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December 11, 2014

Ms. Jeanine Townsend, Clerk to the Board
Cc: Members of the Board
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

VIA ELECTRONIC MAIL

Dear Ms. Townsend:

SUBJECT: COMMENTS REGARDING THE SAFE DRINKING WATER PLAN FOR CALIFORNIA

We appreciate this opportunity to comment on the Safe Drinking Water Plan for California (the "Plan"). The California Association of Mutual Water Companies ("Cal Mutuals") is a not-for-profit representing California's mutual water companies. Many of our members are small water systems that are a major focus of the Plan. We would also like to provide context that will help you better understand how the draft plan may help and hinder our members, as well as other small water systems throughout the state.

It has become apparent from our work that many agencies and policy makers do not understand the role and nature of mutual water companies. A mutual water company is a privately owned not-for-profit corporation that provides water service to its shareholders, and/or their properties, at cost. As such, mutual water companies do not generate profits and do not distribute any excess revenues to their shareholders. Mutual water companies are organized under California's corporate code and must abide by all environmental and health regulations that apply to public water systems, in addition to laws requiring transparency, director training, and financial reporting that do not apply to special districts and other types of water providers.

More specific to the Safe Drinking Water Plan for California we provide the following comments:

1. Safe Drinking Water Standards Disproportionately Affect Small Water Systems in Economically Disadvantaged Areas.

As the Plan points out, safe drinking water standards disproportionately affect small water systems[1], particularly those in economically disadvantaged areas. The Plan overlooks how increasingly safe drinking water standards are derived from ever more sophisticated detection tools and ensuing treatment technologies that few small systems, and even some larger systems, can afford. This problem has been demonstrated by the disproportionate non-compliance of small systems with arsenic and nitrate standards, and is exacerbated by the new standard for Hexavalent Chromium that will result in even higher rates of non-compliance given that many impacted communities cannot afford the necessary centralized treatment systems.

Unfortunately, the Plan fails to adequately address this issue. Instead, the Plan's proposed remedies center around the promise of grants and loans from various sources including the Proposition 1 water bond; the promise of affordability based on the current regulatory platform for safe drinking water; unrealistic "shared solutions" to spread costs; and mandated take-overs and consolidations (see Item 3, below).

To better address this issue, we respectfully suggest that the Plan also include a State Drinking Water ***Strategic*** Plan that employs a timely "multi-contaminant approach" toward the setting of regulatory standards while gathering financial resources to help small systems comply. This is akin to the "multi-species" approach the State Water Board, state fisheries authorities and Federal agencies are taking with the Endangered Species Act. Such a framework for setting safe drinking water standards should take into account relevant, practical factors, such as pending standards for other contaminants, the financial impact on water systems, liability issues, and supply availability. That type of model will provide greater predictability in the ability of small systems to comply with drinking water standards and enhance a water suppliers' ability to strategically plan for financial impacts, necessary treatment technologies, and public involvement efforts.

Without such a plan, small water systems will continue to find that each new regulatory standard sets them at even greater disadvantage while scrambling for ad-hoc and improvised remedies. The state also finds itself developing funding sources without any way to quantify what burdens of cost the future holds not only for small system operators but for California's tax payers. Finally, by ignoring the cost of water treatment technology and infrastructure as "core infrastructure," the plan's call for requiring capital improvement set-asides by small systems, rings hollow and will become a wasteful exercise and expense.

2. A More Stable Source of State Financial Resources Must be Provided.

The recently approved water bond, Proposition 1, includes approximately $500 million for assistance of small systems and safe drinking water. While that is a significant amount of money, it is a "drop in the bucket" when compared with the safe drinking compliance costs facing

[1] The term "small water system" is not defined and thus is subject to varying usage. We believe it would be beneficial for the State Board to define that term so that it is clear what systems would meet that definition. That is an important point in light of the consolidation recommendations included in the Plan.

water agencies throughout the state. The Association of California Water Agencies estimates compliance costs at $4 billion statewide just for Hexavalent Chromium. The entire amount dedicated to small systems in the water bond would barely suffice to assist water suppliers in just the Coachella Valley to come into compliance. Similarly, in parts of Lancaster in the Antelope Valley, Hexavalent Chromium compliance costs can amount to $35,000 per year per service connection.

Another important factor to be considered (which is indirectly a financial factor) is the liability that a water supplier may face if it provides water that does not comply with applicable standards. When a public water system delivers water from a source that is exceeding a state water quality standard, it must provide notice regarding that situation. Such notifications expose that system to potential liability from customers and third parties. Thus, in some instances (particularly involving small systems serving poor areas), the water supplier has simply abandoned its groundwater wells and instead has provided water from more expensive water sources, which results in increased water rates to its customers. This recently took place in the Santa Ynez Valley where public and private not-for profits and investor-owned utilities took this step.

Lastly, the Plan ignores the real world costs that many of its recommendations will have on water suppliers. Procuring and installing meters, preparing and implementing asset management and funding infrastructure replacement, are all laudable actions which we support. However, available state funding is not sufficient to cover the need, and water rate increases in small and disadvantaged communities are not feasible. Other regulations are already causing adverse financial effects on small systems given their inconsistent definition. For example the NPDES permit compliance for the discharge of drinking water affects systems with 2,000 and more connections. The annual financial review of mutual water company financial statements under AB 240 enacted in 2013 specifically targets systems with under 1,000 connections – costing some as much as 25% of their annual revenue. Such compliance costs are not fully considered when new requirements are put in place by regulatory agencies or the Legislature.

In summary, more stable and effective funding from the state (as contemplated by Recommendation 4-5 in the Plan) is necessary to assist water systems (and especially small systems) in ensuring that the water they provide is safe and remains affordable. Funding may be stabilized through a strategic plan that incorporates the regulatory process as discussed earlier in this letter. In addition, by planning smartly, accounting for timing in the implementation of safe drinking water standards, accounting for all actions under its control as well as providing input and exerting influence with other regulatory agencies and Legislature, the State Water Board can significantly assist small systems in providing safe and affordable water to their customers and shareholders. With its recent assumption of authority over safe drinking water, the State Water Board should not miss this opportunity.

3. <u>Consolidations Must Be Carefully Considered</u>.

We are concerned by the Plan's express mandate to consolidate small systems with large systems regardless of the circumstances surrounding the respective systems. We appreciate statements by Water Board Staff during the public workshops that this recommendation applies to non-compliant systems. However, that wholesale willingness to consolidate is exhibited in Recommendation 8-5, which recommends legislation that would require a small public water system that is within the sphere of influence of a larger water system to annex to the larger system. We remain concerned because during the workshops, staff surmised without citing a specific study

applying to the whole state, that larger systems charge less for water than small systems as a universal truth.

Simply put, bigger is not always better. Real world examples illustrate this point. We are aware of a small special district water system located within an economically disadvantaged community in the Greater Los Angeles area. A preliminary recommendation was put forth to consolidate that district with the Central Basin Municipal Water District ("CBMWD") – a much larger agency that is rife with dysfunction and corruption. Under the Plan's Recommendation 8-5, the consolidation of that smaller district into the CBMWD would be mandatory. CBMWD is notorious for levying unnecessary surcharges on their sale of imported and recycled water. Needless to say, that consolidation may not have been in the best interests of the smaller district's customers.

Please allow for situations when a smaller system may provide fully compliant drinking water, more than adequate service to its customers at a reasonable cost. For example, in Pasadena, a mutual water company is providing drinking water to that much larger municipality. Lastly, the recommendations concerning consolidation ignore the practical realities that: (1) counties and county service areas may themselves lack the funding and thus, the desire to take over small water systems with poorly maintained systems in need of significant infrastructure improvements; and (2) some small water systems are located in areas distant from other larger systems, which makes consolidation difficult or even impossible.

A process for consolidation exists in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.). We believe that steps should be taken to adjust that existing process to facilitate consolidations where they make practical, economic and operational sense. A blanket law that requires forced consolidations will end up doing more harm than good.

4. <u>Shared Solutions May Be Problematic</u>.

Cal Mutuals fully supports the concept of having larger systems help small systems. In fact, that is one of the goals of our association – to become a statewide resource, with the assistance of our larger members, to assist small mutual water companies throughout the state.

Unfortunately, there are numerous obstacles that interfere with that noble goal when one mixes the types of larger systems that must help various types of small systems. Chief among those obstacles is Proposition 218, which restricts the purposes for which a public agency water supplier can collect and expend its revenues. Similarly, mutual water companies are restricted to selling their water for cost, which can limit what is a recoverable "cost" for their purposes.

While there are some current examples of larger systems assisting smaller systems, accomplishing that recommendation (Recommendation 3-1) may not be as easy as the Plan contemplates and dedicated funding for such assistance is imperative.

5. <u>A Water Use Fee must be Thoughtfully Considered</u>.

Recommendation 4-3 makes reference to possible adoption of a water user fee. The contemplated fee appears to be similar to the public goods charge that was the subject of SB 34 in the 2011-12 Legislative Session. That charge generated much opposition in the water industry because of the uncertainty over how it would be implemented and regarding the inequity by which the monies generated by that charge would be expended (i.e., monies generated in one

particular water supplier's area were not guaranteed to return to that area for improvements in that area).

Certainly, there are many legal and possibly constitutional issues that would need to be addressed before any such statewide fee or tax could be adopted. Thus, we encourage the State Water Board to be extremely thorough and thoughtful in its approach to such a fee – which will likely have impacts on all of the state's residents who will end up paying that fee or tax.

In conclusion, Cal Mutuals again thanks the State Water Board and its staff for the diligent effort put into the Plan. While we concur with many of the Plan's recommendations, we also believe it is important to acknowledge its shortcomings so that any adverse consequences can be avoided where possible. Please feel free to contact me with any questions concerning these comments at 714 449-3397.

Sincerely,

California Association of Mutual Water Companies

Adán Ortega, Jr.
Executive Director

Cc: Board of Directors, California Association of Mutual Water Companies