports to consumers. The proposed health effects language that would be included is, "Some people who drink water containing hexavalent chromium in excess of the MCL over many years may have an increased risk of getting cancer."

Language is also proposed for hexavalent chromium exceedances before the compliance deadline: “Chromium (hexavalent) was detected at levels that exceeded the chromium (hexavalent) MCL. While a water system of our size is not considered in violation of the chromium (hexavalent) MCL until [insert applicable compliance date], we are working to address this exceedance and ensure timely compliance with the MCL. Specifically, we are [insert actions taken and planned to ensure compliance by applicable compliance date].”

Next slide.

Public notices that include detections or exceedances of hexavalent chromium -- in this case, the Consumer Confidence Reports and the Tier 2 notices -- will need to include the following language on typical

contaminant origins: erosion of natural deposits; transformation of naturally occurring trivalent chromium to hexavalent chromium by natural processes and human activities, such as discharges from electroplating factories; leather tanneries; wood preservation; chemical synthesis; refractory production; and textile manufacturing facilities.

Next slide.

Tier 2 public notices are also included with the proposed MCL. Public notices provide consumers with notifications of violations based on the level of public health impact. A Tier 1 notice is for acute health effects, and notification is required within 24 hours. A Tier 2 notice is for non-acute health effects and persistent violations, and notification is required within 30 days. A Tier 3 notice is for monitoring, reporting and recordkeeping violations, and notification is required within one year.

For the hexavalent chromium MCL, the Tier 2 notifications would be required for both violations after the compliance date and also for exceedances occurring before the compliance date. This would ensure that consumer notification is not delayed by the compliance schedule.

Next slide.

This slide shows existing requirements that are related to the proposed MCL. First, initial sampling for the hexavalent chromium MCL would start within six months of the effective date of the regulation. The exception to this is where sampling from the previous two years can be substituted if the sample was taken in accordance with all monitoring requirements. Permit amendments may also be required in some cases, including for additions or changes in treatment.

Next slide.

Onto the Programmatic Environmental Impact Report, or EIR. This document covered the impacts of reasonably foreseeable means of compliance. It cannot quantify impacts associated with the implementation of any specific project, and it's too speculative to assume sizes, types and locations of potential compliance projects. The EIR recognizes the potential for environmental impacts, and identifies potential mitigation that lead or responsible agencies can require to avoid or reduce impacts. The EIR also takes the most conservative approach, and finds that most impacts are significant and unavoidable.

Next slide.

This slide shows the implementation timeline starting today at this adoption meeting. If adopted, the expected effective date of the proposed MCL is October 1,

2024. Initial sampling should occur from October 2024 to March 2025.

Starting in January of 2025, the first compliance plans would be due, which would be for systems with such high hexavalent chromium concentrations that one sample taken in October would cause their entire running annual average to exceed the MCL. For other systems, an exceedance determination may take up to four quarters, or a full year, and their compliance plans would be due 90 days after that determination. The first Tier 2 public notifications for hexavalent chromium would be required within 30 days of exceedance determinations. And the first Consumer Confidence Reports required to include the new hexavalent chromium information would be sent to consumers by July 2025 or 2026, depending on when the systems initially sample.

Next slide.

Now we'll move on to comments and responses. We have had a total of 89 commenters, 38 of whom spoke at the previous public hearing in addition to 61 letters that were submitted. These commenters made many points, all of which we are not able to discuss in the presentation today. The following comments are mostly common or repeated comments. A draft responsive summary for comments was made available with the agenda materials. Responses to all timely

received oral and written comments will be made available in the final Statement of Reasons submitted to the Office of Administrative Law as part of the final rulemaking record.

Next slide.

Responses to comments are shown in italics below each comment on the following slides. There were comments asking for the MCL to be set at a higher, less costly level that was less likely to result in litigation. 25, 30, and 50 micrograms per liter were proposed by commenters.

The State Water Board is statutorily mandated to adopt an MCL that is as close to the public health goal as is technologically and economically feasible based on Health and Safety Code § 116365.

Therefore, no change was proposed.

Next slide.

There were also comments asking for the MCL to be set at a lower, more health-protective level. 0.01, one and five micrograms per liter were proposed by commenters. These commenters would like the MCL to prioritize achieving a more health-protective MCL rather than highlighting the challenges of compliance. In other words, they believe undue emphasis was placed on costs instead of on the benefits to public health.

The MCL has been set as close to the PHG as is

currently technologically and economically feasible. In addition, the MCL does not preclude water systems from achieving lower levels as desired by their customers.

Therefore, no change was proposed.

Next slide.

Some commenters stated that compliance by the applicable compliance date would be infeasible for some or most systems. As a result, the compliance plan requirements that a system described how it would comply by the applicable deadline was removed.

Next slide.

Some commenters requested an increase in consumer notification in the form of additional notifications of MCL exceedances during the compliance period. As a result, Tier 2 public notification for MCL exceedances before the applicable deadline has been added to the proposed regulation.

Next slide.

Some commenters also ask that exceedance notifications be extended to customers and the general public via city and county website portals. While this request cannot be accommodated at this time, DDW may be able to explore this concept as part of revisions to the Consumer Confidence Report regulations in a future rulemaking.

Next slide.

There were also commenters that opposed Tier 2 notifications during the compliance period. They would like the State Water Board to ensure that systems are actively communicating with the public while they work to achieve compliance via a required communications plan, instead of the required Tier 2 notifications. Commenters state that the Tier 2 reporting should only be used for MCL violations and that requiring this before the compliance date will misinform the public and create a false impression of non-compliance leading to public water system legal exposure.

DDW believes Tier 2 notifications are appropriate for MCL exceedances. In addition, no specific enforceable communication plan elements were proposed for consideration. As described earlier, Tier 2 public noticing would ensure that consumer notification and consumer ability to make informed health decisions is not delayed by the compliance schedule. A Tier 2 notice would not cause increased legal exposure.

Therefore, no change was proposed.

Next slide.

Some commenters requested that the rulemaking be delayed to allow for the Office of Environmental Health Hazard Assessment, or OEHHA, to fully complete the PHG

update because an updated PHG might be higher than the current value. They also state that MCL review has been delayed before for PHG review.

We would like to point out that both OEHHA and the State Water Board are in a constant state of PHG and MCL evaluation consideration, and that both PHG and MCL reviews are multi-year processes. Within the timeframe of either rulemaking or a potential regulatory compliance schedule, any new PHG would reach its five-year anniversary and prompt new calls to wait for a PHG review to be completed, and for a new PHG to be in place prior to any required compliance with an MCL. In addition, the referenced prior MCL review delay was for a contaminant with an existing MCL, and for which rulemaking work had not yet commenced. By contrast, there is currently no hexavalent chromium MCL. The hexavalent chromium MCL is 20 years overdue, and MCL development was well underway when the draft of the noncancer health protective concentration was released.

Next slide.

There were also comments on the timing of PHG publication relative to MCL promulgation. Commenters state that Health and Safety Code paragraph 116365(e)(2) requires concurrent PHG publication and MCL proposal for newly regulated contaminants, such as hexavalent chromium.

However, it would be impossible for the MCL to be set as close as is feasible to the corresponding public health goal if the PHG were not established before the State Water Board began the work to adopt an MCL, which often takes years. In addition, the statute changed to remove the word "concurrent" in 1999. The current language uses the phrase "at the same time," which is interpreted to mean that a PHG must be in place when the State Water Board proposes to adopt an MCL for a newly regulated contaminant.

Next slide.

Some commenters stated they wanted the MCL to be delayed until OEHHA completes the PHG update so the latest science could be included.

However, a review of PHG call-in data submissions has not revealed novel information. In addition, at no time in the regulation development process has there been any indication that the PHG will be revised to a concentration higher than the proposed MCL. With OEHHA's November 2023 release of a draft noncancer health protective concentration of five micrograms per liter, there continues to be no such indication.

Next slide.

Commenters state that the availability and viability of alternatives such as consolidation, blending, and Point of Use or Point of Entry are unsupported.

Commenters state that no analysis of the alternatives was provided and/or that they were not properly considered. In addition, that the cost savings from alternatives were not considered.

The consolidation and alternatives analysis regarding blending and consolidation potential was prepared and added to the documents relied upon. Point of Use or Point of Entry treatment may not be possible for all eligible systems as a means of full compliance due to the customer acceptance requirements, but it has been widely used, and is a viable and permissible compliance alternative for very small systems. These devices are available and can treat to below the proposed MCL.

Regarding cost savings, per statute, economic feasibility must be based on the cost of BAT, which excludes any cost savings from alternatives.

Next slide.

Commenters have also said that they would like a more complete analysis than is provided in the Consolidation and Alternatives Analysis, as more time, funding, and technical assistance will be needed than was acknowledged.

This analysis was limited to the available source data. And, to reiterate, statute requires that economic feasibility be based on the costs of best available

technology.

Therefore, no further analysis is proposed at this time.

Next slide.

Commenters would like economic feasibility to be recalculated or confirmed based on various asserted shortcomings. For example, that the analysis does not employ best practices, lacks analytical rigor and transparency, is results-oriented, does not fully capture the cost of compliance, lacks a cost-benefit analysis, underestimates costs and/or focuses on unrealistic costs.

Next slide.

The economic feasibility analysis complies with statutory requirements, employs best practices and conservative assumptions, and exceeds minimum requirements and transparency of factors considered. Those factors included the estimated compliance costs -- total, per system, per source, per connection, per person, and per unit of water; the median average and maximum monthly household cost increases; the types and sizes of affected systems; the impacts of future planned regulations; an analysis of household cost increases by system size; and the variability of unit costs at alternative MCLs.

In addition, conservative assumptions were used, such as assuming that each source would need its own

treatment plant, that no sewer access would be available, and using the highest annual hexavalent chromium concentration over a 10-year period to determine costs.

Next slide.

Commenters requested that cost-benefit and cost-effectiveness ratio analyses be conducted or improved. They also requested that cost-effectiveness be reevaluated.

As determined by the court, a cost-benefit analysis is not required. Only a feasibility analysis is required, which requires an agency to protect public health to the maximum extent possible, constrained only by what is economically or technically feasible. DDW believes that this has been achieved with this proposal and the analysis provided.

As a result, no change is proposed to the analysis.

Next slide.

Regarding affordability, commenters requested an affordability analysis, alternative measures or metrics to determine affordability, an affordability justification for the MCL, and/or a revision to a more affordable MCL.

Per statute, the MCL must be set as low as technologically and economically feasible. The statute does not provide for a different affordable MCL that is less protective of public health.

Therefore, no change was proposed.

Next slide.

Some commenters requested that the State Water Board conduct a Water Code § 13241 analysis, which requires regional water quality control boards to ensure a reasonable protection of beneficial uses and consider specific factors, including economic considerations and setting water quality objectives within basin plans.

The State Water Board is adopting the MCL pursuant to its authorities and responsibilities under the California Safe Drinking Water Act, not the Porter-Cologne Water Quality Control Act. As a result, the analysis required for the MCL derives from the California Safe Drinking Water Act, and the State Water Board is not required to consider the factors specified in Water Code § 13241.

Even though some regional water boards' basin plans incorporate by reference primary drinking water standards as water quality objectives, this analysis is not required when establishing a new or revised MCL. Rather, it was completed when regional water boards incorporated MCLs prospectively by reference to protect municipal and domestic water supply beneficial uses. Water Code § 13241 factors will be further considered if and when the proposed MCL forms the basis of discharge conditions in new or

revised waste discharge requirements.

Therefore, no change is proposed to the existing analysis.

Next slide.

This comment requests that costs to wastewater agencies be included because MCLs are incorporated prospectively by reference into most basin plans as water quality objectives. First, no cost impacts to wastewater agencies are expected from the proposed MCL. Second, even if cost impacts were expected, we cannot predict the effluent limitations in future permitting actions or incremental costs due to Regional Water Quality Control Board discretion for key variables, such as monitoring frequencies; the monitoring timeframe considered in reasonable potential analyses; when permits are renewed, the application of narrative toxicity objectives; and compliance schedules. Therefore, there is no proposed change to the analysis. However, language has been added to the resolution encouraging the regional water quality control boards to avoid imposing unnecessary costs to wastewater agencies.

Next slide.

Some commenters requested that the cost of food producers be included. Food producers are required to meet certain federal drinking water standards, which do not

include standards for hexavalent chromium. In other words, they are not required to comply with state drinking water standards.

Therefore, no change was proposed to the analysis.

Next slide.

Commenters would like the cost analysis to include possible cost savings from alternatives, from existing treatment processes that could be modified to also remove hexavalent chromium, and from the capability of BAT to remove other contaminants. As previously stated, Health and Safety Code § 116365 requires that the determination of technological and economic feasibility be made using BAT. Even without that statutory constraint, data are currently unavailable to support the requested analysis.

Therefore, no change is proposed.

Next slide.

Commenters request an explanation of why RCF was assumed as the predominant compliance choice, and they would like ion exchange to be used more often as a cost basis. First, as confirmed by the external scientific peer review, RCF is widely applicable. Second, peer reviewers generally agreed that RCF is appropriate for very small systems. Third, RCF appears less expensive than other BATs in most cases, even including additional disposal costs

based on the assumption that direct sewer connections are unavailable and the analysis assumes selection of the most cost-effective alternative.

Therefore, no change is proposed to the analysis.

Next slide.

Some commenters requested that health benefits be monetized and included in the economic feasibility analysis, either for a cost-benefit analysis or to reduce the net costs of the regulation.

As previously stated, Health and Safety Code § 116365 requires that the MCL be set as close to the PHG as is technologically and economically feasible, considering the costs using BAT. Therefore, monetizing health benefits would not affect economic feasibility. The court determined that a cost-benefit analysis is not required.

No change was proposed to the analysis.

Next slide.

Commenters wanted the analysis to include the cumulative burden of existing and projected regulations. Section 11 of the ISOR discusses current rates and affordability and considers the impacts of future regulations on overall economic feasibility.

Next slide.

Regarding funding, commenters would like funding to be made available and they would also like support for

the establishment of a statewide program for low-income households struggling with water and sewer bills.

The availability and provision of funding is not a required element of economic feasibility, and nothing about the proposed MCL changes the existing process for pursuing financial assistance. The recommendation for the establishment of a statewide low-income assistance program is outside of the scope of the current rulemaking. However, we recognize that the majority of costs will be funded by water systems and their revenues.

Next slide.

Commenters requested that the compliance period be extended. However, extending the timeline for all public water systems would not be in the best interests of public health. The compliance schedule is a grace period in which public water systems are deemed not in violation of the MCL, and it is not intended to reduce communication to consumers. As previously stated, the compliance schedule was intended to provide time to design complex treatment, allow for existing -- and minimize additional -- supply chain delays, and account for the systems that have the most and least resources available to comply with the MCL.

Next slide.

Some commenters thought the compliance schedule

was too long and requested that the compliance period for the smallest public water systems be shortened from four to three years.

No change was made to the regulation because the smallest public water systems may need the extra time to realize the benefits of developments by other larger systems, and because shorter timelines would increase the potential for supply chain delay impacts.

No change was made.

Next slide.

Some commenters wanted public water system compliance to be required sooner where possible. Terms such as "where possible" or "as short as practicable" tend to be subjective, unenforceable, and noncompliant with the clarity standard of the Administrative Procedure Act. The proposed consumer notification requirements encourage prompt compliance.

No change was made to the proposed regulation.

Next slide.

Commenters would like the proposed BAT to be re-examined because they may not be appropriate for some PWS. The proposed BAT had been confirmed broadly effective through external peer review. Even so, a technology need not be appropriate for all public water systems to be determined as best available technology.

Next slide.

Some commenters would like other means or methods such as stannous chloride without filtration, and other new technologies, to be considered as BAT or approved for use. So far, stannous chloride reduction without filtration has not been proven effective, and staff is unaware of any recent evidence that shows otherwise. The concerns regarding applying stannous chloride without filtration are the accumulation of chromium and stannous in the distribution system, as well as clogging issues for consumers. However, applying stannous chloride with filtration is already proposed as BAT. Any additions to BAT may be considered in future rulemakings.

In addition, a BAT designation does not preclude permitting of alternative technologies capable of treating for hexavalent chromium.

Next slide.

One commenter noted that hexavalent chromium can be detected down to the parts per trillion. While DDW acknowledges that some laboratories are able to achieve lower detection levels, the proposed DLR was set to the lowest level technologically and economically feasible, allowing for adequate laboratory capacity. Commenters also said that the DLR and analytical methods are unsuitable for a wastewater matrix, and should be reserved for drinking

water. The proposed regulations would apply only to public drinking water systems.

Next slide.

Commenters would like the holding time for EPA method 218.6, which is 24 hours, to be extended to that of EPA method 218.7, which is 14 days. In addition, commenters would like the holding times for both methods to be extended per recent U.S. EPA guidance. The evaluation of holding time modifications may be considered in a future rulemaking.

One commenter asked that the required accuracy for EPA method 218.6 be clarified. The required accuracy is specified in that method.

Next slide.

Commenters asked that monitoring waivers be allowed.

The provisions for monitoring waivers for inorganic chemicals are already available at Title 22 of the California Code of Regulations, subsection 64432(m).

Next slide.

There were comments that requested that the proposed regulation account for projects that were already constructed to comply with the previous attempt at setting an MCL for hexavalent chromium, including allowing for compliance points to be changed to after blending.

Projects already constructed were specifically considered in developing the terms of the compliance plans. Data constraints prevented cost accounting for projects already constructed. In addition, changing compliance points to after blending is already allowed.

Next slide.

Some commenters requested that the proposed MCL level of 10 micrograms per liter be peer reviewed.

Per statute, only the scientific basis of rulemakings must be peer reviewed. MCLs are not determined exclusively on a scientific basis. In setting the MCL value, the State Water Board is statutorily required to consider a variety of factors, and where to set the MCL is ultimately a policy decision.

The scientific basis of the MCL has been peer reviewed. Health and Safety Code § 57004, peer review requirements are satisfied by the external scientific peer review of BAT, which was undertaken by the State Water Board, and the PHG, which was undertaken by OEHHA.

Next slide.

Commenters stated that the November 2023 OEHHA public review draft of the hexavalent chromium noncancer health protective concentration is a draft document and should not be relied upon. Commenters also requested that the relevance of the documents added to the regulatory

record be clarified.

This document was included because of the interest in the PHG update.

Next slide.

Now we'll move on to comments from the Environmental Impact Report, or EIR. This comment period was concurrent with the Administrative Procedure Act process. Comments were received from the California Department of Fish and Wildlife, the cities of Winters and Coachella, and Coachella Valley, Mission Springs, and Twentynine Palms Water Districts. The Draft EIR was revised in response to these comments, but recirculation of the report was not required because significant new information has not been added. The responses were provided to commenting agencies at least 10 days before this meeting and provided in the agenda materials, as well as summarized in the upcoming slides.

Next slide.

Commenters state that the Draft EIR fails to properly analyze cumulative impacts, omitting the past, present and probable future MCLs that the State Water Board has adopted or planned, or the various means by which PWS will implement the hexavalent chromium MCL. The cumulative analysis includes 82 previously adopted MCLs, probable future MCLs, PHGs currently under review, and consolidation

projects funded via the Safe and Affordable Funding for Equity and Resilience, or SAFER, program; the Drinking Water State Revolving Fund; or related funding programs.

Next slide.

Some commenters are concerned that an overly stringent MCL could cause water agencies to shift from groundwater to surface water usage, and that the EIR must analyze potential environmental impacts of this reasonably foreseeable shift. Distance, water rights, and the cost of treatment limit public water systems' ability to switch to surface water. The Draft EIR notes potential impacts related to such a switch, including impacts to fish and other aquatic resources. It's too speculative to know which public water systems might increase reliance on surface water.

Next slide.

Commenters say that the EIR dismisses all other alternatives as incapable of meeting project objectives without substantive analysis, and that the EIR cannot dismiss alternatives by concluding that a 10 microgram per liter MCL is technologically and economically feasible and therefore not analyze other legally sufficient alternatives.

The Draft EIR analyzes 9 lower and 11 higher MCLs, including the number of counties affected, and

provides maps showing the locations of contaminated sources for each alternative MCL. The analysis demonstrates the differing environmental impacts from alternative MCLs, as well as the varying degrees to which alternative MCLs meet project objectives. The Board is statutorily required to adopt an MCL that is the lowest technologically and economically feasible.

Next slide.

We reached the end of the comments and responses discussed in this presentation. The next steps are to certify the final EIR and adopt the proposed regulations, which is what we're asking the Board to consider today. If adopted, staff would then submit the fiscal and economic impact analysis to the Department of Finance. The rulemaking must then be submitted to the Office of Administrative Law by the one-year deadline on June 15, 2024. If approved, the regulation would take effect October 1, 2024.

Next slide.

This slide contains some resources, including a link to sign up for the Drinking Water Program Announcements listserv for future announcements.

And from there, I'm going to pass it off to Kim Neimeyer.

MS. NIEMEYER: We have a change that we're

proposing to the Adopting Resolution, and I'm going to read it into the record. We also have copies of it in the back of the room.

So it would be to the whereas paragraph 15. So we have the current language, and then we would add, the State Water Board is adopting the MCL pursuant to its authorities and responsibilities under the California Safe Drinking Water Act. And as a result, the State Water Board is not required to consider the factors specified in Water Code § 13241, even though some of the regional water boards' basin plans incorporate by reference primary drinking water standards as water quality objectives. The MCL would be incorporated as a numeric effluent limitation for a POTW only if appropriate, and only in compliance with applicable laws (including the Federal Clean Water Act and the Porter-Cologne Water Quality Control Act) through a noticed permit, amendment, or reissuance.

MR. LAUFFER: And I'll just take a quick moment. This particular addition to the whereas clause is front and center from comments that have been raised by a number of POTWs about the allegation that the Board needs to consider the Water Code § 13241 factors in adopting this MCL, which is a purely California Safe Drinking Water Act action.

There are some subtleties within this that I think are important for the Board and for all the

stakeholders to appreciate. First of all, the staff -- and it's spelled out in the response to comments for the Division of Drinking Water -- had surveyed the various publicly owned treatment works in PDS permits from around the state, looking to see if any were already monitoring for hexavalent chromium. None of them have effluent limitations. There are a couple that have performance -- well, I shouldn't say. There are several that have -- a couple that have performance goals related to hexavalent chromium.

But in terms of this board action today, if the Board were to adopt the MCL, and it is ultimately approved by the Office of Administrative Law, that is not going to change any of the NPDES permits that are around the state, or the waste discharge requirements for those regional Boards that prospectively incorporate MCLs into the basin plan. Instead, the regions would have to go through the appropriate process to amend those permits to incorporate a limit if necessary. And that's not necessarily a foregone conclusion, you know, based on the data that the Division of Drinking Water staff has looked at, and their consultations with the regional boards. It is not clear that MCLs will be incorporated as numeric water quality-based effluent limitations for most of the, if not any of the, POTWs in the state.

There's an important additional point that I wish to make. There are -- an MCL that becomes a water quality objective is not necessarily incorporated directly into an NPDES permit, or even waste discharge requirements, as an end-of-pipe numeric affluent limitation. The regional Boards can consider mixing zones, dilution credits, and other activities, and that's even after determining that they need to incorporate a numeric limit, which, again, may not happen at all.

I want to make one minor clarification to one of the -- to Slide 34 that was shown by staff in their presentation this morning, which was a statement that was true as far as it went, but there's an important nuance that should be appreciated. And there's a bullet point on Slide 34 that says Water Code § 13241 factors will be considered if and when a proposed MCL forms the basis of discharge conditions in a new or revised waste discharge requirements. The water boards -- the regional boards and the State Board -- do have an obligation when issuing waste discharge requirements, that serve solely as waste discharge requirements under state law, to consider the Water Code § 13241 factors before incorporating a limitation. And that's a principle that was enunciated by the California Supreme Court and the City of Burbank versus State Water Resources Control Board cases. However, for

NPDES permits and those waste discharge requirements that serve as National Pollutant Discharge Elimination System permits, a provision of the Federal Clean Water Act specifies that states have to include limitations necessary to implement Water Quality Standards. And in doing so, they do not have to consider economics.

Now, this gets into the issue that, one, we did not identify any NPDES permits that would be required to incorporate a new limit based off this MCL, if the Board were to adopt the MCL and then have it be prospectively incorporated into the Regional Board's basin plans. But I do want to make it clear that in that circumstance, if there ever were to be a case of an MCL being adopted, and then it being prospectively incorporated into the Water Quality Control Plan as a water quality objective, and it's for a water of the United States, and subsequently a regional board determines that it has to incorporate limits to achieve that water quality objective, then under the City of Burbank decision, it would not have to do the Water Code § 13241 analysis at that time. It's a nuanced issue depending on the law, depending on the MCL, but I wanted to make sure that folks didn't draw too broad a conclusion from the bullet in Slide 34.

CHAIR ESQUIVEL: I appreciate that caveat, and appreciate here the attempt to try to address what I know

is not just an issue with this MCL, but just an ongoing policy issue that I know the POTWs are concerned around the applicability of -- or just automatic applicability, somehow maximum contaminant limits, to then permits, and work. And so I appreciate the clarification and good work.

And broadly, just thank you. As you acknowledged, Mr. Polhemus, it's taken us some time to get here on this maximum contaminant level and this vote. But as we know with the federal government here now with final PFAS MCLs, where we have a lot of other work to continue to try to move on, and so not to predetermine our vote here, just glad we've gotten to this point. And just appreciate all the good work and input. Water systems, communities, importantly, and NGOs and technical advisors here to help give us our best shot here. So just thank you for all of that.

And then look to fellow board colleagues, if there's any questions or comments off the bat, we do have about 21 commenters and we'll largely take them in order of requests received.

Board Member Firestone?

BOARD MEMBER FIRESTONE: Thanks. And mostly we'll hold until after public comments, but I just wanted to flag some things that I think might help with commenters, thinking about how they -- understanding some

of the dynamics here.

So first of all I'll just say, I mean, I think we're all very frustrated, as you said, with how long this has taken and throughout. You know, from not just the most recent, but I'm talking like since, you know, 2012 or even 2005. So I think there's a lot of need to actually get this in place, and I'm grateful for all of the work, a lot of process. And I also think that we're landing at the right place for now. I do think that a couple things I just wanted to highlight and make sure I had correct.

First of all, I appreciate the work on the notices, and that, given that we have built in a compliance period, as you said, I think that's a very important counterbalance to that, is we want people to be able to comply with the MCLs we set, and we want to be realistic about the time that it takes. But we also need to make sure that consumers have information about the water quality that they have, and that all water systems are moving as quickly as possible, and there's adequate priority given to this as a public health protection.

What we're talking about here with the MCL is one of the least protective MCLs that we have, if we adopt this. And, you know, it is comparable to things like arsenic or disinfectant byproducts or some of these things that are priorities for us to reevaluate. And I think

there's -- you know, I'm comfortable right now with where that is, but I just want to make sure that I understand what, and are clear with the audience that -- and the public -- is we do, is it five-year reviews of all of our MCLs? So just like with, whether it's arsenic, perchlorate, disinfectant byproducts, we're in -- we have, as we went through our priority for drinking water regulations, we go through our five-year review to be able to look at, do we have the MCLs set correctly? Should we look at lowering them? Should we look at changing them? You know, we factor in all the -- if there's updates to public health goals, and detection limits, and things like that.

So can you just -- so even if this is, you know, less protective now, all, hopefully this technology also will continue to improve in terms of affordability. And we can be looking at whether it makes sense in a five-year review, and once public health goals are also reviewed, to look at if we should be lowering it to be more health-protective or to be closer to the public health goal.

MR. POLHEMUS: Yeah. So Ms. Hall can correct me if I'm wrong, but we do have a requirement to review every five years. You may remember we call it the quinquennial review, when we do our presentation to you on what we're doing.

However, I think the reality is we're constantly reviewing. We're constantly in contact with OEHHA, we're monitoring for public safety, we're not blind waiting for five years to come along until we understand that there's been a substantial change to something. So we're not limited to waiting five years. If something happens that modifies the MCL in either direction and we find, you know -- and with input from the Board on how to prioritize that, we'd proceed at that time and not have to wait.

So yes, you're correct, but I'm not sure how meaningful it is in the grand scheme other than it does put a cycle for us to kind of contemplate everything holistically on a five-year review.

BOARD MEMBER FIRESTONE: And we do the annual prioritization. So that's also a time for folks to weigh in, right?

MR. POLHEMUS: Right.

BOARD MEMBER FIRESTONE: In terms of what our priorities are for -- and I guess, similarly, you know, there's -- I know there's a lot of pilots going on with stannous chloride, and it seems like that could be somewhat of a -- you know, that or maybe other things could be somewhat of a game-changer in terms of costs. And, but -- and sorry if you talked about this while I was out -- but if, could you just, you know, if there are new technologies

or, you know, we get those types of treatments through the process -- and I know, I understand for that one, it's very site or system-specific.

But you know, it seems to me that could be also a reason to relook within this process of prioritization about whether we got the balance right.

MR. POLHEMUS: Yeah. Correct. There's always a feedback loop between the initial establishment of an MCL. And this goes towards why we set compliance levels for large systems that will be able to explore different possibilities associated with treatment. And hopefully, you know, there are discoveries made in that process that are beneficial to both them and the public as we go forward, and then those can be incorporated at a later time. There is -- what tends to happen, and this is kind of a function of when we're doing a BAT, or a best available technology approach, is we do a broad sweep of -- it's largely applicable. It works almost everywhere. And what we do find in many instances is that, you know, water chemistry can vary dramatically, and a treatment method that we wouldn't be able to say is the best available technology could be applied in a specific instance. And as that becomes available, certainly the consulting and design engineering world will make that aware, and people will take advantage of those understandings where, in that

instance, it is a possible treatment approach.

BOARD MEMBER FIRESTONE: Okay. I guess the only -- the only other thing I'll mention off the top here is -- and I look forward to hearing from the public on this item -- but is, you know, this, as with many things, a new MCL imposes more costs, and that does challenge affordability. And we have an affordability crisis that will continue to get worse around many things in our state, but certainly water continues to need financial support, financial assistance, and affordability programs across the Board.

I don't think that's only true for new MCLs. I think that's true for, given our changing climate and, you know, the cost of public works increasing, and many other things. But I think we all agree that that is a priority. We do have processes coming up in terms of our intended use plan and fund expenditure plan where I think this will be front and center -- or one of the many things, but front and center in terms of how this gets factored in.

But this is a bad budget year. This is a very, you know, challenging time for figuring out how to prioritize public funds for infrastructure, and so I think we just need to be sober and honest about that. But I do know that this is a priority and one that will be discussed very clearly and intentionally within those funding priority processes, because we recognize this as a real

need.

CHAIR ESQUIVEL: Thank you, Board Member.

Board Member Maguire?

BOARD MEMBER MAGUIRE: Yes, thank you for the presentation. And just teeing off of Board Member Firestone's comments a little bit here.

I've shared the frustration. It's been a long time. Many years that this has been I think the number one priority in our annual priority-setting for drinking water, to bring this MCL proposal to us. So I appreciate that we're here today. It's a long time coming. And I think it's been seven years since there was last an MCL for hexavalent chromium in California. And a lot of the challenges surrounding that, not to get into the history so much, but the premise is the economic feasibility, and the impacts to affordability ultimately, that Board Member Firestone was referring to. So I share those concerns, and appreciation for just how difficult that balancing is, and how difficult it is to make those decisions.

Because certainly there are systems -- there are small systems here that are going to struggle regardless to meet this MCL based on the investments that they have to make. It is going to impact affordability for many small systems. We knew that, the economic analysis shows that, and that's what makes this decision so difficult in part.

So I just want to flag that, and I, too, look forward to discussions about solutions and ways that we can help assist those systems that are going to struggle to meet this, in particular in light of all the other things that are going on.

And I guess I do want a little bit of a clarification and a question. I appreciated the slides on the public health goal review process. And there is this balancing in this seemingly ongoing process here to continuously review MCLs, continuously review public health goals. And so we're always in this, a little bit of a state of uncertainty. I understand that. That's why I'm somewhat comfortable here today. But at the same time, we are in this place where the hexavalent chromium MCL -- or PHG, sorry -- is being actively reviewed by OEHHA. It is a process that's happening. They're partway through it right now, so it is a little bit of an awkward space to be here, knowing that they've actually reviewed and revised part of the public health goal already on the noncancer, and I don't know what the outcome will be on the cancer risk.

So me being a very procedural and sequential person, ideally, I find myself wanting to know the answer to that question first in a perfect world, but I know that's not where we're here today. And I, again, feel that urgency and frustration with having this process having

taken so long. So I was not expecting that PHG review process to be happening now, so this was an unanticipated surprise certainly, but here we are, and so I do appreciate the addition of the resolution resolved number eight language to direct staff to monitor the updates to the public health goal. And, you know, if it is revised, and I think the implication is particularly -- if it is revised either way, I suppose, to reconsider that at an appropriate time.

And so we are here today. Board Member Firestone is correct, where the MCL could be set at a fairly substantial distance -- if you will, risk-level -- from the existing public health goal.

But I'd like to ask just some clarification on what, what if the other, because we don't know the outcome yet of OEHHA's process. So what if we find ourselves in the opposite situation, the other side of the coin, where the public health goal is revised upward, unexpectedly, to greater than ten? What happens at that point?

MR. POLHEMUS: Yeah.

So before I answer that directly, let me just say that we certainly recognize that, and I was pondering this recently. I mean, the instant we have a PHG and then follow through with an MCL, we're at that minute at risk of some new science happening.

So, we're always in a state of doing our best to evaluate where we think we're at, and the appropriateness of it, and it's a continuous balancing. You know, the chances of that happening, hopefully, are always slim, and we try to keep an analysis of what's going on in the science at the time to be comfortable with, are there studies that are going to upset this? And would it be prudent then to wait, or not wait?

And that's kind of what led us to where we are here today. We're always working with our partners at the Office of Environmental Health Hazard Assessment, OEHHA, to kind of keep track of, together with them, the status of the studies, the health predictions, the work that's all going on around, especially something like chrome-6, which certainly has a fair amount of controversy around it and a public focus that is more than many other contaminants, for sure. So from that, and of course, knowing the comments we were continuing to get, we started our MCL work here on the original PHG, and confident as staff that that still was both distance enough from where we felt we were going to be able to achieve technically and economically feasible for an MCL, that the variations that were likely to happen from a revised MCL would not jeopardize both the MCL we set to establish a health protective level, and then the investments, of course, that follow by public water systems

to achieve that and provide that public health goal or public health protection for their public.

In response to that, I did ask OEHHA to proceed, go ahead with a PHG to try to move it forward. And a PHG contains two components, both a noncancer health endpoint and a cancer health endpoint. In this instance, the noncancer health endpoint tends to be easier to derive, and they were able to work on that and get that draft out as we put in our public notice, so that it's part of the record. We think that provides further confidence that, you know, of this two-part, whichever value is lower, the cancer or noncancer, you will be the likely PHG that's proposed by OEHHA, or set by OEHHA, and that we would follow through with.

In this instance, as was noticed, they did adjust upwards the noncancer health goal from two to five, and in making that change in number, certainly one would be, like, well, what's going to happen to other things? They are here today to answer in detail. We did ask them to attend, and I hope -- hopefully I'm getting this all right, so they can tell me if I'm not. But I think what was confidence building to me in our conversations with them was that the noncancer number used the same studies that were used before, but the value that changed was because the modeling techniques they're able to apply are more accurate and

better refined from when they did that original estimate. So it really wasn't that the data set, or the studies that they looked at, had provided any new information. It was more that they were able to be more refined in their finding of the five number compared to the two before. So basically, eliminating some safety factors and being able to be a little more precise.

That five number is quite distanced from the 10 parts per billion that we're proposing. And so we feel confident that -- that only added further to our confidence that when they do establish a PHG, and in my conversations with them as well, that the cancer number, if it modifies, would still be somewhere near where it is. And if it isn't, if something happens in that review, which is still being done, five would then be the de facto PHG, and we would then still be unable to achieve that with our MCL setting.

So I guess that's a long-winded answer, and I think I kind of covered what you were asking for, but it kind of gives to our confidence associated with where we're proceeding and why we proceeded with it, and some confidence going forward.

If something changes, and if tomorrow they decided that there was some fatal flaw and their five -- and their cancer number is non-existent, and we have a

whole new assessment of that, we could basically withdraw the regulation very quickly, and then start over with that PHG so we could take it off the books in a very fast fashion, so that -- like we did when we lost the court case. So it is much easier to remove it than it is to build the case to put it in place.

BOARD MEMBER MAGUIRE: Yeah. That's very helpful. Thank you for that explanation.

And for me, I think, again, it's that balance. It's wrestling with, does it change the economic feasibility quotient part of this decision? I don't think it does here, but I think your explanation of these different scenarios, which we're not anticipating, is very helpful for me. And knowing that there's many, many, you know, other potential maximum contaminant levels down the pipe here, lots of contaminants of emerging concern. We're dealing with EPA just finalizing their rule on PFAS. So I really do have this front of mind in how we do this balancing, how we look at economics and affordability and feasibility of addressing all of these needs.

So thank you for that.

CHAIR ESQUIVEL: Yeah. Thank you, Board Member. I know it's front of mind for all the folks here at the dais. And, you know, I know it's easy, it's natural to want certainty. And I, you know, we hear that oftentimes,

I know from water agencies and others. It's like we just -- we want some certainty. We don't want to suddenly kind of be pulled in different directions. But, you know, regrettably, that's the way science works, is that there's a certain level of certainty we can build in here, but ultimately we will go off of what new science has produced, and we have to be open, but also have some confidence to actually be able to act. And I think that strikes the right balance here. So appreciate that.

Let's move on to our commenters. Not seeing any further comment from the dais. And I know we customarily allow elected officials to go first here. And I know we have Dr. Frank Figueroa from the City of Coachella, who I'd like to call up first. We also have Castulo Estrada, who's from the Coachella Valley Water District and also City of Coachella. So I'd elevate and call him up here next and afterwards, and we'll get into folks in order of comment requests received.

Oh. Apologies. I think the mic is off, just a button there at the top. You should be good.

MR. FIGUEROA: Good morning. Now you can hear me.

CHAIR ESQUIVEL: Yeah, we can. Thank you.

MR. FIGUEROA: Good morning, board members. On behalf of the City of Coachella, I want to urge you to

provide water systems with the time they need to comply with the proposed MCL for chrome-6. In the City of Coachella, like most of the Coachella Valley, chrome-6 is naturally occurring and has been in our water since before the modern Coachella Valley existed.

In response to the 2014 chrome-6 MCL adopted by this Board, which mirrors today's proposal, the city spent $400,000 on design plans to build a strong base annual exchange system to reduce chromium-6 from its drinking water, a project that would have cost $36.2 million to construct. Once passed to the city's water users, the cost of the project would have increased average customers' bills to $96.36 per month, an over 120 percent increase in the water rates per customer over a five-year period. This increase would have pushed the city's affordability index to 4.4 percent of median household income, almost three times higher than the 1.5 MIH threshold used by the state to determine water affordability.

Since then, updated costs for construction of the system are closer to $90 million, with average monthly bills increasing by almost 500 percent, an insufferable figure for a community with an average yearly income of $35,000. Our city is currently working with the Division of Drinking Water to develop a pilot project to test the efficiency -- efficacy of stannous chloride to reduce

chrome-6 from our drinking water, but despite that, we are unlikely to meet the aggressive compliance timeline being adopted today because of the time it will take to design, implement, and then operationalize the study's results. A five-year compliance timeline is the right thing to do, and we urge you to consider including this as part of your vote today.

Thank you.

CHAIR ESQUIVEL: Thank you, Dr. Figueroa. I appreciate your comments. And note, again, affordability is top of mind and assistance for our system. So know that that's definitely part of the Board's consideration here.

Board Member Firestone?

BOARD MEMBER FIRESTONE: Yeah. Thanks.

And I appreciate how much Coachella -- and I know I think Castulo is going to be talking as well -- but just to follow up on this issue, Coachella certainly hasn't been sitting on its heels. As you said, you've been doing a ton to try to proactively identify what are viable options for your community, which I really appreciate. And I'm wondering if maybe the attorneys or some of our staff could just talk a little bit.

So we're setting compliance periods, but within -- now I forget if it's 90 days or 30 days -- within a certain amount of time, systems need to identify, you know,

a timeline or a plan of some sort. I know we took away the details of the plan requirement, but to be able to achieve compliance. And I'm wondering what our options are when for individual systems, like Coachella, where we recognize that there's -- you know, this happens with other things where people may go out of compliance -- but where we recognize that it's going to take some time, even with doing everything they can to get to address a contaminant problem. Do we have the ability to issue, like, a time schedule order type thing or something that provides them some clear pathway that's individualized for a very unique individualized system like that?

MR. POLHEMUS: So I'll start here. So correct that they are required to give us a compliance schedule within 90 days of knowing that they're going to be out of compliance. That compliance schedule has, you know, several milestones in it that we're requesting that they provide us so that we know that they're on a path to achieve compliance, and not waiting until the last minute to surprise us that they didn't get there. It's conceivable, and part of the balancing as well, that when we established a broad-based compliance period, the three windows of time that are based on water system size, knowing that some of them will not be able to achieve that. That was reflected, I believe, in our changes not requiring

that it show that they were going to achieve it, but rather when they were going to achieve the deadline, or achieve compliance.

So in the theoretical of a water system that isn't able to do that, you know, they run then into our enforcement discretion component. If they're vigorously and actively pursuing as we would expect a compliance, but aren't able to achieve it by the time the MCL becomes effective, then we would contemplate at that time -- it's not required, but we could put them under an order that would have some level of modification or refinement of the schedule they gave us before. We would certainly do that in consultation with them as well, and that does provide them a path. I think the difficulty water systems face is, while we've done that, it doesn't forgive them from continuing to do the notification. And at the time that the MCL becomes effective for them, they have to begin notifying that they are out of compliance with the MCL. And so even though we've provided an order, they will have to continue to do that notification. And of course they are always balancing confidence of their water with their customers, as we want to be a partner in that as well. And that's probably more the issue than anything associated with when that schedule kicks in.

BOARD MEMBER FIRESTONE: Okay. Great. So, and

there's not, is there -- if we did an individualized order in that type of situation, is there liability in terms of citizen suits for that system, outside of what -- any enforcement action we would see?

MS. NIEMEYER: No. There's no liability for citizen suits, in part because this is just a State standard. So under the Clean Water Act, they wouldn't be liable for non-federal MCLs. Also, there was some case law that also limited the ability for -- or limited liability for violations of the MCL, finding that, you know, not being in compliance is -- and continuing to serve the water is part of the regulatory process, you know, as they're getting into compliance. It's not unless they were told not to serve the water that they could face liability.

BOARD MEMBER FIRESTONE: Great. Okay. Thanks. That's really helpful.

I mean, I do -- I think there's a big difference between, you know, folks that have been sitting on their heels and not diligently working on trying to address this issue, and, you know, the example of, I think the City of Coachella has been diligently trying to work through, and is actively doing pilots to try to figure out a process.

So, you know, I would certainly expect and have full faith that we would be working with the City and others in that type of situation to figure out how to make

sure that, you know, we help them find a pathway that's realistic for their consumers.

But also, you know, I do think that in terms of this issue of if you're in compliance or not, we are making it a priority to make sure that there's good communications with consumers in the water systems about the quality of the water, and there is a problem. And then it provides an opportunity for the water system to talk through with customers this tradeoff between, you know, moving really fast, but only having super expensive options that are going to send rate shock and maybe be out of reach of consumers, versus giving a little more time but seeing if we can get something that's more affordable for the community. And so hopefully, stannous chloride will work in that area, and this, you know, we can find a pathway forward.

MR. POLHEMUS: If I may add, Chair and Board Member Firestone, I think it's important to emphasize the consideration that we would give in that situation if a system was pursuing an alternative treatment and knowing that they needed more time to do that, that that would be considered in the specific instance of their case. That we wouldn't just blindly say, well, you could put on the more expensive treatment and move forward, knowing that they were there. Of course, we would want to see them

diligently pursuing that, and have a realistic time associated with that study, but we would certainly contemplate that and take that into consideration.

CHAIR ESQUIVEL: Yeah. Thank you, Mr. Polhemus and Board Member. Definitely here to make sure we work with systems.

And again, the amount of effort being seen from the systems is really important as we understand how to balance when it comes to our expectations on timeline for meeting the MCL and the sort of flexibility we're willing to give them.

And in the vein of those that have been doing quite a bit, I do want to call up Castulo Estrada with Coachella Valley Water District and City of Coachella.

MR. ESTRADA: Good morning. Can you hear me?

CHAIR ESQUIVEL: Good morning. Yeah. Thank you for joining us.

MR. ESTRADA: Hi. Good morning board members. For the record, my name is Castulo Estrada. I'm the Board Vice President at the Coachella Valley Water District and the Utilities Manager at the City of Coachella.

Both the Coachella Valley Water District and the City of Coachella appreciate the efforts that the State Water Board has put forth to establish the proposed hexavalent chromium MCL to protect public health. However,

the City of Coachella and the Coachella Valley Water District remain concerned that the impacts to its residents and customers will be unprecedented. The Coachella Valley Water District and the City of Coachella and the Coachella Valley at large will be the most impacted public water systems by the MCL, should the rule be adopted today.

In particular, regarding the City of Coachella, six of its six wells -- that's 100 percent of its sources -- have chromium-6 elevations above the MCL that's being proposed. Since 2016, the city has proactively been researching the most cost-effective treatment technology, such as stannous chloride, besides other approved best available technologies, as Council Member Figueroa mentioned. We've been doing this to try to comply with the proposed MCL. And yet ensuring the cost of water remains affordable to our customers, specifically for our customers in the City of Coachella, that seems to be very unlikely. For the reasons that Dr. Figueroa mentioned, we have revised our cost estimates, and we're looking at about a $90 million project if we have to implement the best available technologies to six of our wells. That's about $15 million per well, and that will increase our monthly bills from $43 to $240 a month within three years of implementation (indiscernible) to do this within three years. And as he mentioned, that's a 500 percent increase,

which will require significant state funding for us to implement this treatment.

The proposed compliance period of three years for water systems such as ours remains a challenge. The Federal Safe Drinking Water Act allows for a period of up to five years for water systems to install capital facilities needed to comply with new federal drinking water MCLs. We urge you to consider this compliance timeline as a base period for which water systems should strive to comply with the proposed MCL. This is necessary to allow for planning, designing, funding, permitting, and for the installation of these new treatment facilities.

In conclusion, the City of Coachella urges the State Water Board to, one, establish funding to support water utilities with the capital costs that will incur, thus lessening the burden of rate increases to our rate payers; two, adopt a five-year compliance period; and three, dedicate resources in the review and approval of proposed capital projects, as time is of the essence for compliance.

And I do just want to point out one more thing, is we actually did secure -- the City of Coachella secured an appropriation through the State budget last year with the help of Senator Padilla and Assembly Member Garcia, specifically to look at whether stannous chloride was a

viable option. I know that the Division of Drinking Water has some questions that they're still trying to answer. And we're hoping that by means of this pilot project, we can gather more information and hopefully address all the concerns.

So with that, I just want to thank you for your time.

CHAIR ESQUIVEL: Thank you for your time, and for those comments and engagement, Mr. Estrada. Appreciate it. And again, points well taken on the concerns around affordability, and certainly front of mind as we think of this MCL and others coming down the line, and how we best support the leadership and the work and, importantly, the health of our communities. So thank you.

Next, I'd like to call up Robert Chacanaca who will be followed by Ana Maria Perez, and then Silverio Perez, and then Roberto Ramirez.

MR. CHACANACA: Thank you for allowing me to give this brief comment to you.

CHAIR ESQUIVEL: Thank you.

MR. CHACANACA: I live in Monterey County, North Monterey County in particular, and I have heavy metal, which you call chromium-6 in my well. Also, arsenic and other wells in the area have chromium-6 nitrates as well. Our water is technically polluted.

I've been listening to the conversations that are going on here. And I want to say, you know, seven years, and you're not moving the needle much here. So it's not very impressive, first of all. And then I want to segue because we're hearing a lot about costs. Costs, costs, costs. We're hearing a lot about it. I want to ask the Board, what is the real cost when you have to say to someone, well, I'm sorry, your child has cancer? Cancer caused by water that was polluted. What does that cost? What is the cost to the families? What is that going to be the cost? What is that one of your relatives? What is that for your parents or your children? Who's going to provide for that cost?

So there's a health care cost that comes into fact that we have water that's polluted. You need to set the level to a safe drinking level, not the level that was set ten years ago or seven years ago. That's not acceptable. It's just not acceptable. So I would encourage you to do the right thing and give us clean, safe drinking water, regardless of what the economic cost is because the human cost is far more greater.

Thank you.

CHAIR ESQUIVEL: Hear, hear. And thank you, Mr. Chacanaca. I appreciate those good comments here, and agree. Next, I'd like to call up Ana Maria Perez, to be

followed by Silverio Perez, and then Roberto Ramirez and Saul Reyes.

MS. PEREZ: (Statement is given in Spanish and then translated by interpreter.)

CHAIR ESQUIVEL: (Response given in Spanish.)

MS. JIMENEZ: Hi, I'm Maraid Jimenez and I'll be providing translation.

She said, hello everyone present. My name is Ana Maria Perez and I come from the Central Coast community of Royal Oaks. Today, I come here representing my community, since, because of work, many cannot be here. Our community is affected by water contamination with chrome-6, nitrates, arsenic, and 1,2,3-TCP. Many people from the Central Coast live daily with this problem, and no one does anything to help us.

Today, I'm here because the State Water Board again has failed us. Since 2017, we've been waiting for a maximum contaminant level for chrome-6 that will protect our health. And after all this time, it's been kept the same. It's not fair that many people have to get sick and even die because the State Water Board has not done their job well. With all my heart, I ask that you establish a level that is lower, and that protects our health and protects the health of our communities in California, and that it be done as soon as possible and not in another

seven years.

Thank you.

MS. PEREZ: Okay. Thank you.

CHAIR ESQUIVEL: Gracias. Thank you.

Next, I'd like to call up Silvio Perez, to be followed by Roberto Ramirez, Saul Reyes, and then Kala Badu -- Babu, apologies.

MR. PEREZ: (Statement is given in Spanish and then translated by interpreter.)

MR. ENRIQUEZ: Good afternoon. My name is Pedro Enriquez. I'll be translating.

So, hello. My name is Silverio Perez. I live in the Royal Oaks community in Monterey, with Rhodes, Johnson, McGinnis, and Live Oak. So in our community, we have different contaminants such as nitrates, 1,2,3-TCP, and chromium-6. These contaminants worry us and we're worried about our health, and right now we're working on short-term and long-term solutions to ensure that we have safe drinking water in our community.

MR. PEREZ: (Statement is given in Spanish and then translated by interpreter.)

MR. ENRIQUEZ: So as you understand, we're very vulnerable in our community, and we're asking you to provide more, stricter protections, and to ensure that the people in this community are safe, and that they're able to

live the lives that they want to. And, you know, we want that to happen, you know, within the next five years, or as soon as possible.

Thank you.

CHAIR ESQUIVEL: Thank you. (Additional response made in Spanish.)

MR. PEREZ: (Response given in Spanish.)

CHAIR ESQUIVEL: Gracias.

MR. ENRIQUEZ: Yeah, very heartfelt. And hope you support us.

And then one caveat: Roberto Ramirez isn't able to speak now but he will later on, maybe like 20 to 25 minutes.

CHAIR ESQUIVEL: Okay. Thank you for that. Thank you. Thank you.

We'll come back to Roberto Ramirez, and next would like to call up Saul Reyes and followed by Kala Babu.

TECHNICAL SUPPORT: Chair Esquivel --

MR. REYES: Yeah, I was just unmuting.

Hi. Good afternoon, Water Board. My name is Saul. I represent the community of Royal Oaks, and the Central Coast.

Like many of my community members here that came before me, I share that sentiment that the State Water Board has let us down once again. I have a private well

where we get our water from, and it's heavily contaminated with the hexavalent chromium. Our last reading level was at 31.4 micrograms per liter, and, yeah, I'm just here to share that sentiment of disappointment with the Water Board, that they've been slow to establish a rule that protects our health, of our families. It feels like a great injustice.

And yeah, thank you.

CHAIR ESQUIVEL: Thank you. Mr. Reyes, I appreciate the honest frustration and your being before the Board and communicating that on I know what is an important issue, but I know folks are looking for something more protective. And so just appreciate you being here and being part of the discussion and conveying that here to us.

MR. REYES: Yeah. Thank you for having me.

CHAIR ESQUIVEL: Thank you.

Next, I'd like to call up Kala Babu, to be followed by Andrea Abergel and then Joanne Le.

MS. BABU: Thank you, Chair and board members for the opportunity to speak with you today. My name is Kala Babu. I am a legal fellow with Community Water Center, and I just want to highlight a few points in my public comment.

The Board is required to set the MCL as close as feasible to the PHG, with a primary emphasis on protecting public health. With an MCL that's over -- that's about 500

times the PHG, it's really difficult to see how that is the Board prioritizing public health. The Board concedes that a lower MCL may be technologically feasible, but it avoids backing a more protective standard by claiming that it's not economically feasible at this time to set anything under 10.

But really, the term economic feasibility is a political, or formal, or nicer way of saying, sure, we can probably lower this technologically, but do we want to pay to protect more Californians? But public health and human rights are not something to be balanced in a cost-benefit analysis. So at least the way that we approach cost should be taken with a broader perspective. Include consolidation, include blending, include alternative water supplies as part of this cost analysis.

The reason that I'm bringing that up in my public comment is that these are the methods that are most likely going to be relied upon in order to comply with the MCL, not these expensive treatment techniques like ion exchange. In fact, the Board's own staff had issued a report that stated 36 percent of systems can meet the MCL through consolidation, which that percentage doesn't even include the number of systems that are currently undergoing consolidation, and 43 percent of systems can meet the MCL through blending. So ultimately, the Board constrained

itself by relying on these unnecessarily high costs, and in doing so failed to set an MCL as close as feasible to the PHG. Truly, we have yet to understand how low this MCL could go, and how many Californians we could protect. This MCL also creates the illusion that it is safe to consume water with this amount of hex-chrome in it. A cancer risk for 500 out of every 1 million people doesn't sound very safe. This is especially because it's low-income communities and communities of color that are carrying the weight of contaminated drinking water, like you heard from our partners from Central Coast.

Our Central Coast community partners and EJ communities, just like theirs, are the ones who are dealing with the immediate and the long-term consequences of the Board's decision. And unfortunately, getting help for them after their water tests higher than 10 micrograms per liter is going to be too little too late.

And I just want to wrap up by iterating -- or I guess reiterating -- the California Human Rights Water since I know everyone has that memorized. That is, every human being has the right to safe, clean, affordable and accessible water. Again, exposing 500 people out of every 1 million Californians to cancer risks due to hex-chrome does not uphold this human right. This is a state that has nearly 39 million people. So we urge the Board to

reconsider and adopt a lower MCL to protect all Californians.

Thank you.

CHAIR ESQUIVEL: Thank you as well. Really appreciate the good comment here.

And actually a quick question for our folks: can you remind me of the population that we know currently is served by systems that aren't going to be meeting the MCL? Just -- if you don't have it on the top of your head, just because I know it's a subset of the 39 million that we have in the state and trying to have a good sense of it.

MR. POLHEMUS: Give us just a minute to look that up.

CHAIR ESQUIVEL: Okay, yeah, we can come back to it. Let's -- we'll continue on hearing from folks.

Next, I'd like to call up Andrea Abergel, to be followed by Joanne Le, and then Nick Blair.

MS. ABERGEL: Hello, good afternoon, Chair Esquivel and board members. Andrea Abergel, Manager of Water Policy at CMUA, the California Municipal Utilities Association. The -- you know, I'll mention already, the adoption of this primary drinking water standard has definitely been a long time coming, so I'm happy to be here today to see it across the finish line. I just want to acknowledge that as some of the board members have already,

there's going to be some ongoing needs for water systems to get to compliance.

CMUA's Public Water and Wastewater Agency members are strong advocates for the Human Right to Water, and do all that they can to make sure that water they deliver to their customers is safe. CMUA has been involved with the MCL process for many years with some of our fellow associations, and we've offered feedback and suggestions where possible, but our feedback has been consistent: Water systems need sufficient time and funding to get to compliance.

There are many factors that are not within a water system's control that would impact compliance. Permitting can take one to two years. Acquiring funding can take additional time. Actual construction, performing environmental mitigation efforts, can delay the project. And then, in some areas, there are factors even beyond this that are not foreseeable that could further complicate compliance, so systems are working towards compliance. We know that. We hear some of them here today, but they might need additional time. So we really appreciate the acknowledgement from staff and from the Board that maybe we need to work with systems individually to help them get there.

So we support the standard the Board is adopting.

We just ask that the Board consider enforcement flexibility, which is something that Board Member Firestone, you mentioned, some sort of time order to get to compliance. Work with those water systems on their extenuating circumstances and hardships just might take a little bit longer than the two to four years prescribed, depending on the system.

So just another important limiting factor, and this has been talked about ad nauseum, but the actual financing for treatment is a big concern. You've heard during that first public comment period, I think it was August, that many communities are going to have to spend millions to get to compliance. You're going to hear -- continue to hear that today. It's untenable for some of those communities. So we, to the extent possible, encourage the Board to prioritize funding through SRF or other pots, acknowledging this is a troubling financial year for the state and the budget. But as time goes on, look for financial and technical support for those communities so they can get to compliance in the most feasible way.

So we know, you know, this has been a long time. We encourage the Board just to wrap up, to continue working with water systems on solutions that are best for their communities.

Thank you for the opportunity to be here again and provide these comments.

CHAIR ESQUIVEL: Thank you, Ms. Abergel.

Next, I'd like to call Joanne Le, followed by Nick Blair and then Nataly Escobedo Garcia.

MS. LE: Morning, Chair Esquivel and members of the Board. My name is Joanne Le and I'm the Director of Environmental Services with the Coachella Valley Water District.

To echo Dr. Figueroa, and our Director Estrada, on our appreciation for the effort that the Board has put forward to establish this MCL to protect public health. As reflected in our written comments, CVWD remains concerned that the Board has not followed all requirements of the rulemaking process, including as set forth in the Health and Safety Code § 116365, and of the California Environmental Quality Act, as staff acknowledged this morning. CVWD reiterates its written comments expressing these concerns, which were not addressed by the Board's responses to comments, and as mentioned before, CVWD and the Coachella Valley are going to be the entities that are most impacted by this regulation should it -- is adopted today.

Our -- 34 of 93 of our wells have chrome-6 concentration above 10 parts per billion from naturally

occurring chrome-6. And thank you for recognizing the challenge that we have in the Valley. The region, there's been regional collaboration in looking at more affordable treatment technologies such as stannous chloride, you've heard, to comply with the proposed MCL, as well as trying to keep rates low for our customers, and especially the disadvantaged communities.

So we would like the Board today to direct staff to timely working with us on these demonstration projects to move our process forward. And construction of an approved BAT at all of our 34 wells will cost approximately $510 million, and that's approximately $15 million per well, which will result in a rate increase from $36 a month currently to $146 a month within three years of implementation. That's about 300 percent in rate increase. So significant state funding will be required to implement this MCL.

So our district would like the Board to express today a firm commitment to working with our water systems to fund this effort. And just to echo the compliance period, two years for large systems with 34 impacted wells, such as ours, remains a challenge and unrealistic, as Board Member Firestone has mentioned earlier and has recognized. So -- and while we recognize that you would be working with us on some sort of specific compliance plan, we urge you to

adopt a more realistic five-years compliance schedule.

In addition, public noticing requirements during the compliance period should be clarified to make sure that the public is receiving clear and accurate information on the efforts that their public water utilities are making to comply with the rule.

And for that, I thank you for your time.

CHAIR ESQUIVEL: You as well, Ms. Le. I appreciate that.

Just a note for folks. I think right now we have about 15 commenters left to get through. We are approaching what is, you know, traditionally a lunch hour here. We'll just continue on as opposed to breaking for lunch and then coming back, because I know that there's folks that have traveled a long way to come up here. So just to allow folks to be prepared, we'll continue on through this item and try to complete it, and take -- and hopefully get everyone out of here with not too late of a lunch.

So Nick Blair, next commenter. Thank you.

MR. BLAIR: Good afternoon, Chair Esquivel and fellow board members. Thank you for the opportunity to speak today on the proposed hexavalent chromium MCL.

My name is Nick Blair. I'm speaking on behalf of the Association of California Water Agencies, also known as

ACWA. We represent over 470 public water agencies throughout California that supply water for domestic, agricultural, and industrial uses to over 90 percent of the State's population. Our members are collectively entrusted with the responsibility of supplying the public with safe and reliable drinking water. Ensuring the safety of the supplies by meeting or exceeding all relevant state and federal standards is the highest priority to our agencies, as noted by some today.

We appreciate the hard work that DDW staff and the Board has had in this long process, including today, continuing to be ongoing. And we do appreciate that there was that addition of the compliance timeline of two to four years to add some much needed flexibility for water systems. Admittedly, as you have heard today from a few speakers, we do have members that retain concerns about the financial constraints and supply chain issues impacting their ability to be in compliance within the time allotted, but they're working expediently to be in compliance with the proposed MCL.

So as noted today, I think by Board Member Firestone, and also staff, and then by Coachella, we encourage the Board post-adoption to continue to look at financial and technical support for water systems in disadvantaged communities and low-income communities

working towards compliance, and we encourage expedience of dialogue with local DDW offices working with these water systems that are doing their due diligence to be in compliance, but are experiencing challenges, as has been noted throughout the day. We may have other member agencies speaking online. I know we had one gentleman from Indio who wanted to come, but his flight experienced an emergency landing, so he may not be here, but I'm hoping he can speak online.

Thank you for the opportunity to speak today. We look forward to continuing to work with the Board on this issue as needed, and additional MCLs as they come throughout the year.

CHAIR ESQUIVEL: Thank you, Mr. Blair. I appreciate those contributions, and safe travels, and glad to our colleague from Indio, and hopefully they are able to join remotely.

Next, I'd like to call up Dr. Nataly Escobedo Garcia, be followed by Angela Islas -- or Angela Islas -- and then Mayra Hernandez.

TECHNICAL SUPPORT: And Chair Esquivel, we had Dr. Escobedo Garcia, and she does not appear to be on the Zoom platform anymore.

CHAIR ESQUIVEL: Okay. Thank you. And Dr. Garcia, if you're viewing, we'll just, enable to join the

platform later, we'll keep an eye out for you, and I'll call you up then thereafter. Next, I'd like to go to Angela Islas, to be followed by Mayra Hernandez, and then Sherri McCarthy.

MS. ISLAS: Thank you, board members. Good to see you all again. Angela Islas, Water Projects Coordinator with Central California Environmental Justice Network, CCJEN for short.

Just want to just put on the record that I second many of our colleagues' and residents' comments regarding the MCL for hex-chrome. I think there just still needs to be a lot more reevaluation in terms of the set MCL with the PHG. You know, I know that, you know, it's been a long time coming to get to a certain MCL to meet for hex-chrome. But again, you know, I just want to reiterate just a lot of what I was hearing earlier from the residents, commenting that it's not protective and, you know, it's just -- it's something that a lot of the residents really are doing their best to be patient, and see that there is a light at the end of the tunnel to find the appropriate MCL.

So again, for the record, just want to echo our partners with CWC residents, and, you know, speaking also on behalf of some of the San Joaquin Valley residents here that were not able to join today, that are impacted heavily with hex-chrome, you know, we need to have an adequate MCL,

and we cannot do -- we cannot settle for profit over people, or even cost over people. So definitely appreciate the Board's work on this but, you know, again, we really want to see the adequate MCL appropriate to protect all for safe access to drinking water.

Thank you so much.

CHAIR ESQUIVEL: Thank you. Really appreciate the participation here, and advocacy, and contributions to all of this, Ms. Islas. Appreciate that.

Next, I think we might be able to go back to Dr. Garcia.

MS. GARCIA: Hi, everyone. So sorry about that, my internet dropped --

CHAIR ESQUIVEL: It's okay.

MS. GARCIA: -- just as I was about to give comments.

CHAIR ESQUIVEL: At the very least it's good to see you.

MS. GARCIA: Good afternoon. Good to see you too.

My name is Dr. Escobedo Garcia, and I'm providing comments on behalf of Leadership Council. While we appreciate that we are now adopting an MCL for hex-chrome, we are concerned that the proposed MCL is not protective of public health. The proposed MCL would ensure that many

Californians continue to be exposed to dangerous levels of hex-chrome in their drinking water. This will inevitably lead to avoidable cancer, and deaths of some exposed residents. As we've raised in previous comment letters, in proposing an MCL of 10 parts per billion, the Board has failed to determine whether an MCL lower than 10 parts per billion is capable (audio cuts out). The Board's initial statement of reason provides no evidence or analysis that lower levels are actually infeasible.

When looking at economic feasibility, the Board should have leveraged its drinking water needs assessment to better understand how consolidation would reduce the overall cost of compliance. Specifically, it should have analyzed which systems with hex-chrome in their water are within three miles of a system that either do not have hex-chrome, or could treat hex-chrome more effectively and affordably, and reduce the estimated cost of compliance for these potential subsumed systems.

Last, the Board must commit to supporting water systems serving disadvantaged communities with funding for construction and treatment costs, and to quickly evaluating less expensive treatment options like stannous chloride.

We appreciate the work done by the Board to defend an MCL of 10 parts per billion from polluters. This is a historic step forward. However, we note that the

Board has failed to meet its obligations under the California Safe Drinking Water Act by failing to propose the lowest achievable MCL by improperly relying on overly expensive cost estimates that rely on centralized treatments and fail to consider health benefits. While we do not support an MCL of 10 parts per billion, we do agree that this decision has been long overdue and support the Board moving forward with making a decision today.

Thank you.

CHAIR ESQUIVEL: Thank you, Dr. Escobedo Garcia. Appreciate those comments. And again, clearly feeling the disappointment on where we're landing.

But at the same time, I guess for me, I do want to ask a question of staff: when it comes to -- and I know this was somewhat covered in the staff presentation -- but the requirement is to assess the best available technology as the kind of cost structure that we're looking at for systems. Is it -- are we just completely precluded from looking at consolidation and other forms of compliance. Or is it -- you know, for me, I know the complexity of, I mean, just even within our Safe and Affordable, SAFER program, and then importantly, all the consolidation work we're doing, you know, those costs aren't completely known and are really variable between systems, and there's just a lot that we would have to go in to do -- you know, get that

good data, I guess, in some way. Just trying to figure out what the limitations are. If, you know, our analysis is somewhat limited by the direction within the California Safe Drinking Water Act, and what we have to look at? Or is it in just the feasibility of trying to really completely cost out things like consolidation, et cetera, where there may be some consolidation projects out there that you can kind of tee off of them. Most of it would be just kind of, back of the envelope, and importantly, not as much in control of the water system to be able to then really use as a way to meet the MCL.

So just wanting a little more kind of unpacking of that.

MR. POLHEMUS: Yeah. Sure. Happy to provide that.

So the statute doesn't give us specific direction as you mentioned as to what we're to pursue. It really comes down to the practicality associated with what we're able to do from a knowledge standpoint. And we do take a conservative approach, in that we find the best available technology, we are required to establish what those would be, and therefore they need to be broad coverage on the components, and then we are able to look at each source that then needs some level of treatment associated with that. So it ends up being a treatment-based number that we

come up with originally.

We did do further analysis on consolidation. We have encouraged consolidation in our SAFER program, and many others, and would prefer that to be a scenario that is pursued by many water systems if they're able to do that. The reality is many times that's more expensive. And I think we would recognize that in our funding programs, and still encourage that if they were to take that, because it has a long-term sustainability aspect that comes with it, with that extra cost. And this Board has faced those determinations before when they're contemplating that.

So it is a bit of a struggle, and I always feel like, whenever we give the answer of the cost, you know it's wrong. But it's kind of the best number we can get, because it's conservative. So hopefully water systems are creative and able to find ways underneath it. Some of them will find new sources, if that's a possibility. And we did do some investigation of that and there was some percentage associated with that as well.

And I don't know, Bethany, if you remember off the top of your head when we did those, kind of the range of consolidation and new source numbers we looked at. I'm not recalling them.

MS. ROBINSON: I think it was somewhere between 30 and 40 percent of systems had consolidation potential.

CHAIR ESQUIVEL: Okay. I appreciate that.

MS. NIEMEYER: But I would add though that the statute does say that we're supposed to focus on the -- so it says, for the purpose of determining the economic feasibility, the State Board is supposed to consider cost of compliance to the public water systems, customers, and other affected parties with the proposed primary drinking water stand standard, including the cost per customer, aggregate cost of compliance, using best available technologies. So when we do the numbers -- but we do include other numbers too. I mean, we looked at Point of Use/Point of Entry, because we know that is going to be an option for some systems.

But the statute does direct us to use that when we're coming up with our numbers.

CHAIR ESQUIVEL: I appreciate that. And I appreciate still we get the incorporation, again, of this other data around consolidations around other strategies. And I know, you know, hearing here the concern from folks, it's like, you know, that number can get down, does that mean that we can reduce then our MCL then? And it's not a one-to-one, I know, in the balancing that the Board is doing when we set the MCL. But hearing that quite a bit, so I wanted to just unpack it. So I appreciate that.

Okay. Let's move to our next commenter.

Next, I'd like to call up Mayra Hernandez to be followed by Sherri McCarthy and Andria Ventura.

MS, HERNANDEZ: Members of the Board, my name is Mayra Hernandez.

And today I just wanted to first say that I really appreciate the conversation that we're having today. It's really important. And we have representation from the Central Coast and the Coachella Valley, but also wanted to state that I was born and raised in Merced, which is in the Central Valley. And I grew up with chromium-6 in my rural area -- or my rural community known as Beachwood.

So just wanted to voice that: that this is also an issue in the Central Coast, and that we'll be back here in five years, making sure that we have a health-protective MCL.

Thank you.

CHAIR ESQUIVEL: Thank you incredibly. Appreciate you being here in person with us.

And on the population impact, maybe just really quick, just so we have, again, a sense.

MR. POLHEMUS: Yeah. Certainly. We did look that up.

And so from Attachment 1 of the ISOR, looking at the tables, this would be Table 24. It does show that for, -- and I'm going to give several numbers here -- the first

one being for community water systems, out of MCL of 10, basically 5.3 million people would be impacted. Then if you add in non-transit, non-community, the transient non-community, and wholesalers, then the overall state number would be 5.5 million.

CHAIR ESQUIVEL: Thank you.

MR. POLHEMUS: And just to note on that, so that is specific to the MCL of 10.

CHAIR ESQUIVEL: Right.

MR. POLHEMUS: You know, if you were to go to nine, the number increases, of the number of people that would be impacted by the MCL. And if you went to a higher number, it could go down, and I can certainly provide those numbers as well. We analyzed everything from one -- an MCL of one through much higher numbers like 25.

BOARD MEMBER FIRESTONE: Yeah. Do you mind giving it on five?

MR. POLHEMUS: Sure. An MCL of five for community water systems would impact 15.2 million people, and a total population of 15.95, so rounding up to 16 million.

CHAIR ESQUIVEL: Those are very helpful numbers.

BOARD MEMBER FIRESTONE: So, sorry, just to put a point on that, that's -- one of the things is, that means that by setting it at 10 instead of five, or, if we were to

set it at five -- trying to figure out how to say this -- but, you know, there's about 10 million people that aren't getting protections, and also aren't getting costs --

MR. POLHEMUS: Correct.

BOARD MEMBER FIRESTONE: -- from -- because we're not setting it at five, as opposed to 10.

And then of course, there's going to be -- I don't know. You know, I'm not going to make you go through like, six, seven, eight, nine. But, so, I think, I mean, one of the things that resonates, and I think is really important is, is that that means that people are getting exposure to chrome-6 over the public health goal and technologically feasible level, like 10 million more people than, and if we set it at 10, as opposed to what -- well, maybe four is technologically feasible -- but because we're taking into the economic feasibility here, and setting it at 10, but it also means that those folks aren't going to have those costs economically or compliance-wise.

So there's -- you know, those are, I think really difficult decisions, and I just want to be clear about the implications of the decision that we're making. But I appreciate those numbers.

CHAIR ESQUIVEL: Yeah. Likewise. Again, it's important for us to get some sense of scale here.

Board Member Maguire?

BOARD MEMBER MAGUIRE: Thanks. Yeah. I really appreciate this discussion, and admit it's a tough balancing to do, as I mentioned earlier.

If we could put a little bit of an operational reality frame of reference on this too. If you're -- if the Board sets whatever the MCL is set at -- so let's say it's 10, that's the proposal today -- realistically, how do water systems work to meet that? My understanding has always been that they meet -- maybe shoot for 80 percent of the maximum contaminant level when they're, you know, in fact operating -- you know, installing treatment, and operating a system, they don't operate right up to the cusp of 10. Often the reality is what we see for systems that do have treatment is that they -- their actual treated water concentrations are quite a bit lower than what the drinking water standard is.

Is that -- is my understanding correct there?

MR. POLHEMUS: Yeah, so generally when we're permitting a treatment train such as this type, which would be absorptive or removing the material, they often have an efficiency that's higher. So, you know, it's not like you can set a dial and I want it to be at 9.5, so that I'm just under 10. It's going to function, and it's going to remove, you know down in the five, seven level when it's basically operating effectively.

So what we do look at is -- really the number of the MCL is more triggering who is going to do the treatment, and then be at those lower levels, versus they don't. And there's this gap certainly between, once they're out of compliance and having to put on treatment, and then achieving a number of, you know, five to seven or something in that range -- very likely to be safely under -- and also fully operate what their treatment's capable of delivering. And then the gap between that, and then those that are at, you know, nine or eight, where they're not violating the MCL and so not providing treatment, or not required to meet the MCL.

Certainly when they get close, we can make them do studies and other things to kind of assess when they might come out of compliance. We'd rather them take proactive steps to get there before, but that's a discussion in particular for each system.

BOARD MEMBER MAGUIRE: Thank you, I appreciate that.

CHAIR ESQUIVEL: Appreciate the dialogue here.

And let's move to our next commenter. Next, I'd like to call up Sherri McCarthy, followed by Andria Ventura, and then Roberto Ramirez.

MS. MCCARTHY: Good afternoon, Chair and members. I'm Sherri McCarthy with the American Chemistry Council.

Thank you for allowing us to offer these comments. The proposed resolution directs staff to monitor the PHG update process and revise the MCL if the final PHG indicates that chromium-6 presents a material different risk than OEHHA determined in 2011.

That question has already been asked and answered. Based on more than 30 studies published since 2011, there is a threshold for cancer effects that is well above the 2011 PHG and likely above the proposed MCL. The decades old assumption that any exposure to chromium-6 causes cancer no longer aligns with the weight of scientific evidence for the oral exposure pathway. Other jurisdictions have recognized the evolution of the science, and have set health-protective standards higher than this proposed MCL. We appreciate the Water Board's recognition of OEHHA's ongoing PHG update.

An update there is the key word. Any confusion regarding the validity of the existing PHG caused by OEHHA's on-again, off-again approach to the PHG update was resolved when OEHHA announced their second data call-in in March of 2023, announcing a comprehensive review of the 2011 PHG based on new information and studies published since 2011. That was before the Water Board issued its proposed MCL, and that was when it should have suspended the MCL process.

We are already seeing movement on the PHG that casts doubt on the need for a 10-parts-per-billion MCL. Even before correcting the errors in their draft, noncancer health-protective concentration, OEHHA's draft is two-and-a-half times higher than the 2011 noncancer PHG, which means the 2011 PHG substantially overstates the noncancer health benefits of the proposed MCL. We haven't even seen the cancer document yet.

We appreciate all the time and effort the Water Board has invested in the proposed MCL, but the California Safe Drinking Water Act is supposed to produce risk-based standards informed by best-available science. And that's not possible when the state's evaluation of the updated science comes after the standard is adopted.

Thank you.

CHAIR ESQUIVEL: Thank you, Ms. McCarthy.

Next, I'd like to call up Andria Ventura, to be followed by Roberto Ramirez, and then Michelle Chester.

MS. VENTURA: Good afternoon. I think we're at afternoon. My name is Andria Ventura, and I am here on behalf of Clean Water Action and our tens of thousands of members throughout California. I've been working on this. I've gotten old working on this. And over those years, I've seen protecting the public from hexavalent chromium become politicized at the expense of public health. I've

seen how ratepayers, particularly in low-income communities and communities of color, have been used as pawns around claims that they can't pay the high cost of treatment. And frankly, it's been a dark stain on California. While I am here to express once again why a 10-part-per-billion drinking water standard for hex-chrome is inappropriate, I do want to start with a point of agreement. We do agree that the MCL should not be delayed further because of OEHHA, that OEHHA will at some point review the PHG as it relates to cancer. We agree that -- and this is based on discussions with the OEHHA that we've had -- that it is unlikely that the PHG will be lowered or raised much, if at all, based on new science that they've seen to date. And even if it is, we already know that the final overall PHG, as you heard earlier from Mr. Polhemus, cannot be higher than five parts per billion based on noncancer endpoints. Consequently, an MCL can move forward, and we would argue that it could be at least lowered to five parts per billion, if not lower than that.

Which brings me to my main point. In our view, a 10-part-per billion-MCL for hex-chrome is an injustice that is out of keeping with the Board's mission to protect public health and future generations. Given that it is 500 times higher than the current public health goal of 0.02 parts per billion, it really flies in the face of

California's requirement that the MCL be set as close to the PHG as technically and economically feasible.

Now, you have already heard from other advocates about their views of flaws in the Board's economic analysis that skewed the decision up to this number. We would support those comments.

But I want to bring up something that has been -- is particularly disturbing. And it's important, because if we're going to revisit this in five years, or when you look at other MCLs, this has to be said.

For over 20 years now, industrial polluters and some water systems have repeated the mantra that hex-chrome is expensive to treat and would therefore place an untenable burden on ratepayers. And there is truth in that. Though I have to say that, with a few exceptions, we've heard some really good actions by Coachella's water systems, and what they're trying to do, and we recognize that few of those entities have been leaders in innovating to bring down costs, getting resources to disadvantaged communities, or understanding the cost of cancer. And we've had 20 years for them to step up to the plate.

However, at a hearing last year, every single person who lived in a community with hex-chrome in its water, called on this Board to set the MCL lower to protect them from cancer and other health problems. And you heard

the same thing today. Every one of them. These are those rate payers that we're supposed to be protecting from high costs, and they're asking to be protected from cancer and to set a lower standard.

And the disturbing part is that after all the speakers that day sat down, some members of this Board picked up industry's mantra, telling those ratepayers that they needed to be protected from the cost and ignoring their testimony. And it was an insult that reflected a paternal attitude that people drinking contaminated water don't understand what they need, and their voices could be talked over.

The Board's mission is to protect our water and our people, and while we understand truly the need to balance many needs, many factors, and many perspectives, it is disturbing to us how much the rhetoric coming from industry, water systems, and the Board itself align. It is sad that what should be a public health effort becomes politicized and about dollars, because at the end of the day, there are certain things that exist, despite denials, misleading interpretations of science, or even politics. The earth is round, climate change is real, and hexavalent chromium in drinking water can cause cancer at very low amounts, and that should be our priority.

Thank you.

CHAIR ESQUIVEL: Thank you, Ms. Ventura. Really appreciate your comments here.

Next, I'd like to call up Roberto Ramirez, followed by Michelle Chester, and then Debbie Mackey.

TECHNICAL SUPPORT: And Mr. Ramirez, I see you're participating by a phone, and you should be able to hit star six.

MR. RAMIREZ: Okay. Can you hear me?

CHAIR ESQUIVEL: We can. Thank you.

MR. RAMIREZ: Hi, my name is Roberto Ramirez and I live here in the Royal Oaks community of Live Oak, Johnson, McGinnis. We've lived here for 20 years now, just over 20 years. The -- it seems like the problem with our water being more and more contaminated over the years, it's gotten worse. It doesn't really seem like anything's been done. I mean, I hear from the board members and others of the speakers where we have more technology, we have newer science. But all of the new technology, if anything, what it's been doing for the most part, it's been used to identify a problem, identify the higher levels of chromium in the water. And it's great that we can identify them, but nothing's being done to address the problem, correct the problem.

We live in California, one of the, you know, if not the best state in the country, where our agriculture, I

mean, feeds, you know, millions of people throughout the world. We have an economy that is probably within the top five or ten economies in the world, and to say that we don't have the money to help mitigate that problem doesn't really seem like it's a solution, it's more of a cop-out.

Having seen two friends that live here in the community, I've seen where they've been hit with cancer. I found that they were drinking the water for over 40 years because they thought the water was good. The water does taste really good. It tastes just as good, if not better, than bottled water, because you cannot smell it, you can't taste that there's those deadly chemicals in it, you know. But they're there. We have chromium-6 in our water. We have nitrates in our water.

So I think at this point, we cannot leave it to the private sector to address it. I mean, the private sector, for the most part, is a for-profit system. That's great, I mean, that our government allows private entities to succeed and be successful and be prosperous, but the state needs to step up and also do what it has to do to protect its community. And not doing anything, and to allow private enterprise to continue to contaminate our water, and for the state to not take the role to really oversee that it happens, I don't think it's why we elect, you know, our publicly elected officials. You know, just

like, you know, we have, for example, just to give one example, PG&E, I mean, it's a public enterprise, something that I believe should be -- it's a private enterprise, I'm sorry -- something that should be, you know, taken care of by the State, (audio cuts out) of dollars and profits every year. And as soon as they have a catastrophe or something where they have to pay, they suddenly don't have the money to do so.

And what does the State do? The state bails them out and, you know, bails them out again, and allows them to continue to do business as usual where they increase the fees, you know, year after year. And so I'm really hoping that the Board can set these limits within the next year, so that something can start to happen now, and not five years from now. Because one more life that is lost -- I mean, it doesn't hit home until it hits your immediate family, until it hits your family, and that's where you say, well, you know, does X amount of money really compare to having that, you know, family member in your life, in your family?

So I think the Board really needs to be there to support the public interest and not any other private interest, because otherwise, I mean, you're really not helping anybody.

And that's what I have to say. I just see that.

I mean, I know there's a lot of science, and we're improving on identifying and detecting the problem, but we need to really try to prevent that problem from occurring in the first place. So I hope that you can really take the steps necessary to reduce the chromium levels, or the MCL, to what it needs to be. It looks like it should be below 10 if not lower.

And I think, again, like, something -- that is something that really needs to be addressed now and not later. I mean, I don't see why it cannot be addressed this year as opposed to, you know, years from now.

And that is my comment.

CHAIR ESQUIVEL: Thank you. I really appreciate your -- thank you for that Mr. Ramirez. I appreciate your participation here, and providing that comment here to the Board. Just thank you.

Next, I'd like to call up Michelle Chester, to be followed by Debbie Mackey, then Katie Little, and then Matthew Shragge.

MS. CHESTER: Thank you, board members. My name is Michelle Chester with Somach Simmons & Dunn, and I'm commenting on behalf of the Central Valley Clean Water Association. I do appreciate the clarification added to the Adopting Resolution regarding automatic incorporation and the responsibilities of the regional boards, but, as

staff noted, this is a nuanced issue. And the approach today is a departure from how the regional boards have applied and incorporated MCLs to date, as water quality objectives or effluent limits.

The language in the Adopting Resolution offered by staff is still insufficient in addressing the concerns of the Regional Board's automatic incorporation of MCLs into Title 22. The language wouldn't necessarily prevent a regional board from relying on prior Water Code section economic analyses that would have been conducted in adopting a basin plan, and which could not have sufficiently addressed the feasibility of the MCL adopted today. Also because, as commenters have raised, these concerns weren't sufficiently considered by the State Water Board. So this would seem to continue the bureaucratic procedures that the Supreme Court proposed in its Burbank decision, specifically regarding the Board's failure to consider economic concerns and address the economic burdens that the law anticipates and requires.

Without clarification, the Board's justification and language, including an Adopting Resolution, doesn't resolve the regulated community's confusion regarding the intention of implementation enforcement of the adopted standards by the regional boards. The concern, again, is not just with hexavalent chromium and the MCL today, but a

bigger issue that is going to rise with any MCL adopted by the Board unless and until there is clear direction from the State Water Board to the regional boards specifically addressing the language regarding automatic incorporation, and the impact on permittees, particularly because there is existing language and permits generally referencing and requiring compliance with Title 22 for POTWs, specifically as to receiving waters. So a new permit wouldn't necessarily need to be adopted to enforce compliance with the MCL.

As the Chair noted, this is a pending concern with the adoption of an MCL for PFAS. So moving forward, we see an opportunity for the Board to provide clear direction, avoid litigation that may delay implementation of the selected standard or future standards. Specifically, we would ask that the State Water Board perform the requisite economic feasibility analysis rather than deferring to the regional boards, which, as stated, is a statutory responsibility of the Board under the Health and Safety Code, and because the regional boards don't have a process in place to perform the analysis before adoption of the MCL into Title 22.

Alternatively, or additionally, we would ask that the State Water Board clarify that the regional boards must perform the economic analysis in a manner that's tailored

to the discharger -- the discharge or the constituent to ensure that it doesn't rely simply on prior analysis done under the Water Code.

Again, I appreciate that staff has coordinated with stakeholders. I would ask that that process continue. Ultimately, we would like to see a broader solution, so this issue doesn't need to be addressed at each adopting hearing for MCLs that come before the Board, or before each regional board.

Thank you.

CHAIR ESQUIVEL: Thank you, Ms. Chester. And yes, always an ongoing collaboration. And I know a few other folks will be speaking to these points as well, so we'll circle back at the end of comment on further clarification and perspective.

Next, I'd like to call up Debbie Mackey, to be followed by Tim Worley, and then Matthew Shragge.

MS. MACKEY: There we go. Sorry about that.

Good afternoon, board members. Debbie Mackey, Executive Officer with the Central Valley Clean Water Association.

And I just wanted to build upon Michelle's comments, because this is a huge and ongoing issue for us. And with this being the first of many that are planned -- of proposed MCLs. The consideration, the full water

consideration, we think is very, very important. And so I do want to express my thanks to the board staff, particularly Darrin, and also to Mr. Lauffer for the clarifications that he provided today.

When the Department of Drinking Water came over to the State Water Board, part of the legislature intent was to combine the water rights -- this is found in, by the way, Water Code § 174 -- to combine the water rights, water quality, and drinking water functions of the state government to provide coordinated consideration of water rights, water quality, and safe and reliable drinking water. And so how we do this, and how we move forward, especially as some -- as we mentioned, PFAS, and some other of these MCLs, are considered as really important to us, to the communities that we serve. Because they see it on both ends: they see it both on their drinking water side and on their wastewater side. And so I just again would encourage more collab -- more and early collaboration on how we might resolve this, so that the statutory obligations, both under the Health and Safety Code and the California Water Code, are met.

And with that, I thank you.

CHAIR ESQUIVEL: Thank you as well. And I agree that, you know, the vision here is to be able to be better integrated and coordinated across these authorities and

work. So just appreciate that.

Next, I'd like to call up Tim Worley, followed by Matthew Shragge, and then Katie Little, Susan Allen, and Sarah Johnson.

Mr. Worley?

MR. WORLEY: Thank you, Chair Esquivel. Good afternoon, board members. I'm speaking on behalf of the Community Water Systems Alliance. CWSA is a group of large systems who are trying to help and be advocates for the small systems within their midst. We stretch from Coachella Valley to Watsonville, and those two entities are certainly impacted heavily by this contaminant. We also understand the Safe Drinking Water Act, the difficult balance that you have to adopt the most health-protective standard, while also considering economic and technological and economic feasibility.

I'm going to just focus on one aspect which we have spent a lot of time studying as it relates to this regulation. I know that your adoption, and economic feasibility, does not depend solely on affordability per se, but that was considered as it should be, as a closely related component of economic feasibility. In fact, the ISOR stated, I thought somewhat bluntly, that the proposed regulation is considered economically feasible in part because the State has adequate financial resources to

offset the acknowledged financial burden -- that's not a quote, but it's pretty close -- the burden that this regulation will create in low-income households.

CWSA does believe that affordability and accessibility are important parts of the Human Right to Water policy that is adopted by the state. It is in this law for a reason. Households that cannot afford their water bills may incur health impacts more acute even than the chronic risks from chromium-6.

Out of this concern and this interest, we contracted with a team of national experts on the issue of water affordability to do an independent analysis for us of the amount of money that would be needed to keep water affordable. This team, led by Janet Clements and Bob Raucher, concluded several shortcomings of the Division of Drinking Water Staff Economic Analysis. Primarily, they discovered the funds needed would be 50 percent to 70 percent more than stated in the ISOR.

Moreover, significantly, they found that impact -- those impacts would be felt in larger systems, and this impact was largely overlooked by the analysis in the ISOR. We have the -- our main disagreement is with the sanguine assessment, that was in the ISOR, that you can offset the affordability challenge, and also the assumption that you can reach all those in need. This is -- there is a big

administrative and financial hurdle, many obstacles for systems, especially smaller systems, to access the funding that they need to for treatment or for other alternatives, including consolidation in many cases.

All of this puts a huge cloud in our mind, a cloud of doubt, over the economic feasibility of this MCL. We know -- I personally believe that every one of you cares deeply about the people in the households that will be challenged by this regulation. We believe that you have that commitment, but public statements do not actually produce the money. And we would like to see a bigger commitment to affordability and a reassessment of economic feasibility in future regulations adopted by this Board.

Thank you for your time.

CHAIR ESQUIVEL: Thank you, Mr. Worley.

May I ask, not having seen the analysis and work that folks did for you, what were the drivers in, you know, finding such higher costs? Was it just on our assumptions around the cost of construction for treatment, or was it, you know -- what were the factors that contributed to that, just for my own edification?

MR. WORLEY: Sure.

They accepted the treatment costs that were estimated in the ISOR. The difference comes from the metrics that they used, which we feel are a truer

assessment of affordability. They looked at two additional factors that were not -- or metrics that are not included in the staff's analysis. One is the poverty prevalence indicator. And another one is looking at the household burden indicator. Those were created by a national team, not just these two, although they were part of the team working on an affordability recommendation to EPA for -- because everyone is well aware that 2.5 percent of household, median household income is a very poor indicator. So these were the metrics that they applied to this particular effort, and so I think it did reveal some things that you should be aware of.

CHAIR ESQUIVEL: No, for sure. I really appreciate that. I know that we have a very robust discussion through our needs assessment for the SAFER program around just affordability and what metrics we look at. So just appreciate that. I know it can help enrich what is a robust discussion I know here before the Board in totality, not just in the MCL here.

MR. WORLEY: And I would just add one other footnote on the affordability question. We are all aware that water rates across the nation -- here in California is not an exception -- are skyrocketing much faster than the rate of inflation, much more than other utilities or other necessary services. So we would like the Water Board and

the Division of Drinking Water to take a more comprehensive look at water rates, water affordability, than sometimes, than really what we saw in this analysis.

Thank you.

CHAIR ESQUIVEL: That's fair. Thank you.

Board Member Firestone, did you --

BOARD MEMBER FIRESTONE: Just, you know, the contributions that the study that you all funded, one of the things I found from it was that it's very much in line with what we have been doing with our needs assessment in terms of refinement of the affordability indicators. I think we're thinking -- you know, we're going in the same direction, and thinking along the same lines that we need to look at affordability and include some of those socioeconomic kind of poverty prevalence indicators and incorporate that, and we are in that analysis. And I think similarly too -- you know, this is just sort of a request overall to folks is that, you know, we are, as I said, we're going to be considering the -- for the more limited, but still significant, financial resources that we do have from federal and state programs, we're going to be considering how we're prioritizing those. Including, I think, talking about how we're addressing systems that are now facing increased costs here. Really encourage you all to participate in that extensively, in the intended use

plan process, and then in the fund expenditure plan process, especially for the small, disadvantaged communities. I think this is a priority for everyone, and that's where a lot of these things really can -- we can make sure we're getting it right within our funding programs and any other assistance programs.

CHAIR ESQUIVEL: Thank you, Board Member. Thank you again, Mr. Worley.

Next, I'd like to call up Matthew Shragge, followed by Katie Little, Susan Allen, Sarah Johnson, and our last commenter will be Jared Voskuhl.

MR. SHRAGGE: Good afternoon, members, Chair Esquivel and members of the Board. First and foremost, I'm the general manager of Twentynine Palms Water District. You guys are familiar to me. I've sat in some Zoom meetings and gone over chrome-6, and I know that you guys care, so I want to thank you guys for putting in the time that you have with chrome-6. I want to thank staff because your guys' report was good.

Twentynine Palms is a severely disadvantaged community: 100 percent disadvantaged, 75 percent severe disadvantaged. And the simple fact that even smaller to medium systems are doing things for members of the Board that came to our tours and saw what we're doing in our back rooms with activated alumina. So we already strip natural

occurring fluoride and arsenic, and now we're faced with chrome-6. But you guys see, as a small district like I am, the efforts that we put forth with doing our own pilot study before it was required with our engineers.

So some of the things that we are trying to do, that are still very stringent in a community that doesn't have the funds. I know that we sat back for years waiting for grant funds, and it seems like you do everything right as a smaller water district, and you don't get word on funding. So to hear that you guys are allowing compliance periods, and also really taking a look at what you can do to help us water districts. You know, we agree that these standards are there, and not necessarily do we agree with the levels. Would we like to see different levels at times? I would say yes. But at the end of the day, too, we agree that we're all here for the people of California, and what we do is what we would provide. So as public servants, that's what we do.

So I just want to kind of end it just quick. I just want to let you guys know that, you know, this is going to be on my ratepayers, and in a severe disadvantaged community where I do turn offs after SB 998, we do turn offs after three months, this is just a trickle effect that my customers will have to pay for. And with that being said, that's nothing against the health concerns that we

have as well. So coming up here today from Twentynine Palms, 18,000 residents, for me, it was important that you guys hear from little communities like ours that are trying to stay successful. And the only way we can stay successful is longer compliance periods, and some funding from the state through grants, especially when we're a district that does everything correct.

So thank you for your time. Thank you, staff, for your guys' time, and appreciate you guys listening.

CHAIR ESQUIVEL: Appreciate your attendance here.

I know just the travel alone is a lot to ask sometimes, but it makes a difference having you here and being part of this discussion, and acknowledge the leadership.

I've been able to tour Twentynine Palms as well. And you guys are doing a lot with, I know what are always not enough resources. So it means a lot. Thank you.

Next, I'd like to call up Katie Little, to be followed by Susan Allen, Sarah Johnson, and then Jared Voskuhl.

MS. LITTLE: Thank you, Chair and members. My name is Katie Little, and I am here on behalf of the California League of Food Producers today. We would like to share our concerns with the adoption of the proposed MCL for chrome-6.

As the Water Board's responses to comments acknowledge, some of our members own and operate non-transient, non-community water systems, where the source water exceeds the proposed MCL, in some cases by only a few parts per billion. These systems would be subject to the proposed MCL. The Division asserts that food processors are only required to comply with the MCL if they serve water to their employees, but staff's interpretation of the California Food and Drug Code in their responses to comments ignores customer and public perceptions of food safety. If the State deems water above 10 parts per billion to be unsafe, our customers will reasonably expect that we will not wash their food in that water. That means all of our source water will need to be treated below 10 parts per billion.

The Draft Resolution takes a backwards approach to addressing the disconnect between the PHG update and the MCL rulemaking by directing staff to reopen and revise the MCL if the PHG presents a materially different risk than previously determined by OEHHA. Since the statute requires the PHG to be the primary foundation for the MCL, the PHG, whether new or updated, should come first. The proposed approach is strongly biased in favor of leaving the MCL exactly where it is, regardless of what happens to the PHG.

The resolution also doesn't acknowledge the need

for the Standardized Regulatory Impact Assessment to be updated if the PHG changes. A change in the PHG will change the health benefits assumed in the ISOR, I-S-O-R, and potentially the evaluation of alternatives to the proposed MCL. That analysis should inform a decision about whether to revise the MCL.

Finally, the compliance schedule requirements are silent about the effective date for NTNCWS. We don't know which of these three tiers we qualify for, if any. Our members operate low-margin businesses that will face many of the same hurdles as small water systems, and should receive similar consideration in the regulation.

In order to remain in compliance with evolving water regulations, food producers are required to implement expensive updates to their system operations. We have no ability to recover these additional costs other than raising the cost of our products, which is ultimately passed on to the consumer.

California League of Food Producers remains dedicated towards providing consumers with affordable, safe food while meeting these many regulatory hurdles our industry faces.

Thank you so much.

CHAIR ESQUIVEL: Thank you, Ms. Little. I appreciate your contributions here, your comments.

I do have a quick question. Just wondering, going back to the previous MCL adoption here at the Board, when 1,2,3-TCP was adopted, what was the impact on your industry and folks? You know, were there measurable concerns, not unlike this MCL, around those costs? Were they tracked? Do you have a sense of it? Just kind of wondering.

And we may have lost Ms. Little.

MS. LITTLE: Sorry, I was re-muted.

CHAIR ESQUIVEL: Oh, that's right. You may have unmuted. Yeah. Apologies.

MS. LITTLE: Yes. So unfortunately I am new with the League of Food Producers, so I will look into that and certainly get back to you.

Thank you for your question.

CHAIR ESQUIVEL: I really appreciate that. Thank you. Yeah, just trying to think through, again, the concerns that you're raising with this MCL, and maybe trying to then better characterize those by understanding previous MCLs, so thank you.

Next I'd like to call up Susan Allen, to be followed by Sarah Johnson, and then Jared Voskuhl.

MS. ALLEN: Hi there. I'm Susan Allen and I'm here on behalf of California Association of Mutual Water Companies. We represent about 500 mutual water companies

statewide. Most of them have -- support communities with 15 to about 500 service connections.

And what's unique about a mutual water company, which I'm sure you know, is that the company and the people are the same, and so there's no differentiation between the customer and the entity.

So we certainly care about water quality, but I think we -- and we appreciate the commitment that you have made to economic feasibility, and to the unique needs of small systems, and recognizing that the kinds of challenges in implementation that small systems are going to face are significantly different than for the broad brush of water suppliers that have this challenge.

We're not talking about increases in rates of, you know, $20 or $100. We're talking about thousands of dollars per household, and with a cost for consolidation of even more in many cases.

We also know that consolidation has not met the goals and hopes that you all have had for it. And then in many cases, what we're finding is two equally struggling, limited resourced systems are the available consolidators, and nothing plus nothing equals nothing.

So we wanted to kind of ask for your partnership as we move forward with robust technical assistance, robust financing, and maybe just to think with us outside the box

about how we really address the unique needs of small systems. One of the things that we've been finding in CalMutuals as we're trying to help some of our systems that want proactively to prepare to address the treatment plan, is that they can't find an engineering firm who will consult with them because it doesn't pencil. They can't find a provider to provide centralized treatment. And some of the providers that are available, the technologies are untested, and so then they're in the vortex of having to make a leap of faith with somebody who has to prove that they can actually do what they say they can do, and then also maybe sometimes share those costs. We often have folks managing these systems that are volunteers without kind of an expertise, but earnest. And also I think recognizing that even the systems that are not DACs or SDACs, because of economies of scale, with robust reserves and proactive attention, is just beyond their capability.

What we appreciate about SAFER is setting aside money uniquely and targeted towards small systems. What we are increasingly seeing is that the systems and structures and policies and practices and access to that is still built for the big guys. And we would kind of ask you to maybe take a step back and say, what kind of systems could we put in place that would really partner with small systems and respond to their needs? Maybe a more

wraparound services approach, where we go from TA to implementation together with one provider, and then we think that actually that would be mutually beneficial and save costs.

So we thank you for your partnership. We ask you to help you partner with us, and to really embrace the fact that we're on a slightly different and more challenging path.

CHAIR ESQUIVEL: Completely agree with your points, many of your points there, Ms. Allen. And very focused here as an institution on how we provide that level of service that is different for small, you know, especially at-risk and failing systems than our larger folks out there, and the door's open on continuing to engage on that. So thank you, I appreciate that.

Next, I'd like to call up Sarah Johnson and then Jared Voskuhl. Good afternoon.

MS. JOHNSON: Good afternoon. I am Sarah Johnson, General Manager of Joshua Basin Water District, located about 45 minutes north of Coachella Valley, and the neighbor to Twentynine Palms District.

Today, I had a couple of points that I thought would be important to bring up. First is the consumer notifications of exceedable MCL during the compliance period may create a problem with trust in our community

because they may not understand. So I want to make sure that we are thoughtful about that language, that we work together with that notification, if that is something that you are looking to do, because it is going to cause a lot of issues rather than help in my opinion.

Second, the compliance periods, if you do adopt the MCL, need to be reasonable. We have five wells that are impacted. That's all of our water sources. I don't see how we can do this in three years. And then the most important is affordability. We are a severely disadvantaged community, and we need access to funds. So not only do we need access, but it needs to be a streamlined approach.

So thank you, appreciate your time.

CHAIR ESQUIVEL: Appreciate yours. Thank you for being here with us, Ms. Johnson, and providing those comments.

Jared Voskuhl?

MR. VOSKUHL: Hi. Good afternoon, Jared Voskuhl on behalf of CASA, the California Association of Sanitation Agencies. CASA represents over 130 wastewater agencies that provide the collection, treatment, recycling and resource recovery from wastewater. I know it might be strange for a wastewater to be here right now on this item, but the way the California laws and regulations are

written, we are kind of roped in to this proceeding. And so we're here to provide comments on that. And we appreciate the time and attention that's been provided to us from staff to help us work through the concern.

But in short, before we really go into the slides, which I hope to get through quickly, the concern is the way that we understand permits to be written, basin plans to be written, and MCL statutory code to be written, whereby we could be impacted under an MCL and thus we are requesting analysis. And in this case, there's been so much conversation that analysis could definitely be said, it's been held. It's in writing, it's also in emails. We've constructively had that conversation. And so our request is that that be formalized and placed into the final statement of reasons. Our initial comment letter asked for us to be amended in as one category of impacted parties.

And so our hope is that when we emerge at the end of this today, that we could also have that request be granted. And I think that would satisfy our concern.

So into the presentation itself.

Next slide, please.

I'll highlight our written comments, and then I'll highlight the way MCLs and water quality objectives link up, and then a couple of responses to the comments --

from us to the Board's response to comments.

Next slide.

So for our comment letter, this is what I just shared, but essentially we are just seeking for the final statement of reasons to be amended with this C6 direct costs for wastewater treatment plants. There's five other categories of direct costs that are considered. And the issue here is not whether there is a cost or not, it's that we need to be considered. And we need to be considered because we are brought into this with the way the basin plans are written, the statutes are written, and permits are written.

The second thought was we wanted that analysis conducted, which has been performed, and there's no dispute there. And the conclusions in terms of impacts, there's no disagreement in terms of it. In this case, we don't expect or anticipate where that impact would be realized. For another contaminant, it could be.

And then our third request, which was to include this in the future for MCLs.

So next slide, please.

Now I want to highlight this relationship between the MCLs and water quality objectives.

Next slide.

So, you know, MCLs are initially something done

under California Department of Public Health, and that was governed under the Water Code, and Health and Safety Code.

Next animation.

And so in there, in the Health and Safety Code, what it says that, it uses the word, shall, consider impacts to other parties, which is where we feel like this is raised for us.

Next slide.

And here's that Health and Safety Code reference.

Next slide.

And so the State Board shall consider the cost of compliance to other effective parties with the proposed primary drinking water standard using best available technology.

Next slide.

And so then over on the water quality side -- next animation -- we have water quality objectives that kind of fall under the Porter-Cologne Act part of the Water Code. And this assigns that discretion to the State Water Board and the regional water boards.

Next slide.

And so in this case, the NPDES permittees are required by their basin plans to comply with MCLs -- this is an old presentation, so I should update that -- not as effluent limits, but as receiving water limits. But for

the record, that should be noted.

Next slide.

And I don't think there's a dispute by counsel so on that being somewhere where we'd be potentially impacted.

And so then to look at this basin plan language that I just referenced, here's an example, but this isn't basin plans for all regions, except for eight.

Next slide.

It's this bold part. This incorporation by reference is prospective, including future changes to the incorporated provisions as the changes take effect. So in theory, once OAL adopts this MCL, it then goes into the way these basin plans are written, it goes in as a receiving water limitation, is our understanding.

Next slide. Next slide. Couple -- one more, maybe. One more animation, please.

Thank you.

Yeah. So this is kind of that dynamic that we just highlighted, and with that relationship, and that basin plan language.

Next slide.

That's where we feel like we are impacted, and so that impact needs to be considered, and we're asking for that formal recognition in the final statement of reasons.

Next slide.

And then just quickly a couple of responses to the replies to the comments that were in, and then I'll conclude.

Next slide.

This was just response a to comment 53 -- just copied and pasted it in there -- and I'll break it apart in a few different slides.

Next slide, please.

So the first item was a comment in the response that it wasn't clear there would be any monitoring or treatment costs, and our concern is with the exclusion of that acknowledgement in the statement of reasons.

So I don't think there's disagreement whether there'd be there, but the clarity of cost is not the issue for us. The issue is that inclusion.

Next slide.

And then, again, staff kind of explains their analysis, and in combination with the Adopting Resolution clause four, we've found this to be persuasive and comprehensive. And so again, no dispute there.

Next slide.

On this portion of the response to comments, there was a disagreement. It said no wastewater agency would have to comply with the discharge requirement based on the proposed MCL until a new permit is adopted. But

this is not how we understand the way that these various codes and regulations and basin plans operate together, and we felt it was much the opposite.

And so if there was an effluent sample to, you know, collected, or receiving water sample collected, that contained a detectable amount of the contaminant above the MCL, then the NPDES permittee could be alleged to have violated the permit. And that's really the crux of what we're talking about, and why we want this recognition in the final statement of reasons. Even in the instance of here with hexavalent chromium, it's not the case, and another contaminant in the future, it could be.

Next slide.

And then in terms of this piece of the response to comments, we understand groundwater and hexavalent chromium, the relationship there, but it said that, you know, treatment of the drinking water supply will phase it out of wastewater treatment facilities, and residential is not the only pathway for influence. So if it's commercially or industrially derived, there's a chance you could still find hexavalent chromium in a waste stream, if there's no pretreatment for it, and it's being used for some type of manufacturing process that leads to a facility. And we wanted to draw that distinction in the response to comments.

Next slide.

Here was the other item about the 13241 analysis.

And next slide.

I think ultimately, you know, maybe to just pause before I jump in -- the real concern is the economic analysis. If there is going to be an impact, if treatment is going to be required, we're wanting just to ensure and enshrine that is captured and happens at some juncture along the way. And so with that, we had, you know, some comments about when this is to be performed, but I feel like the discussion today during staff presentation did a good job delineating that. So I don't think I need to dwell on this one.

Maybe the next slide, please.

Yeah. I want to make the point here, I guess. The Board notes that State hasn't required regional boards to incorporate primary drinking water standards. But I think the thought is if the basin plan was accepted, and the basin plan language had that incorporation by reference in there, the Board did set up that dynamic, and thus that's what we're seeking that process to be folded in here.

Next slide.

And ultimately this one gets to the concern that we do want economic analysis. And if it's not through

13241, then with the MCL process is where we would hope and expect that to occur.

And so I think that's it for me. I mean maybe, unless -- that's it. So I appreciate your indulging me here, and listening to this concern. I know it maybe seems like a nothing-burger, or something minor in consideration of the impacts, but for our members, this is a very big issue. So I appreciate the time and thoughts.

Thank you.

CHAIR ESQUIVEL: Thank you, Mr. Voskuhl. I appreciate you elevating it.

Quick question back to -- I think a question I gave to Katie Little here -- going back to 1,2,3-TCP and its adoption as an MCL: what, I mean, consistent to your concerns here with this one, what was the impact? Where -- what was the, you know, where -- can you explain if there was one, I guess?

MR. VOSKUHL: I'm not prepared to answer that, but I think it's less the impact and more the consideration, is our focus.

CHAIR ESQUIVEL: Yeah. I'm having a hard time parsing it out. I get it a bit, I think. But nonetheless, okay, yeah. I appreciate that.

Other board members? Vice Chair? Same, yeah.

It's just -- if we could actually use as a basis

what happened to previous MCL adoptions, and what ended up sort of being a cost or a burden on the POTWs, would be really helpful, because it would help me better ground what I know is a concern. And I think, you know, you guys are kind of gearing up because of PFAS out there. And I just want to be careful, I guess, on best understanding what the real issue is.

MS. NIEMEYER: I did check in with the Executive Officer for the Central Valley Regional Board to find -- ask that question. And he was not aware of any POTW having to upgrade in any sort of way to address the TCP MCL.

CHAIR ESQUIVEL: Yeah.

VICE CHAIR D'ADAMO: Maybe if we could --

CHAIR ESQUIVEL: Vice Chair?

VICE CHAIR D'ADAMO: -- tease that out a bit, because it seems -- first of all, thank you. I wouldn't call this a nothing burger. I think that it's just that you're doing your job, and you're raising this concern, but I, too, was thinking about 1,2,3-TCP and the effect there.

So let's just say that whether it's this contaminant or another contaminant, that a process is underway at a regional board. What would be the process for Mr. Voskuhl or his members to elevate it and say, okay, wait, we need to have an analysis that's required the 13241 process? Or would it be through compliance that it would

come up? That maybe they get a compliance order, and then their response to that is that, you know, we don't think we should have to comply, because this analysis was not performed?

MR. LAUFFER: Sorry about that.

This gets very complicated very quickly. But, first of all, for those regions that do have the prospective incorporation of MCLs, many of their permits that they've issued historically do have, as Mr. Voskuhl indicated, a generic receiving water limitations requirement. And, you know, we haven't talked a lot about it before this Board, because you haven't had as many of those permitting type issues come up, but you generally have two types of effluent limitations for our permitted facilities.

They have end-of-pipe effluent limitations. Often those will be either technology-based or water quality-based, and an MCL that is incorporated prospectively into a Regional Board's Basin Plan would be a water quality objective in the Basin Plan, that could then be translated into an end-of-pipe water quality-based effluent limitation through a number of steps. It doesn't necessarily mean that it gets set at the MCL level.

And then the other thing that is a feature of a lot of these permits are receiving water limitations, that

you can't cause or contribute to an exceedance above the Water Quality Standard.

For this particular constituent, hexavalent chromium, it is unlikely, based on the record that our staff have looked at, that you would have any of the POTWs discharging into a water body that would have a compliance issue with the receiving water limitations language. I want to go -- work through that quickly, just to explain that for the proceeding before you today, that's not a compliance issue that they're likely to encounter.

For others, they could be, based on that prospective incorporation for future MCLs this Board adopted. And then at that point in time, there are a couple of different things. First of all, it is not a very straightforward enforcement matter, in the sense of if there was some, say, PFOA or PFAS-based effluent limitation or MCL down the road that became a water quality objective in a basin plan, just the fact that it's in there does not mean that a POTW, if it's got that constituent in its waste stream, is actually violating the Water Quality Standard. You have to -- there will have to be an analysis. The Regional Board would have to go forward, if it thought there was an exceedance of the Water Quality Standard, to try to prove the nexus and that they actually did cause or contribute.

The more realistic issue that folks are worried about is, a permit comes up for reissuance, or a new permit is to be issued after the Board adopts a new MCL. And at that point in time, it's not immediately incorporated as a one-to-one, but instead the permitting agency, the Regional Board, would have to go through the steps to figure out whether or not it even needed to include an effluent limitation in the permit for the facility, and then calculate what that effluent limitation could be. And then also would be able to incorporate -- because it would be a new or newly interpreted Water Quality Standard for our NPDES permits -- they would be able to take advantage of the State Board's compliance schedule policy. So they would get a period of compliance.

That discussion is in the context of the Clean Water Act, and our permitting under the Clean Water Act, which is what many of the POTWs are most concerned about. And because of that, the California Supreme Court decision in Burbank, the regional boards, if they found that there was a need for the effluent limitation, they appropriately calculated it, they have to include the effluent limitation without regard to the 13241 factors, but they're allowed to use that analysis and the need to increase treatment to provide a compliance schedule, for example.

And that's -- it's a long-winded way of saying

there is a way that it gets factored in, but there is not in that particular circumstance an obligation to consider the Water Code § 13241 permits, because the prospectively incorporated MCL for a federally covered -- so in other words, for a water of the U.S. -- needs to be implemented through an NPDES permit when the effluent is present, and the analysis shows that an effluent limitation is necessary.

That got very convoluted very quickly.

But there is a scenario where there will not be a Water Code § 13241 analysis, and I want the board members to appreciate that. In the other circumstances, when it's not a federal water, under the Burbank decision, the State Water -- or the Regional Water Board would have to consider the § 13241 factors at the time of permitting.

VICE CHAIR D'ADAMO: That helps, but then could you go back to when it is a federal water, and when you reference an analysis: what analysis?

MR. LAUFFER: Well, so, first of all, the analysis of whether or not it's necessary in order to protect the Water Quality Standard, the receiving water, whether it's necessary to incorporate an effluent limitation in the permit, and then what the appropriate calculation for that effluent limitation is. But that's not taking -- that's not looking at the Water Code § 13241

factors.

Now, if I can kind of reset the conversation a little bit, because I wanted to answer Board Member D'Adamo's question straight up, but I think one of the things that you've heard from the comments today -- and I will say, facts absolutely matter as the Board is evaluating MCLs. What you see in the staff's response to comments and what you've heard from the wastewater treatment plants, whether through CASA or CVCWA, is that there's a genuine agreement with the staff about this particular MCL is unlikely to create costs.

And that's important because, whether or not, when the staff is going through and doing its analysis under the California Safe Drinking Water Act as to what are the classes of industry that would be affected by the MCL, and it could have an impact -- here, that analysis led to, there was not a concern about the POTWs for a variety of reasons based on the nature and chemistry of hexavalent chromium, how it enters the waste stream for the POTWs. And ultimately, they were not in that initial analysis, but when the cost issues were raised by CASA, they were incorporated into the response to comments. So that will make it into the final documents that go to the Office of Administrative Law through that response to comments.

In future proceedings, which are not before the

Board at this point in time, you could very quickly get to a different conclusion about whether or not POTWs as a class of industry need to have that economic analysis in the initial statement of reasons, the SRIA, and the various documents under the California Safe Drinking Water Act. And so I don't want the Board kind of getting bound up, that what it does here sets the precedent for what needs to occur elsewhere, because each one is fact-bound, and it could drive a different analysis, and a different placement of that analysis, in a future proceeding.

If I can, I did want to respond to a couple other questions or issues in this space.

CHAIR ESQUIVEL: Let's go ahead and do so.

I see we have a last-minute commenter that has potentially joined the platform. Let's go ahead and conclude on your points that you would like to make, Mr. Lauffer, and then maybe take that comment.

Thank you, Mr. Voskuhl. Thank you.

MR. LAUFFER: Sure. I just wanted to address one concern that was raised that this was somehow different, or that the transfer of the Drinking Water Program to the State Water Board created some sort of new obligation. First of all, for those regions that have prospectively incorporated MCLs, whether it was adopted by the Department of Health Services, which was the precursor to the CDPH, or

whether it was adopted by CDPH, or whether it was adopted by the State Water Board in the case of 1,2,3-TCP, for those regions, once the MCL was effective for the California Safe Drinking Water Act, it was -- it became effective in their basin plans as a water quality objective because they are prospectively incorporated.

Second, that approach has been upheld by the courts, including in California Association of Sanitation Agencies versus State Water Resources Control Board, a decision from 12 years ago, where the court affirmed and upheld against a challenge by the POTWs, that it was appropriate under Porter-Cologne to prospectively incorporate those MCLs. And it found that the process that was used under the Safe Drinking Water Act, and the public processes much like we have now, were sufficient to allow that prospective incorporation.

Ms. Mackey referenced that the transfer of the program does allow alignment, the transfer of the Drinking Water Program. It's important to appreciate, though, that the prospective incorporation, and the use of MCLs as water quality objectives, has been the practice. Nothing's changed in that regard. And in transferring the program, the legislature did not impose any new obligations on the State Water Board. It did not substantively change Porter-Cologne. It did not substantively change the California

Safe Drinking Water Act. It simply changed the entity that was responsible for implementing the California Safe Drinking Water Act. And so it would be -- it would not make sense to somehow impose a new duty on the Board in setting MCLs that had never existed in the decades before that. And then just sort of the final point -- well, I think we've articulated that in responding to Ms. D'Adamo's question.

CHAIR ESQUIVEL: Thank you, Mr. Lauffer, I really appreciate that. And to your point, Vice Chair, again, it's not a nothing-burger, Mr. Voskuhl, here. It's ultimately just doing our best to try to best understand the issue. And importantly, it sounds like, again, this may become a real concern with other MCLs, and have confidence here in this one that we are appropriately taking into consideration the impact onto the POTWs, and here seeing none at this point.

Board Member Maguire?

BOARD MEMBER MAGUIRE: Yeah. Thank you. I greatly appreciate that explanation, Mr. Lauffer. That's very helpful. And I just want to tee up that I agree, this -- it does seem like this could come up with future MCL discussions. We have nine regional boards, all of which have their own decision-making independence. And so there's a lot of moving parts here. We also have a number

of statewide policies and permits, including our Stormwater Program, including other general permits and orders. So for me, it's difficult to understand, you know, when we make a decision at one point, where -- you know, where are the effects from that decision. And here in this MCL case, I'm heartened to hear that there's agreement that there's not much impact, if at all, from the MCL being discussed today.

But I am concerned about future standards. And so I would just welcome a broader conversation about that as we go forward, to get a little bit out in front, before those future standards are here, we're in the same position, where we're jammed a little bit in terms of making a decision and getting this new information. I think there's an opportunity for folks, stakeholders, to maybe circle up a bit, and think through what this could and should look like going forward.

So I just want to put in my two cents for that. Thank you.

CHAIR ESQUIVEL: Thank you, Board Member.

I believe the individual that was trying to put a last-minute comment is not currently on the platform. And if we don't see her soon, I think I'm going to close out public comment here. I just want to thank everyone as always for the input, the work that has gone on to all of

this decision here before the Board. You know, myself, being from the Coachella Valley, and 18 years of my life drinking chrome-6 water, and having family still in the community, this isn't a decision without a personal touch. And so know that, very much heard, the displeasure, the concern from folks around where we are landing on this MCL, and know that there is opportunity and consideration to continue to do better, to be more protective, especially as -- whether, you know, technologies improve and, importantly, our scientific understanding of the human health impacts. But I'm comfortable with where we are currently, even if it's still not as protective as a public health goal, but certainly a balance. And not one, again, that I don't take very personally given my own family's exposure -- continued exposure here in the Coachella Valley.

And so I just look to fellow board members and colleagues for some thought, questions, and just kind of sensing, trying to find out where we stand.

Board Member Firestone. Please. Thank you.

BOARD MEMBER FIRESTONE: Thanks.

So I think I've said a lot of what I have, but I guess I want to just start with that, we really want to avoid being in this situation where the public health goal is different from the MCL. Right? It really complicates

trust for, and communication with, customers about what safe water is, when there's a big difference between the level for the public health goal and the MCL. And so fundamentally, I think that's -- that underlines part of why the law requires us to set it as close as feasible. You know, personally, I think we should go lower, but I think that that can be, and should be, done through this five-year review process.

I think the -- you know, there's a number of technologies that I think could help really lower the cost, and could help make sure that more people could be protected, and that we could really have a more fully health-protective MCL. But, you know, we have a number of these where, like arsenic and some others, where there's a big gap between the public health goal and the MCL. And this is going to be yet another one. So I think, as we move through our reviews of the MCLs and our priorities, we need to be really taking a close look at -- and I know we are -- but at these ones where there's a big gap like that. So that's why we have arsenic as one of those that we're looking at coming up, and I think this will need to be that, too.

But for now, I think I'm comfortable with moving forward with 10 despite that. I do think as we -- you know, I'm tempted to try to put stuff into resolution

language, but I think I'm going to trust staff to be able to do it without resolution language.

So just, you know, I think we talked about enforcement discretion. I really trust that staff will be working with individual systems, like some of the ones we heard from today, that are working really diligently doing pilots. Maybe aren't -- you know, are disadvantaged and aren't going to be able to meet the generic timelines we have for compliance, but being able to set individual ones through orders that are, you know, still as quickly as feasible. So I trust staff will be doing that.

I also wanted to ask relatedly about -- yesterday we talked about having dedicated staff. I'm wondering, one of the things we're doing right now is having these pilots going on around stannous chloride. So are there dedicated staff that are helping to, you know, expedite the sort of permitting that we have around chrome-6, and particularly the stannous chloride, that are going to be able to help support that moving quickly given the timelines that we have?

MR. POLHEMUS: Yeah. I mean, there aren't now because we haven't started on it, but yes, we'll definitely make a focus of it. We, in fact, met I think three months ago with some consultants that had done a bunch of studies on it already. Unfortunately, for that particular water

system, the results were not positive. It looked as if it wasn't going to work for them, but we -- you know, that kind of goes to the point of this is a water chemistry issue, and their chemistry is different than others. So hopefully it does pan out for others in the future, but we will definitely focus when people are looking at that.

BOARD MEMBER FIRESTONE: Great. Yeah. I know it's -- you know, this permitting for this is critical on systems, especially when we have, you know, tight timeframes people are working under. We want to make sure we're being as responsive as possible and facilitating that on our side.

And then I guess, lastly, I do hope that we, as we're setting up the discussions in the intended use plan and fund expenditure plan, you know, I'd really like staff to be able to come with some estimate of what we're expecting people able to come to us with on -- you know, especially for disadvantaged communities -- on chrome-6 within this. I think that's going to be really important for us to understand as we're weighing the many competing demands on the limited funding. And so I just would like to make sure that we communicate that with the Division of Financial Assistance and Division of Drinking Water, to be able to make sure that that's very clearly laid out, for us to consider as we're looking at those priorities.

MR. POLHEMUS: I can assure you it's front and center. Joe and I have had many a conversation about it already.

I do want to note, though, that this year's IUP, probably, while we would need to talk about it, isn't going to understand the full impacts. Right? We need to go through the regulation. They need their plans. We need to understand their costs a little better. So it's important for us all to recognize that we need to remember it more likely next year, next -- you know, 2025's IUP was kind of when that issue would really come to the fore.

CHAIR ESQUIVEL: Board Member Maguire?

BOARD MEMBER MAGUIRE: Thank you so much.

This has been a lot of work to get to this point, and it's not lost on me how much staff has done here to get through these multiple iterations, administrative review drafts, very detailed economic analysis, several years of public process and engagement. So thank you for all that work, certainly.

I know there's mixed feelings about this decision today, that there's feelings that we should be at a lower standard and not at 10, but I do like to take a step back and look at California as compared to the rest of the nation. And I think here we're actually leading the way, or one of the leaders, as I understand it. And so I do

want to say that I'm proud of the work that we're doing here, and I think this does represent progress. And it's totally appropriate to review the MCLs during the five-year review cycle and see how they match up with the public health goal that is final at that time, and go through that cycle. That's what we're charged with doing. So that makes sense to me.

But here today, I'm trying -- I have been trying over these last several years of this to take in all of the information, and look at how do we best protect human health and communities that are impacted, which keeps me up at night, and is something that is very important to me. But at the same time, ensure that we can do it in a way that's cost-effective and viable and affordable to the same communities that are impacted. And then to me, even sitting here today, it is not clean-cut, and it's not clear how we get there. I appreciate the discussions about prioritizing the funding, and the work that we need to do there. We do need to take a look at that.

But the reality is, there's a lot of priorities on the funding, that same funding. Those same dollars are spoken for, time and time again, which is why we have so many folks who still are struggling meeting even the current standards that we have today. You know, nearly a million Californians still have challenges with existing

MCLs, so -- and we're working hard. We've made good progress. We're working hard to meet those needs and address those issues.

But effectively, what we're doing here is, I mean, we're adding to that workload, and that's just the reality of it, with a diminishing funding resource. And I've struggled with that, and I still to this day struggle with that, and I hope that things change as we go forward. So I think it makes sense to go to -- I'm comfortable with the 10 parts per billion MCL, as is proposed today. And that's a lot of the reason behind that comfort, is that I think right now that's the appropriate step.

In the future, circumstances can change, and perhaps they will. But for today, I think this is the right decision.

Thank you.

CHAIR ESQUIVEL: Board Member -- Vice Chair?

VICE CHAIR D'ADAMO: Well, I'll just say in the interest of time, I have some notes here, but you covered all of them, Board Member Maguire. I agree completely with what you've said.

The only thing that I would add is that, aside from my support, I would really look forward to sort of a lessons learned. I know this was very unique to chrome-6, but what lessons do we have coming out of it for the next

round, whether it's chrome-6, arsenic, whatever it may be. It's important for us to comply with our authorities, and we have the court decision, and so, you know, just looking for an opportunity to learn more about how we can, in the next round, go through a little more smooth and expedited process.

But good work. Thank you all. Thank you to the community members that stuck with us. And I just remember, Ms. Ventura, how many times you contacted us and came, showed up in public comment, and said, hello, remember us. And even though we said it was a priority, you know, you -- just sticking with us every step of the way is very much appreciated, and look forward to continuing to work with you and others that express concerns.

So thank you.

CHAIR ESQUIVEL: Board Member Morgan?

BOARD MEMBER MORGAN: Thank you.

So this, like many of our decisions, is not an easy one. So I really want to -- staff, you guys have been working really hard, and this, you know, this one's taken a while. So, you know, I really want to see us continue to really work to clear that -- clear the backlog, so that can re-examine, take a look at MCLs every five years. And to -- you know, I really also wanted to thank you for re-examining how, in the order that MCLs are taken a look at,

and grouping them by technology, and just looking at other ways where we can move quicker. And so, you know, with, you know, arsenic coming up, and just understanding that, you know, similar technologies can be used, and just looking at how we can do that, and just the progress that can be made over this time with taking a look at chrome-6, and then taking a look at arsenic, and hopefully, you know, please, let's get everyone meeting the arsenic limit also, so that we can continue to make progress, and so that communities are not continuously being left behind.

We wrote, you know, I want to see us moving forward, and also just as we continue to go -- you know, we've talked about this -- the cumulative burdens that are put on many communities, and the overlap of these contaminants within the communities. And so just continuing to look into that, and getting better, you know, understanding, as new science and new research continues to happen, so that, as we're taking a look at these MCLs, we can continue to group them, and group them in a way to where the most impact can be made as far as health, and that does help. So that we can continue to improve the health and the quality of life of communities that have not been heard, and that are continuing to struggle with just having safe drinking water.

So, you know, I want to continue to learn, adapt

our processes, and like the Vice Chair just said, you know, lessons learned, so that, you know, we can continue to do better.

So not an easy decision, but I'll be supportive of this one today, knowing that we will be revisiting it, and we'll know more at that time, and can continue to move forward.

CHAIR ESQUIVEL: Thank you, Board Member. Hear, hear.

Do we have a motion?

BOARD MEMBER MAGUIRE: Yeah. I'll move to adopt the resolution, with the change sheet read into the record by Ms. Niemeyer.

BOARD MEMBER MORGAN: I'll second it.

CHAIR ESQUIVEL: Thank you both.

Ms. Tyler, can you please call roll call vote?

BOARD CLERK TYLER: Board Member Maguire?

BOARD MEMBER MAGUIRE: Aye.

BOARD CLERK TYLER: Board Member Morgan?

BOARD MEMBER MORGAN: Aye.

BOARD CLERK TYLER: Board Member Firestone?

BOARD MEMBER FIRESTONE: Aye.

BOARD CLERK TYLER: Vice chair D'Adamo?

VICE CHAIR D'ADAMO: Aye.

BOARD CLERK TYLER: And Chair Esquivel?

CHAIR ESQUIVEL: Aye.

BOARD CLERK TYLER: Thank you.

CHAIR ESQUIVEL: Thank you as well.

The vote is unanimous, and the MCL is adopted. Appreciate it.

I know -- go on now to the administrative office to be approved. So just thanks everyone for the good, good work.

That wraps up item number six.

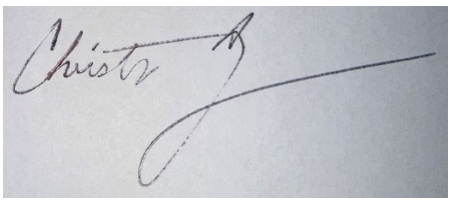
(Whereupon at 1:54 p.m. the Board moved to further items and later adjourned)

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a notary public and certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May, 2024.



_____

Chris Caplan
Electronic Reporter
CER**1971

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

MARTHA L. NELSON, CERT**367

May 24, 2024