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CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION and SOLANO COUNTY TAXPAYERS ASSOCIATION

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION, a California corporation; and SOLANO COUNTY TAXPAYERS ASSOCIATION, a California corporation, Petitioners, v. STATE WATER RESOURCES CONTROL BOARD, Respondent.	CASE NO. 34-2014-80001850 **DECLARATION OF CLIFTON J. McFARLAND IN SUPPORT OF SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES PURSUANT TO THE COURT'S NOVEMBER 15, 2015 ORDER** Dept: 44 Judge: Hon. Christopher E. Krueger **BY FAX**

1474887.5

I, Clifton J. McFarland, declare as follows:

1. I am an attorney at law duly authorized to practice before all courts in the State of California. I am an attorney with Mitchell Chadwick LLP, and one of the attorneys of record for Petitioners California Manufacturers and Technology Association ("CMTA") and Solano County Taxpayers Association ("SCTA" and together with CMTA, the "Petitioners"). I submit this Declaration in support of Petitioners' Supplemental Memorandum of Points and Authorities Pursuant to Court's November 15, 2016 Order. Unless otherwise specified, I make this Declaration of my own personal knowledge and, if called as a witness, could and would competently testify thereto.

Court's November 15, 2016 Order

2. At the August 26, 2016 hearing on the Petition, there was discussion between the Court and counsel for the Petitioners and the Respondent State Water Resources Control Board ("State Board") regarding the status of compliance with the new Maximum Contaminant Level, or "MCL," for Chromium-6 and the potential effects of invalidating the MCL. Attached hereto as **Exhibit 1** is a true and correct copy of the Reporter's Transcript of Writ Proceedings (the "Transcript").

3. As part of this discussion, counsel for the State Board stated: "[w]ell, Your Honor, I think there certainly would be—if you do affirm the tentative, I think there certainly could be some problems. First of all, Mr. McFarland underestimates the status the projects, the construction projects to build the treatment systems. Some may still be in the pencil stage, but I think – my understanding is, and we do have—we can compile comply [sic] the evidence for this if You Honor wishes, but my understanding is that quite a few of the projections are well into construction. So there would be quite a bit of—chaos may be going too far, but certainly a lot of uncertain about what to do, and I just—what all those water systems are supposed to do that have been complying or on the path to compliance. I don't think it's as simple as just putting down a pencil. You have contractors hired and it's—it's a big deal, so ..." (**Exhibit 1**, Transcript at 28:3-18).

4. On or about November 15, 2016, I received the Court's Order Vacating Submission and Ordering Additional Briefing (the "11/15/16 Order"). The 11/15/16 Order requested the parties address a number of issues raised in connection with the hearing on the Petition, including the status of compliance with the MCL as discussed at the hearing, through additional briefing, and stated: "[t]he parties are strongly encouraged to meet and confer regarding these issues prior to filing their briefs, to see if they can agree on any of the terms or scope of the remand. If there are areas of agreement, the parties should so state in their briefs." (11/15/16 Order at p. 3).

5. Within the next several days, I telephoned Russell Hildreth, counsel for the State Board, to initiate a meet and confer process consistent with the 11/15/16 Order. Mr. Hildreth and I exchanged voice mail messages for several days. On November 22, 2016, Mr. Hildreth and I spoke by telephone and we agreed to schedule a meet and confer conference during the first half of December. We also agreed to a stipulation to extend the briefing schedule, such that opening briefs would be filed on or before January 27, 2017.

December 14, 2016 Meet And Confer

6. The parties first met and conferred on December 14, 2016, at the offices of CMTA. The parties discussed issues presented, and questions asked, in the 11/15/16 Order. The parties agreed to work together to attempt to answer the questions posed in the first bullet point paragraph in the 11/15/16 Order, which provides: "If the court invalidates the current MCL, how will that affect those public water systems that have already either begun complying or fully complied with the MCL? . . . The court asks this question because it is concerned that some public water systems have already spent substantial sums complying, or attempting to comply, with the current MCL."

7. At this meeting, I stated my view that if the parties could answer the questions in the first bullet point paragraph regarding: (1) the total sums public water systems anticipated spending to achieve compliance with the MCL; and (2) the sums that public water systems have already spent—it might then be possible to work toward a stipulation on the "terms or scope of the remand," consistent with the 11/15/16 Order.

January 9, 2017 Meet And Confer

8. The parties met and conferred for a second time on January 9, 2017, at CMTA's offices. Several representatives of water purveyors affected by the new MCL attended the meeting and provided input to the State Board as follows.

9. Steve Bigley, Director of Environmental Services at the Coachella Valley Water District, indicated that he had obtained an engineering cost estimate which estimated the future capital costs to achieve compliance with the MCL would total $278 million, of which approximately $14.7 million had been spent to date.

10. Shawn Hagerty, counsel to the Coachella Water Authority, stated that his client estimated compliance costs of $36.2 million, of which about approximately $400,000 had been spent to date. Mr. Hagerty also stated that another client, the City of Winters, estimated compliance costs of $42 million, of which approximately $126,000 had been spent to date.

11. Adan Ortega, Executive Officer of the California Association of Mutual Water Companies, indicated that the costs of compliance with the MCL were simply unaffordable for many of the association's members including those who provide water service in rural areas and urban pockets.

12. Owen Sharp, of the San Andreas Mutual Water Company, indicated that it would cost his company $500,000 to comply with the new MCL and that approximately $35,000 had been spent to date simply on completing the paperwork to request a compliance extension to January 1, 2020, pursuant to Senate Bill 385.

13. The water purveyor representatives indicated a willingness to contact other water purveyors to gather additional information regarding: (1) the amount they expected to spend to achieve compliance with the MCL; and (2) how much they had spent to date, in an effort to address the issue raised by the Court's 11/15/16 Order, and the State Board was amenable to the process as a way to progress the discussions.

14. Mark Bartson, head of the Technical Operations Section of the State Board's Division of Drinking Water, also attended the conference on January 9, 2017. Mr. Bartson stated that there were a total of 7,588 public water systems in California. Of these, 4,430 were either

community water systems or non-community, non-transient water systems, referred to as NCNTWS, the types of water systems that must comply with MCLs. Mr. Bartson stated that approximately 197 of these water systems operated one or more water sources that contained Chromium 6 at levels exceeding the current MCL of 10 parts per billion. Mr. Bartson stated that the Division of Drinking Water is "not tracking" 67 of these systems because they had an "easy out," a simple and straightforward way of achieving compliance, such as taking a well out of service. Mr. Bartson also stated that the Division of Drinking Water was then "tracking" approximately 130 water systems with respect to compliance with the new MCL.

15. During the conference, I asked counsel for the State Board if they would provide me with the list of the 130 water systems that are being tracked by the Division of Drinking Water so that the water purveyor representatives could contact those water systems to determine the amount they expected to spend to achieve compliance and the amount they had spent to date. Counsel for the State Board indicated that they would consider my request.

16. The parties also agreed to conduct a further meet and confer conference on January 31, 2017 and thereafter agreed to a further stipulation to extend the briefing schedule, such that opening briefs would be due on March 10, 2017.

January 31, 2017 Meet And Confer

17. The parties met and conferred for a third time on January 31, 2017, at CMTA's offices. At that conference, I indicated that the water purveyor representatives had made some progress in gathering cost information from other water purveyors, but that there was not enough information to form the basis for a discussion. I again asked counsel for the State Board if they would provide the list of the 130 water systems that are being tracked by the State Board's Division of Drinking Water, as that list would be of assistance to the water purveyor representatives in gathering cost information pursuant to the 11/15/16 Order. Counsel for the State Board provided a list of about 194 water systems that operated one or more water sources that contained Chrome-6 at levels exceeding the current MCL of 10 parts per billion. Counsel for the State Board stated that the list did not contain contact information, but that information could be obtained from the Division of Drinking Water's website.

18. At the conference on January 31, 2017, the parties agreed to tentatively set the next meet and confer conference for February 21, 2017. The parties also agreed that they would postpone the conference if insufficient cost information had been obtained by that time to form the basis for a constructive discussion.

19. Thereafter, the parties agreed to postpone the meet and confer conference tentatively set for February 21, 2017 to February 28, 2017.

February 28, 2017 Meet And Confer

20. On February 27, 2017, I sent Mr. Hildreth, counsel for the State Board, a "Draft – Work In Progress" summary of the results to date of a survey of the purveyors identified in the State Board's list that was being conducted through the California Municipal Utilities Association, and which sought information from those purveyors about the amount they expected to spend to achieve compliance with the MCL, and how much they had spent to date, in an effort to continue to address the issues in the Court's 11/15/16 Order (as more specifically set forth in the Declaration of Danielle Blacet which is attached pursuant to the reference below).

21. The parties met and conferred for a fourth time on February 28, 2017, at CMTA's offices. At that conference, we discussed the then current results of the survey which included information for about 32 water systems. The survey results indicated that public water systems had not spent substantial sums in complying with the MCL.

22. I asked counsel for the State Board if they would agree to stipulate to an extension of the briefing schedule to allow more time for additional survey results to be collected. Counsel for the State Board stated that they would not agree to a further extension of the briefing schedule. During the conference, my co-counsel Andrew Collier asked counsel for the State Board if they were aware of any information regarding purveyors that had spent substantial sums in complying with the new MCL. Counsel for the State Board indicated that they were not aware of any such information. Given this, and the survey results to date, I also asked counsel for the State Board if they would agree to stipulate that: (1) compliance with the Chrome-6 MCL would require the expenditure of substantial sums by public water systems; and (2) public water systems

had not spent substantial sums to date in complying with or attempting to comply with the current MCL. Counsel for the State Board indicated that they would not so stipulate.

Additional Information Per Court's 11/15/16 Order

23. As part of the Petitioners' continuing efforts to address the issues presented, and questions raised, in the Court's 11/15/16 Order, additional information has been obtained and is attached to this Declaration for convenience and economy rather than separately filed.

24. Attached hereto as **Exhibit 2** is a Declaration of Danielle Blacet, Director of Water for CMUA. In her declaration, Ms. Blacet provides further information about the survey.

25. Attached hereto as **Exhibit 3** is a Declaration of Steve Bigley, director of environmental services at the Coachella Valley Water District. The Coachella Valley Water District will incur more Chromium-6 compliance costs than any water district in the state. In his Declaration, Mr. Bigley provides further information about the compliance status of the Coachella Valley Water District and the costs it anticipates incurring.

26. Attached hereto as **Exhibit 4** is a Declaration of Adan Ortega, executive director of the California Association of Mutual Water Companies. In his Declaration, Mr. Ortega provides further information about the compliance issues that his members are confronting.

27. Attached hereto as **Exhibit 5** is a Declaration of Scott Rogers, general manager of the Coachella Water Authority. In his Declaration, Mr. Rogers provides further information about the compliance status of the Coachella Water Authority and the costs it anticipates incurring.

28. Attached hereto as **Exhibit 6** is a Declaration of John W. Donlevy, City Manager of the City of Winters. In his Declaration, Mr. Donlevy provides further information about the compliance status of the City of Winters and the costs it anticipates incurring.

29. Attached hereto as **Exhibit 7** is true and correct copy of a letter submitted by the Southern California Water Committee ("SCWC") to Felicia Marcus, Chair of the State Board (a public record of which this Court is requested to take judicial notice pursuant to California Evidence Code sections 451, 452). As the letter states, the membership of the SCWC includes a large percentage of the drinking water purveyors in the state.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of March, 2017 in Sacramento, California.

CLIFTON J. MCFARLAND

DOWNEY BRAND LLP

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Exhibit 1

To the Declaration of Clifton J. McFarland

IN THE SACRAMENTO SUPERIOR COURT

COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

HON. CHRISTOPHER E. KRUEGER, JUDGE, DEPARTMENT 44

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CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION AND SOLANO COUNTY TAXPAYERS ASSOCIATION, Petitioners, vs. STATE WATER RESOURCES CONTROL BOARD, Respondent.	CASE NUMBER 34-2014-80001850

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REPORTER'S TRANSCRIPT OF WRIT PROCEEDINGS

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FRIDAY, AUGUST 26, 2016

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CYNTHIA L. HALL, CSR NO. 10064

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FRIDAY, AUGUST 26, 2016

MORNING SESSION

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Proceedings in the matter of CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION VS. CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, Respondent, Case Number 34-2014-80001850, respectively, came on regularly this day before Honorable **CHRISTOPHER E. KRUEGER**, Judge of the Superior Court of California, County of Sacramento, sitting in Department 41.

California Manufacturers and Technology Association was represented by **CLIFTON MCFARLAND** and **ANDREW L. COLLIER**, Attorneys at Law.

The State Water Resources Control Board was represented **NICHOLAS STERN** and **RUSSELL HILDRETH**, Deputy Attorneys General.

The following proceedings were then had:

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THE BAILIFF: Remain seated and come to order. Department 44 is now in session.

THE COURT: Good afternoon.

MR. MCFARLAND: Good afternoon, Your Honor.

THE COURT: So we have California Manufacturers and Technology Association versus State Water Resources Control Board.

Counsel, please state your appearance.

MR. STERN: Nicholas Stern for the State Water Board.

MR. HILDRETH: Russell Hildreth also for the State Water Board.

MR. MCFARLAND: Good afternoon, Your Honor. Cliff McFarland with the Mitchell Chadwick firm for the Petitioners.

MR. COLLIER: Good afternoon, Your Honor. Andrew Collier with the Downey Brand firm also on behalf of the Petitioners.

THE COURT: Thank you for being patient and waiting a little while to start this hearing. I had been hearing a matter for another judge -- for, like, another judge on another floor, so I just got up here right when this hearing was supposed to start.

You've all seen the tentative?

MR. MCFARLAND: Yes, Your Honor.

THE COURT: And so the Board, I would imagine, has the most objection. So I would suggest, I think you can go first, Mr. Stern.

MR. STERN: Thank you.

THE COURT: Let me know. Go ahead.

MR. STERN: I'd like to first address the legislative ratification issue addressed in your tentative.

THE COURT: Uh-huh.

MR. STERN: I think the -- well, first of all, the answer to the question is yes, the Legislature has ratified the standard. The best evidence of that is both the bill itself and then the -- some of the bill analyses that came with that.

The bill analysis from the Department Appropriation Committee said that the purpose of SB80 -- 385, it was adopted because some affected water systems had only six months to construct expensive, "expensive new treatment facilities." The statute itself requires water systems that want to take advantage of the extension that the statute offers, to develop a compliance plan. The compliance plan has to state compelling reasons why it is not feasible for the water system to comply. It has to give a summary of the water system's funding sources. It has to state any other options for compliance that the water system has, and it has to state the earliest feasible date to comply.

So I think between the bill analysis, which refers to the -- clearly is aware -- shows awareness of the costs involved and the feasibility issue, and the bill itself which expressly uses the term feasible and also talks about -- is talking not just about technical issues, but funding and compliance that would reduce compliance costs, I think that those show that the Legislature was well aware of the costs and the costs that this statute -- that the -- I should say that the cost that the regulation and MCL will impose on water systems.

What the Legislature did in this bill is they put the burden of demonstrating feasibility on the water systems to the extent -- so what that means is to the extent that the feasibility analysis done by the Department -- and I'll get to that in a minute -- but to the extent that the Department's feasibility analysis was inadequate, the Legislature cured that defect and basically, essentially mooted the issue of feasibility. So the Legislature --

THE COURT: I mean, clearly they don't pass this bill unless they know that there's this problem. Certainly they know that all these different water systems are complained to the Legislature, but is there somewhere in the bill or the history that says, "We write this MCL at 10 parts per billion"? Nothing quite that black and white or...

MR. STERN: It's -- it -- they could have, of course, deleted or changed the MCL. That -- legislation that would have done that was actually rejected by the Legislature. Instead by saying you have to comply with this MCL, the 10 part -- the existing 10 parts per billion, that was what I'm saying is ratification. And they did so --

THE COURT: I think you're on stronger ground when you start talking about ratification of the 10 parts per billion. I don't really think legislation that didn't make it through the -- certainly legislation that didn't make it through the process to be a bill -- to be a law, I mean it's -- it's kind of interesting, but it's -- they kill a lot of bills for a lot of reasons. They don't like what color paper it's printed on or whatever. They don't like the author. They like the other author better of the bill that did pass, but anyway, go ahead.

MR. STERN: Well, I completely agree with you, Your Honor, and if that's all we have here, if they hadn't also passed a bill in that context, if you put those two together, I think it -- and it wasn't just, here, you get an extension. No. The water -- the way they put it was the water systems expressly had to provide compelling reasons why the existing timetable, existing deadline for compliance is infeasible, and that part of that feasibility analysis that the water systems have to do is address funding and options for compliance which I'll go into much more detail in a minute.

THE COURT: Okay.

MR. STERN: So moving on to the heart of Your Honor's analysis of economic feasibility, the -- the Court agreed with petitioners that feasibility connotes affordability, and --

THE COURT: Well, otherwise it's just number crunching, and my concern is the numbers were crunched for all these different MCLs, for all these different sizes of water systems based on hookups, you know. There were different charts there, but to take it -- doesn't -- let's put it this way: Technological feasibility looks at what technology is out there. Economic feasibility presumably looks at who can afford to pay for this. We can have the perfect -- you know, they always talk about you could build a perfectly safe car, but no one could afford to drive it. You could have the perfectly, you know, the water that meets every OEHHA public health goal at 0.02, but maybe no one could afford that. So when you talk about feasibility, don't you by necessity have to be thinking about the implementers, the customers, the water systems and whether they can afford them, not just saying well, there's, you know, this column for this MCL. Well, here are all the different costs. Oh, well, we're just going to kind of go with this one that's -- that even though there's, you know, maybe a $5,000 cost -- you know, bill cost to some people, but we're just going to -- we just picked one because, you know, we liked it.

MR. STERN: Well, I have kind of two responses to that. One is that is -- sounds exactly like what the Court in the City of Portland did, but the difference between this case and the City of Portland, and it's certainly a reasonable analysis. I'm not saying that, but in this case it is not applicable. You don't look to other sources. You don't try to interpret because what you have is a statute that says precisely what the Department was requested to do. And when you have a statute that says you must consider X, Y, Z, you don't then look to the dictionary. You don't then look to federal law, and you don't go to other ways that you would otherwise do if you had an ambiguous standard. But this isn't --

THE COURT: What is the definition of feasibility that I'm supposed to use in this statute?

MR. STERN: In section 116365 subdivision (b)(3) it says, "For the purposes of determining economic feasibility pursuant to this paragraph, the State Board shall consider," and then it goes on, X, Y, Z. And that is exactly what the Department did, and those tables reflect that.

THE COURT: But isn't there -- I'll read the whole sentence because it's interesting. "For the purposes of determining economic feasibility pursuant to this paragraph, the State Board shall consider the cost of compliance to public water systems, customers, and other affected parties with the primary drinking water standard, including the cost per customer and the aggregate cost of compliance using the best available technolcgy."

Now that's 116365(b)(3)as you said. But when you're considering feasibility and you're considering cost per customer and aggregate cost of compliance, isn't there at least strongly implied that then you figure out whether those customers can pay that cost per customer, whether those water systems can pay the aggregate cost of compliance, or are you just supposed to sort of look at it and go I can crunch the numbers, and now we pick one?

MR. STERN: Well, let me -- let me explain why, and I completely understand Your Honor's concern for the extremely, you know, the obviously high cost for certain small water systems. And this also fits exactly with what the Legislature did with SB 385. It talked about water systems that want to -- that want to submit a compliance plan to get an extension. They have to talk about options and they have to talk about alternative funding sources. They're the ones that know about this, and let me be specific about these options.

So one option is small water systems. The ones where the cost is most expensive, they can get a permit from the Department -- or from the State Water Board for a point of use or point of entry treatment if centralized treatment is not economically feasibility. And if I may give you the citations for that just for the record?

THE COURT: Sure.

MR. STERN: It's Health & Safety Code 116380, Title 22 of the Code of Regulations, 64417 et seq.

Second option, small disadvantage communities can get grants to help pay for treatment. That's what the -- that's at lease in part what the SB 385 bill meant by alternative funding sources.

Next, next option for compliance, the water system may be able to replace its contaminated water sources with uncontaminated sources or just turn off -- if it has multiple sources, just turn off the contaminated one and rely on the uncontaminated one.

And lastly -- no, not lastly. I have two more, sorry. They can blend uncontaminated sources with contaminated sources and the result -- with the goal that the blend would have a lower level of contamination under the MCL.

Lastly, water systems aren't necessarily able to pass on these costs to users because of Proposition 218, and that's -- Proposition 218 added Articles 13(c) and (d) to the California Constitution.

THE COURT: But isn't that the proposition that has to do with making sure you're not -- I mean passing along direct costs to direct users, right?

MR. STERN: Yes. What I'm saying --

THE COURT: So why couldn't they? The cost to producing the water would seem like something that would be -- the cost of reducing a particular contaminant, say, per gallon is something and then you figure out how many gallons, because people presumably have meters, then isn't that the kind of cost that's -- that you don't have to worry about

Prop 218 for because it's directly put right on the users?

MR. STERN: Perhaps you're right, Your Honor.

THE COURT: I mean it's not like, say, a levee for park systems in a whole area and it's unclear who's using the park and whose parcel is getting direct benefit. I think we know whose parcel gets a direct benefit of certain gallons of water because we have these water bills that say you drank this much water.

Isn't this line of argument, Mr. Stern, kind of putting the feasibility -- the need to determine the feasibility on the water system and taking it away from the Department? I mean the Department is supposed to figuring out the technological and economic feasibility of compliance, right?

MR. STERN: Well, as I said, my position, the Board's position is if the Department did under the statutory language, to address your concerns about the cost to the users though, I'm pointing out that water systems, and only water systems know whether they -- whether they have one -- which of these options they can go with. And it's up to water systems to apply for this permit and demonstrate that it would be economically feasible.

So the water systems know if they have two sources, one is contaminated and one is uncontaminated, and I'm saying that Senate Bill 385 is basically acknowledging that by putting the burden on water systems to demonstrate that so that they can get the extension, and --

So, the point is though, you see the number in the table for small water systems as over $5,000. That doesn't necessarily mean that by no means that that's what users of those small water systems are actually going to have to pay because there's all these different things that might happen that are within -- largely within the water systems.

THE COURT: But aren't all the things you're talking about part and parcel of the feasibility analysis that wasn't done here? I mean, the Court was not trying to signal -- and this is a tentative ruling -- but wasn't trying to signal that the Department has to go back and set the MCL higher so that it's cheap enough or the number's small for everyone or anything like that. It's really just all these numbers are being crunched and the Department has to take into consideration a feasibility. And maybe the feasibility analysis says that, you know, if all water users are this big bell curve, the people who are going to have to pay a heck of a lot of money or figure out how to get a point-of-entry permit as you mentioned or blend sources or join a bigger water system and just, you know, stop having their own little pumped water system wherever they are, those people are just going to have to do those things.

If an analysis said, oh, 85 percent of the people looking at the -- I think the other side pointed out the U.S. Conference of Mayors, some study, looking at some study like that about what the average person makes at a salary and, you know, and considers well, 85 percent of the people can afford 10 MCL and maybe the other people have to try other options, but that's the feasibility study that doesn't seem to have been done, right?

I'm not saying, you know, $5600, 10 MCL is definitely too low. You have to have a higher standard, but it just seems like the feasibility study beyond the crunching of the numbers wasn't done.

MR. STERN: I'm not sure what -- I mean, I think -- again, I think they did what was required, but I also think what, for instance, the method of the U.S. Conference of Mayors, what exactly does that do? I mean it only -- at some point you have to say okay, so you calculate median and household income and you set some rather arbitrary number above which is deemed to be infeasible below which is feasible, but what good does that do?

And I think what's going on is this -- the numbers -- I mean if you think about it, the Department had to set an MCL. The Legislature said they had to, and if you look at the table that is in your tentative, you may notice that if the Department had set it for two times the current existing standard or three times, the amount for those -- the costs for those small water systems would still be 4 or $5,000, depending on which one, and the maximum we're talking about is 50 parts per billion doing nothing. So for 20 or 30 parts per billion, you still have the same problem. So...

THE COURT: But that's where you have to say, well, at the same time -- I mean the Board, I get, has to weigh several different considerations. They're told set a level as close as feasible to the corresponding public health goal, and to the extent technologically and economically means all these different criteria -- and I know that these mandates are somewhat conflicting, right? You can hit the public health goal and have it be really expensive. They even try to -- this is like 800 times the public health goal, right?

MR. STERN: Five hundred.

THE COURT: Five hundred. That's right. Okay. Don't try to do math on the bench, right?

So at the same time, you know, if you had a feasibility study that said well, you know, this number of people can afford one and these small systems can't do it, but at the same time, you know, they have other options and we have to consider that if we doubled the MCL to 20 parts per billion, so many more cancer patients -- I mean there's just -- you know what I mean. There's just all these different factors.

I'm not asking a very good question here, but what I'm trying to say is -- well, I'm not sure. Now I'm sort of getting a little tied up here, but it doesn't -- economic feasibility isn't the only thing. Technological feasibility is still here. The goal of getting it as close, you know, being no less stringent than the EPA and as close to the OEHHA's public health goal as possible, those are all goals. But a feasibility study still has to look at who can afford it, right?

MR. STERN: Well --

THE COURT: And maybe say look, these people can afford this. This is the number that comes as close to all these different conflicting criteria as we can and yes, some people are going to have to pay a lot of money or try different sources of water. I just don't see the Department having done that.

MR. STERN: I think the Department in calculating the per service connection fees and all the other data that it did collect and consider went as far as possible. And I think SB 385 -- and not only I do think that's what the statute demands, but I think SB 385 recognizes that by putting the feasibility analysis further -- any further feasibility analysis in the hands of the water systems who knows whether they can blend or substitute or, you know, some other options.

THE COURT: See, I don't know if you call that feasibility analysis. Don't you just call that compliance? I mean they're not really charged with analyzing their own feasibility. They just have to comply, find a way to comply. How does that excuse the Department's duty?

MR. STERN: Well, the Department's duty is set by statute.

THE COURT: Anything else?

MR. STERN: Yes.

THE COURT: Okay.

MR. STERN: Not on the issue of economic feasibility. I'd like to move on to economic impact under the APA.

Your Honor's tentative ruling points out that the regulation defining economic impact became effective during the administrative process. In other words, it was -- it became effective after the rule. The regulation was proposed, but the Court suggests that the Department could have, in the final statement of reasons, there they could have addressed economic impact in accordance with this new definition. And the new definition, of course, requires analysis of indirect and induced costs, not just direct costs.

But I think -- I think that regulation was part of what the Department of Finance, who promulgated that regulation with the definition of economic impact, that regulation was part of a package and in that package of the government code that mandated that finance issue those regulations. And I'm talking about -- I'll do some citations for the record -- Government Code 11346.3 and Government Code 11346.36. The latter regulation -- the latter statute -- excuse me.

The latter statute directions finance to adopt the regulations. In the former regulation, what it says is that -- that they're supposed to apply these regulations, apply to regulations, "proposed on or after November 1st, 2013." So that applies, that means that according under the government code, all the regulations that were promulgated, including this definition of economic impact, apply going forward to -- not to regulations that had already been proposed, but to regulations that were proposed after November 1st, 2013, and this regulation was proposed well before that date. So that definition of economic impact, which requires analysis of indirect and induced costs, doesn't apply to this regulation.

THE COURT: Okay.

MR. STERN: And the Court in discussing this economic impact analysis -- I just had two more points on this.

THE COURT: Okay.

MR. STERN: -- says that the Department failed to analyze the impact on 65 private, non-transient non-community water systems, and the Court cites to page 367 in the administrative record. Now that table actually applied -- the number is actually even smaller than 65 because that table applies not only to non-transient non-community water sources, but also to community water sources. And it doesn't just apply to small water sources. It applies to all sizes of water sources. So the number of, let's see, factories and businesses of that sort that are private, that have small and that have their own water system is even -- we don't know the number. We just know it's a subset of the 65 listed in the table.

So if you take that into consideration and the fact that of those -- of that subset of 65, some of those -- some of the -- I'm going to say 30 just to throw that number out there -- some of that 30, they're going to make use of those options that I discussed earlier. So given that we're really talking about a very, very small number, even much less than 65, I think the substantial compliance rule under the APA applies.

And lastly --

THE COURT: Is that a new argument you didn't make in your opposition, substantive compliance argument?

MR. STERN: Yes, it is.

THE COURT: All right.

MR. STERN: It's new -- yes. It's in response to the

Court's tentative.

THE COURT: Okay.

MR. STERN: Lastly, the Court found that the Western States case does not apply because it did not involve the APA, and granted the Court in Western States didn't use the phrase economic impact, it used the phrase economic considerations; however, the adoption of a secondary standard does involve the APA. And if you look at the briefs that the parties in that case filed, they made quite clear that what they're talking about is economic impact and therefore that's what the Court actually was discussing. Those briefs are available on Westlaw. I have the Westlaw citations if you're interested.

THE COURT: If you want to give them to me, sure.

MR. STERN: How about I give you the first of them, 2001 Westlaw 34131909, and that's page 32. The brief -- that's the opening brief, and the brief states, "The agency must consider all adverse economic impact on California business enterprises." And it cites for that Government Code 11346.3. "Here," the brief goes on, "Here DH's deliberate indifference to costs associated with the new MCL is an additional and independent ground for requiring its recisions."

THE COURT: All right.

MR. STERN: Thank you.

THE COURT: You're welcome.

And do you want -- who's arguing on this side?

MR. MCFARLAND: I'll be talking this afternoon, Your

Honor.

THE COURT: All right.

MR. MCFARLAND: Do you have a preference in which we do this? I know you had asked three questions in the tentative order. We're prepared to --

THE COURT: Just address the points you want to address, counsel.

MR. MCFARLAND: All right.

THE COURT: I'll interrupt with questions.

MR. MCFARLAND: I'm going to start then where Mr. Stern started and talk about the first question that you posed which is has the Legislature effectively ratified the MCL and responded to complaints about economic feasibility by providing additional time to comply? The short answer to that is no, the Legislature did not ratify the MCL. And no, the Legislature did not respond to complaints about economic feasibility by providing additional time to comply. What the Legislature did was provide additional time to comply to avoid widespread non-compliance on July 1st. Now this device that the Legislature employed extending a deadline is not exactly unusual practice sometimes referred to as buying time, sometimes humorously referred to as putting off to tomorrow what I can or can't do today, and sometimes cynically called kicking the can down the road.

I'd like to touch on three points, and I'm going to start with the case law cited in the tentative order. That case law is a -- falls into the area of jurisprudence, cannons of statutory construction, and I want to talk about that a little bit. Second, I want to talk a little bit about the cases that were cited in the tentative order, and then third, I want to talk about the role of the Legislature and how it acts in our formal government.

So first with respect to the case law, I thought the most instructive thing to do with respect to the cases that were cited, and there were other cases in the area, was to figure out where they fit into California Jurisprudence so we can have a foundation from which we could operate. We knew where we were coming from. The most concise treatment I can find of this general topic is Cal Jur 3d, the second volume at sections 371 to 378, and I did bring copies of those sections. I don't know whether it's helpful to provide them or whether I should continue with my argument and I can provide them at the end.

THE COURT: I'm not going to stop and read Cal Jur now.

MR. MCFARLAND: Yeah, let me just continue.

THE COURT: If you want -- I'll just tell you, I'm going to take this under submission. I'm not going to just ratify the tentative today, so I will be able to read all the cites that have been given me.

MR. MCFARLAND: Let me do a brief explanation then of how I see the cases that are cited in the tentative order, how they -- what they stand for, whether they fit into jurisprudence, and I want to contrast that to the question that was posed. Those sections of Cal Jur, to which I've referred the Court, fall under the general heading of Administrative Regulations and Rulemaking and the

Construction of Statutes and Regulations and the difference that should be accorded to agencies in the construction of a statute or regulation. The overview starts at section 371. Like Cal Jur does for sections, overviews the area --

THE COURT: Are you agreeing or disagreeing with the tentative?

MR. MCFARLAND: I'm agreeing with the tentative.

THE COURT: Okay. So because you're starting off like you're putting this into the constellation of law in the world, but if you think it's fine, you don't have to give me the -- how all the cases fit into all the jurisprudence of cases. I don't want to cut you off, but I mean if you're fine with the tentative, then -- if there's things you want to point out that are wrong with the tentative, go ahead.

MR. MCFARLAND: Of course we agree with the tentative, Your Honor, but the question was -- I wanted to take seriously the question that was posed and provide our viewpoints as to what those cases mean and how they are not applicable to the question that was posed.

THE COURT: Okay.

MR. MCFARLAND: If that's useful, I can continue.

THE COURT: Go ahead.

MR. MCFARLAND: If it's not useful, I can talk about something else.

THE COURT: You best know what you want to say, so why don't you just go ahead.

MR. MCFARLAND: I'll move through this a little bit more quickly then I was planning on given your admonition, but this section of the cases that were cited deal with the deference afforded an agency when its interpreting the statute. The courts have long recognized the construction of a statute by an agency should be afforded some deference, but the agency's interpretation is always subject to review by the Court, and it's the duty of the Court to determine the true meaning of the statute. That's what this area -- that's the area of law that these cases stand for.

When we look at the cases, and I'll briefly look at sheet metal workers which is the first one cited. Sheet metal workers, the Department of Industrial Regulation in its covered determinations over the years had interpreted the prevailing wage law consistently that offsite fabrication work performed at a permanent facility is not subject to prevailing wage. In contrast, fabrication work performed at a dedicated temporary facility is subject to a prevailing wage. So what the court of appeal did in the case it had in front of it was it noted the canon of statutory construction, a consistent longstanding agency interpretation of a statute particularly when the Legislature had revisited the statute several times in the interim and not disturbed the agency's interpretation is entitled to deference. And that's the general rule that is talked about in those cases.

This canon of statutory construction doesn't support the proposition that the Legislature ratified the 10 parts per billion MCL merely by extending the compliance deadline. In the cases cited in the tentative, what's at issue is the interpretation of statutory language and that the courts utilized many canons of construction to aid in that interpretation. The focus of the cases is on the inquiry of the -- is on the statutory language itself, what it means, and the issue in the cases as the amount of deference to be provided to agency's interpretation. It's a doctrine of statutory interpretation.

Here what's at issue is the status of a substantive regulatory standard. The focus of the question in the tentative is on the Legislature and the issue is whether legislative silence indicates ratification of a newly acted standard, and a doctrine of statutory interpretation is inapplicable here. The cases and what they stand for and where they fit in the jurisprudence are inapposite to the question that's being posed.

My last point in this area is I think it's important to bear in mind that the Legislature acts to the passage of bills and there is not a doctrine of legislative ratification by silence. We're unable to locate any such thing. Senate Bill 385 contained a provision changing the compliance date from July of '15 to January of 2020, and that was the substance and sum total of that bill. If the Legislature had wanted to set a regulatory standard, it would have needed to include that in that bill or another bill, hold committee hearings, and unlike SB 385, there would have been opposition to that bill and there would have been contentious hearings. The Legislature would have had to pass the bill. The Legislature sometimes considers standards setting legislation. It very rarely passes, and finally the governor would need to sign the bill. That's the process in which the Legislature acts. It's an open process and it's a participatory process, and I don't think it's proper to treat legislative silence and the complete absence of a legislative process on the issue as the functioning for passage of a bill. To do so operationally would deprive this Court of jurisdiction to the hear the matter and would deprive my clients of the right to challenge regulatory standard, a challenge, that should be noted, was pending when SB 385 was passed.

So that may be more of a thorough answer to question number one than you were anticipating, but that's our answer to question number one.

THE COURT: Okay.

MR. MCFARLAND: In light of the question Your Honor asked or the comment that you made reminding me whether we're in agreement with the tentative or whether I'm arguing with you, would you like me to address questions number two and three or not necessarily?

THE COURT: Not unless you want to, mindful of the fact that you've used about two-thirds of your time. As the tentative said, we're trying to limit this to about a half an hour for each side. I'm not vigorously shutting the door on it, but I think if there's specific points you want to make.

MR. MCFARLAND: Let me make those points quickly, Your Honor. With respect to question number two, would this Court be interfering with the judgment of Alameda County Superior Court, I believe the answer to that is no. The issues and parties are wholly distinct. As you say, two groups filed a deadline lawsuit in Alameda County. As is typical, the petitioners prevailed in the deadline lawsuit. DPH met the deadline that was established by the Court, the rivers were turned, and the case was concluded. This is a wholly separate matter brought by different parties on different grounds.

THE COURT: Let me ask a different question.

MR. MCFARLAND: Yep.

THE COURT: The other side said, essentially, the subsequently passed legislation at least recognized that the people weren't able to comply with the mandate here, all these water systems weren't, and that basically by giving those water systems different options, they were sort of putting on the water systems to determine feasibility or to cope with -- to determine their own economic feasibility. Either blend their water or change their point source of water or something else. What do you say to that?

MR. MCFARLAND: Let me state two things with respect to that. First of all, any time an MCL is passed, it then falls to the water systems to implement the MCL, and the water systems are going to go through a process to try to accomplish that task and of course there will be an engineering analysis and of course there'll be a determination as to how to best do that. I don't think that that's unique, but it doesn't go to the issue of whether the standard that was initially set by the Department is economically feasible. That's just a function of the water system managing its operations for the benefit of the system and of its customers in the best way that it can. It's not an argument that economic feasibility is a duty of a water system or it doesn't relieve the Department from not having to determine whether the 10 part per billion MCL was feasible to begin with.

THE COURT: What about the argument that the Court got it wrong about the economic impact under the APA analysis, that the government -- the argument was Government Code 11346.36 applies only to regulations proposed on or after November 1st, 2013, and therefore it doesn't apply here?

MR. MCFARLAND: Yeah, that argument is in response to the manner in which the Department approached its economic impact on business analysis where it basically inserted the word direct into the statute where it doesn't appear to begin with and essentially amended the statute unilaterally to take out the word business and put in the word regulated entity and having essentially amended the statute to make it say something different than what the Legislature said it said.

The answer to the question is easier. When we pointed out that there was a regulatory definition that included direct, indirect, and induced, what we were trying to say among other things is the Department doesn't get to insert words into the statute, and the fact that the regulation might not have applied at the time that the proposal was put out, doesn't change the fact that the Department can't unilaterally insert the word indirect into a statute where it doesn't exist. I think as Your Honor pointed out and as we tried to argue in our paper, the direction in which this area of the law and this type of analysis is headed is in the opposite direction, is to be more inclusive in the analysis, and the Department wants to be less inclusive and narrow it. But they're narrowing it by adding words to the statute that don't exist.

THE COURT: Anything else?

MR. MCFARLAND: Let me just respond, very briefly, to what Mr. Stern said with respect to economic feasibility, and I think I'm going to echo some of the words you said from the bench. Mr. Stern mentioned, you know, five potential ways in which compliance could be ameliorated: Grants for treatment, replacement of sources, blending, a discussion about Prop 218, that although the numbers are quite high, the people might not have to pay for it, and we appreciate that. Our viewpoint is that those are all great questions and all areas that should be explored. They should have been explored in the economic feasibility analysis. That's what the statutory requirement is for, and all of that stuff should have been done upfront and in the ISOR as opposed to post-hoc arguments --

THE COURT: And that's I-S-O-R, not an eyesore.

MR. MCFARLAND: I hadn't thought of that one.

THE COURT: Just for the record.

MR. MCFARLAND: And then finally, there was some discussion about the Department did what the statute said. We would disagree with that. The statute did say do X, Y, and Z, but one of those letters is that the Department was required to consider the various numbers it calculated to make a determination as to which of the MCL levels were economically feasibility, and yes, there -- the statute did provide direction. It's that the direction wasn't and that task wasn't completed.

THE COURT: Let me ask a different question. You know, what if the Court grants this writ and there's all these water systems that have been moving heaven and earth to comply all this time. What does that do to all -- how does that sort of unsettle the whole situation?

MR. MCFARLAND: Yeah. My understanding is that water systems have to do a number of things at this point: Study the groundwater quality, determine their options for compliance, conduct tests to see which of the three treatment options is best, perform conceptual engineering studies on a couple of options, do an engineering design of the option they select, put bid packages out and ultimately construct the project. The big dollar items are closer to the end of that train, close to the end of that list with of course the big ticket item being the actual construction of a public works project. It's my understanding, as it is yours, some of the systems have incurred costs, but it's my understanding that substantial costs have not yet been incurred. The substantial costs are back-end loaded. They deal with the construction and with the heavy engineering design that takes place toward the end.

If it were remanded and the number were changed to -- picking something out of thin air -- 20, obviously what would happen to water systems whose water contained between 10 and 20, they would put their pencils down. They wouldn't have to continue down their list and their timetable and incur all those additional costs.

With respect to systems, their sources were over 20, so they still had a compliance obligation, my sense is that a lot of the work that had been done to date, getting a handle on the water quality, because it's not just the hexavalent chromium. It's the chloride, the sulfate, the dissolved solids and the other things that are in the water that direct which of the treatment possibilities will be feasible or won't be feasible. A lot of that work will still be useful for the systems that still have a compliance obligation. Now they may have to downsize some of that work and it would probably be less work than it otherwise would have been done, but a lot of the work that would have been undertaken would still be useful on a going forward basis. Again, I think they would all breathe a sigh of relief because the major costs, which are down the road, would then be smaller and wouldn't be things that they have to address at the 10 part per billion.

THE COURT: The Court's going to take a ten-minute break at this time, and then I'll hear reply from Mr. Stern.

(Break taken.)

THE COURT: So I had a question for Mr. Stern which is the same question I asked the other side. If in fact the Court grants the writ, sends the Department or State Water Resources Control Board now back to the drawing board, is there some problem with all these water systems that have been laboring to comply all this time, what happens to that?

MR. STERN: Well, Your Honor, I think there certainly would be -- if you do affirm the tentative, I think there certainly could be some problems. First of all, Mr. McFarland underestimates the status of the projects, the construction projects to build the treatment systems. Some may still be in the pencil stage, but I think -- my understanding is, and we do have -- we can compile comply the evidence for this if Your Honor wishes, but my understanding is that quite a few of the projections are well into construction. So there would be quite a bit of -- chaos may be going too far, but certainly a lot of uncertain about what to do, and I just -- what all those water systems are supposed to do that have been complying or on the path to compliance. I don't think it's as simple as just putting down a pencil. You have contractors hired and it's -- it's a big deal, so --

THE COURT: Okay.

MR. STERN: -- I would -- I would just ask that the similar to what the Court did in the Poet case if -- I can give you the citation for that. Poet versus ARB, that's from 2013. The citation 218 Cal.App.4th 681. In the remedies, that that was the case involving both APA and CEQA violations, and the remedies for APA are discussed at page 756 and then the disposition discusses all the remedies at 766-767. Essentially the Board would hopefully be able to not restart from scratch because that would take quite a long time.

THE COURT: I doubt that they would. I mean the Court would just be granting this on a narrow issue.

MR. STERN: That --

THE COURT: I mean to the Court's -- I mean, my perspective is -- and I'm going to take this under submission. I'm not sure, but as of right now when I was working on this tentative I was thinking it's just the Board didn't take it -- well, it was the Department. It would be the Board -- didn't take it to the last system which is to figure out how all these costs become feasible to all these regulated bodies. You know, it's like the last step almost of the analysis, of the economic analysis. What's already in the analysis is, like, the necessary predicate for a feasibility analysis. The Court just feels, as expressed in the tentative, that it seemed like DPW -- DPH stopped short.

MR. STERN: Well, I'm sure the Board would appreciate that sort of narrow -- relatively narrow remedy. If I may, unless does the Court have additional questions or may I just --

THE COURT: Yeah, go ahead.

MR. STERN: I just wanted to very quickly point out the citations to the record on the issue of options, optional means of complies, just to indicate that those are in the record. The issue of permits that small water systems can apply for if centralized treatment is economically feasible. That is at page 4644, and the blending as an optional means of compliance is at administrative record page 282.

And lastly I would just kind of reiterate my -- our argument about SB 385, and that I think SB 385 did do much more than what petitioners suggest. It's not just an extension. The whole compliance plan approach where water systems must submit a compliance plan demonstrating why it's not feasible to comply and funding sources and itself mentions these other options for compliance. I think it does a lot more than just -- than just provide an extension. Thank you, Your Honor.

THE COURT: Okay. Thank you. The Court will take this under submission and issue a written ruling within 90 days. Thank you.

MR. COLLIER: Thank you, Your Honor.

MR. STERN: Thank you.

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CERTIFICATE OF OFFICIAL CERTIFIED SHORTHAND REPORTER

State of California)
) ss.
County of Sacramento)

I, CYNTHIA L. HALL, hereby certify that I am an Official Certified Shorthand Reporter of the Sacramento Superior Court and that I recorded verbatim in shorthand writing the proceedings had, Friday, August 26, 2016, in the Matter of California Manufacturers and Technology Association vs. California Department of Public Health , Respondent, Case Number34-2014-80001850, completely and correctly to the best of my ability; that I have caused said shorthand writing to be transcribed into typewriting, and the foregoing pages, 1 through 30, constitute a complete and accurate transcript of said shorthand writing taken at the above-mentioned proceedings.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

Dated: Friday, September 16, 2016

Cynthia L. Hall

CYNTHIA L. HALL, CSR No. 10064

Exhibit 2

To the Declaration of Clifton J. McFarland

DECLARATION OF DANIELLE BLACET

I, Danielle Blacet, declare as follows:

1. I am the Director for Water at the California Municipal Utilities Association ("CMUA"). I make this declaration of my own personal knowledge and, if called as a witness, could and would competently testify to the matters stated in this declaration.

2. CMUA was initially formed in 1932 to represent the interests of California's community-owned electric utilities. CMUA now represents the common interests of a diverse coalition of California's publicly-owned electric utilities and water agencies and provides a forum to develop and discuss statewide policy issues affecting its members. CMUA currently has about 61 members, which includes many of the largest publicly-owned water utilities and agencies in California.

3. As the Director for Water for CMUA I am, among other things, responsible for monitoring the status of this case given that several of CMUA's members are impacted by the new maximum contaminant level of 10 parts per billion (ppb) for Chromium-6 (the "MCL"). I have reviewed and am familiar with the Court's November 15, 2016 Order in this case which, among other things, seeks information about how much water systems have spent in attempting to comply with the MCL.

4. Earlier this year, I was approached by Steve Bigley, general manager of the Coachella Valley Water District. I understood that Mr. Bigley, along with Adan Ortega, Executive Director of the California Association of Mutual Water Companies ("Cal Mutuals"), and Owen Sharpe of the San Andreas Mutual Water Co. had participated in a conference with the parties to the case and were interested in working with CMUA to help gather information regarding the expenditures that public water systems have made in attempting to comply with the MCL.

5. Thereafter, I worked with Mr. Bigley, with respect to the drafting of a brief survey questionnaire which was intended to elicit information about the expenditures that public water systems have made in attempting to comply, with the MCL. Mr. Bigley provided me with a cover letter that accompanied the survey. A true and correct copy of the letter and survey

questionnaire is attached hereto as **Exhibit A**.

6. The survey asks two questions, and states: (1) Please estimate the total amount of capital costs (past and future) that your agency/company will need to spend for your water system to comply with the 10 parts per billion maximum contaminant level (MCL) for hexavalent chromium; and (2) How much of the amount listed above has your water agency/company spent to date? The survey asks that this information be provided to me. To the extent that survey respondents had questions, the cover letter indicated that they could contact Mr. Ortega (with regard to mutual water systems), myself (with regard to CMUA members) or Mr. Bigley (with regard to others).

7. On or around February 1, representatives of the California Manufacturers and Technology Association ("CMTA") provided me with a list of about 194 water agencies impacted by the MCL, which I understand was provided by the State Water Resources Control Board in connection with discussions regarding the November 15, 2016 Order (the "purveyor list"), along with contact information (email addresses) for about 45 of these water agencies.

8. On February 7, I emailed the cover letter and survey questionnaire to about 45 of the water agencies on the purveyor list.

9. On February 27, I emailed the cover letter and survey questionnaire to about 41 water agencies, including those agencies that had not yet responded to my February 7 email and those for which I obtained additional contact information. I did not send the cover letter and survey questionnaire to the remaining water agencies on the list obtained from CMTA because I was not provided their contact information. I would have transmitted the cover letter and survey to these additional water agencies had I been provided with their contact information.

10. Mr. Bigley, Mr. Ortega, and Mr. Sharpe, directly and through their representatives, provided me with ongoing assistance in the effort to obtain information pursuant to the Court's November 15, 2016 Order at various times during the process including by obtaining contact information for potential survey respondents, reaching out to potential respondents about the survey, soliciting and transmitting information in response to the survey to me for compilation, and compiling information.

11. On a periodic basis, as it was received, I caused the information obtained through this collaborative effort including the survey results and related outreach to be recorded in a chart. The chart contains four columns of information obtained from the above described process to date: (1) the name of the water agency/company; (2) the name of the individual who provided the information; (3) the total capital costs the agency/company anticipates spending to achieve compliance with the MCL; and (4) the amount spent to date (and the calculated percentage of total costs spent to date). A true and correct copy of that chart is attached hereto as **Exhibit B**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of March 2017 at Sacramento, California.

DANIELLE BLACET

EXHIBIT A

EXHIBIT A

TO THE DECLARATION OF DANIELLE BLACET

Danielle Blacet

From:	Danielle Blacet
Sent:	Tuesday, February 07, 2017 4:35 PM
To:	Danielle Blacet
Subject:	Chromium 6 Compliance Costs Survey-RESPONSE REQUESTED by Feb 21
Attachments:	Cr6 Remaining Compliance Cost Survey.docx

Good afternoon-

We are reaching out to you regarding your efforts to comply with the hexavalent chromium (Cr6) Maximum Contaminant Level (MCL). On November 15, 2016, Judge Christopher Krueger of the Sacramento Superior Court issued an order requesting additional briefing in California Manufacturers and Technology Association, et al. v. State Water Resources Control Board, a lawsuit challenging the California Department of Public Health's (now State Water Board's) drinking water MCL for Cr6. Judge Krueger's tentative ruling in the case is to remand the MCL to the State to consider the MCL's economic feasibility. Before determining the scope and terms of the remand, however, the court has asked for information about the impact invalidating the current MCL would have on utilities that have already taken actions to comply with the MCL. In particular, the court would like to receive information on the extent to which some public water systems "have already spent substantial sums complying, or attempting to comply, with the current MCL."

Because the impacted water systems are the best source of information needed to respond to this request from the court, we have prepared the attached survey to collect this information and help provide it to the court in response to the court's request. Please take a moment to complete the survey for your water system(s) impacted by the Cr6 MCL and **return the survey by February 21, 2017** to:

- Danielle Blacet, CMUA, at dblacet@cmua.org or 916-326-5810 (fax).

Water systems that do not know the estimated capital cost to install treatment facilities needed to comply with the Cr6 MCL can use a cost estimating tool prepared for the Water Research Foundation. Go to http://crvitreatmentcosts.com/home/ and enter some information about your water system to produce estimated capital costs for each of your impacted groundwater wells.

If you have questions about filling out the survey, please contact the appropriate volunteer water expert listed below for assistance.

- California Municipal Utilities Association Members – Danielle Blacet at (916) 326-5802
- California Association of Mutual Water Companies Members – Adan Ortega at (714) 449-8403
- Other Impacted Water Systems – Steve Bigley at (760) 398-2651, extension 2286

Thank you for your participation.

Sincerely,

Danielle Blacet
Director for Water
California Municipal Utilities Association

Adán Ortega
Executive Director
California Association of Mutual Water Companies

Hexavalent Chromium Compliance Costs Survey

In its Order dated November 15, 2016, regarding the hexavalent chromium (Cr6) maximum contaminant level (MCL), the Superior Court of Sacramento County asked that the following issue be addressed:

"If the court invalidates the current MCL, how will that affect those public water systems that have already either begun complying or fully complied with the MCL? The court posed this question in its tentative ruling, but did not get an answer at the hearing. The court asks this question because it is concerned that some public water systems have already spent considerable sums complying, or attempting to comply, with the current MCL. If it knows, the Department may also wish to address how many public water systems have fully complied with the MCL and how many are in the process of complying."

Answering the following survey questions will assist the court and the parties in addressing this issue:

1. Please estimate the total amount of capital costs (past and future) that your agency will need to spend for your water system(s) to have the required source capacity to reliably purvey drinking water meeting the 0.010 milligram per liter (10 parts per billion) maximum contaminant level (MCL) for hexavalent chromium.

____

2. How much of the amount listed above has your water agency spent to date?

____

Name of Water System(s): ____

Name of Individual Responding to Survey: ____________________________________

Please return your survey by March 6, 2017 to:

Danielle Blacet, CMUA, at dblacet@cmua.org or 916-326-5810.

EXHIBIT B

EXHIBIT B

TO THE DECLARATION OF DANIELLE BLACET

Hexavalent Chromium MCL
Water System Compliance Survey

March 10, 2017

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
Coachella Valley Water District: Core Community (3310001); CVWD: I.D. No. 8 (3310048)	Steve Bigley	$278,000,000[1]	$14,700,000[2] (5%)
City of Banning	Luis Cardenas, Senior Civil Engineer	$36,400,000[3]	$260,000 (0.7%)
Santa Ynez Rancho Estates Mutual Water Company	Sig Hansen, Director and VP Operations	$850,000 - $1,400,000[4]	$9,400 (0.7%-1%)
Coachella Water Authority	Scott Rogers, General Manager	$36,200,000	$400,000 (1%)
Joshua Basin Water District	Curt Sauer, General Manager	$15,000,000 - $17,000,000	$150,000 (0.9%-1%)
Twentynine Palms Water District	Ray Kolisz, General Manager	$2,775,000	$275,000 (10%)
City of Winters	Carol Scianna	$42,000,000[5]	$126,000 (0.3%)
City of Los Banos Public Works Department	Randy Williamson, Water Quality Specialist	$41,000,000 - $92,000,000[6]	$50,000 (0.05%-0.1%)
Hesperia Water District, City of Hesperia	Jeremy McDonald, Public Works Supervisor	$2,100,000 - $7,400,000	$0
Morning Star Packing Co., Los Banos	Tod Harter	$965,000	$32,000 (3.3%)
City of Watsonville	Jackie McCloud	$22,200,000	$550,000 (2.4%)
Hidden Valley Lake Community Services District	Kirk Cloyd, General Manager	$4,000,000[7]	$40,000 (1%)

[1] Pursuant to the survey instrument, all costs reflected in this column are for capital expenditures only. Estimates do not include ongoing operation and maintenance costs.

[2] Includes consulting services to prepare a compliance plan pursuant to SB 385 (Hueso, 2015).

[3] Banning estimates additional ongoing system operation and maintenance costs of approximately $700,000 per year.

[4] For 92 residential customers.

[5] Winters does not qualify for grant funding. The City anticipates residential water rates will more than double if it is required to implement its current compliance strategy.

[6] Capital cost to treat 13 groundwater wells.

[7] System states it does not have the rate capacity to absorb this cost and does not qualify for State Revolving Fund loans.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
City of Dixon	Joe Leach, PE, City Engineer/Public Works Director	$14,000,000	$86,000 (0.6%)
Santa Ynez River Water Conservation District, Improvement District No. 1	Eric Tambini, Water Resources Manager	$25,800,000[8]	$1,700,000 (6.5%)
Rio Linda Elverta Community Water District	Robin Baral, Churchwell White LLP (General Counsel)	$62,500,000	$47,000 (0.08%)
City of Arcadia	John Corona	$2,135,000	$75,000 (3.5%)
City of Patterson	Kerry Fuller, Churchwell White, contract City Attorney	$65,000,000 - $70,000,000[9]	$50,000 (0.07%-0.08%)
Antelope Park Mutual Water Company	Elizabeth Green	$1,300,000[10]	$1,000 (0.08%)
Antelope Valley Mobile Estates	Elizabeth Nicholson	$60,000 - $100,000[11]	$0
Aptos Ridge Mutual Water Company	Stephen Pfeiffer	$75,000 - $120,000	$2,000 (1.7%- 2.7%)
Desmond Road Water System #3	Kate Sawyers	Unknown[12]	$0
Dolan Road Mutual Water Company	Gary Kubisch	$150,000	$0
First Mutual Water System	Bill Cox	Unknown[13]	$275.00
Harbor View Water Association	Jean Rashe	$150,000	$0
Paradise Lake Mutual Water Company	Josie Avala	Unknown[14]	$0
Rolling Acres Mutual Water Company	Alan Flint	Unknown[15]	$0
Myoma Dunes Mutual Water Company	Mark Meeler	$10,000,000 - $20,000,000	$100,000 (0.5%-1%)

[8] Compliance will result in a rate increase of 45% over a five year period. Compliance costs are significant considering that the Improvement District No. 1's 2016/2017 annual budget is $9,281,960.
[9] A feasibility study prepared by an independent consultant indicates Patterson will need to spend an additional $135 million to $175 million in ongoing operation and maintenance costs for the system over a 35 year lifecycle.
[10] CrVI concentration 10.6 ppb in 2016.
[11] System anticipates an additional $12,000-$15,000 per year in ongoing operation and maintenance costs.
[12] Estimate not yet available.
[13] Based on discussions with the State Water Board, the water system has concluded it cannot afford treatment.
[14] Estimate not yet available.
[15] System has not produced an estimate because it does not have sufficient resources to cover treatment cost.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
San Andreas Mutual Water Company	Owen Sharp	$500,000	$35,000 (7%)
Sundale Mutual Water Company	Vanessa Carrier	$1,200,000	$0
Sunny Mesa Water System	Don Rosa	$3,000,000	$33,000 (1.1%)
Terra Nova Mobile Home Park	Eric Graboff	$160,000	$5,000 (3.1%)
Clear Skies Mobile Home Park	Eric Graboff	$112,000	$5,000 (4.5%)
Wildewood East Mutual	Frank Starmer	$2,598,000	$35,000 (1.3%)
Rosamond Community Services District	Ronald Smith, General Manager/ GEI Consultants	$1,300,000	N/A[16]
City of Kerman	Ken Moore	$20,000,000[17]	$45,000 (0.23%)
City of Brentwood	Eric Brennan, Water Operations Manager	$3,900,000[18]	$0[19]
City of San Luis Obispo Water Department	Dean Furukawa, Water Treatment Plant Supervisor	$3,600,000[20]	$0
Mitsubishi Cement Corporation	David M. Rib, Environmental Manager	$0[21]	$0
South Willows Industrial Park	Steve Soeth	$1,000,000	$10,000 (1%)
North Edwards Water District	Dolly Kostopoulos	$7,816,390	$0[22]
Western Skies Mobile Home Park	Vicky Steel	Unknown	$0
Landale Mutual Water Company	Frank Purcell	Unknown[23]	$0

[16] While RCSD did not provide an estimate of amount spent to date, the District has incurred costs associated with evaluation of treatment alternatives and "mandated state reporting on a Chromium VI Action Plan", but "infrastructure costs have not been accrued to date."

[17] Additional ongoing operation and maintenance costs are estimated at $ 1,500,000 per year. Kerman estimates that it will need to raise water rates by four- or five-fold over current rates just to comply with the 10 ppb Cr VI standard.

[18] Includes annual operation and maintenance costs.

[19] Brentwood has temporarily removed wells from service to comply with the 10 ppb MCL.

[20] SLOWD is currently evaluating further development of its groundwater basin that would require an additional estimated $6.3 million for Cr6 treatment.

[21] Mitsubishi shut down its primary source well to meet the Cr VI MCL. This action resulted in some increased expense to pump water from more distant wells over greater elevation gains and to conduct additional sampling and analyses of alternative well water. Respondent did not quantify these expenses.

[22] System reports possible state grant of unknown amount.

[23] CrVI concentration at 11.5 ppb in 2013.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
Hidden Valley Water Agency	Glenn Church	$100,000	$0
Leafwood Community Water Agency	Louie Calcagno	$100,000	$0
Strawberry Road Water System #06	Susan McCall	$100,000	$0
San Joaquin River Club Inc.	Sam Hedge, Water and Wells Chairman	$850,000	$44,000 (5.2%)
Monterey Bay Academy	Jay Ketelson	$2,000,000	$30,000 (1.5%)
Renaissance High School	Steve Okamura, Energy Manager	$500,000	$25,000 (5%)
60th Street Association Water System	Cathy Montano	$250,000[24]	$0
Quartz Hill Water District	Chad Reed, General Manager	$2,000,000[25]	$0
Indio Water Authority	Scott Rogers, Water Quality	$5,802,600[26]	$291,000 (5%)
Soquel Creek Water District	Carla James, Water Program Coordinator	$10,000,000	$300,000[27] (0.03%)
Fircrest Mutual Water Company	Mark Calhoon, System Operator	$20,000[28]	$0
Fisherman's Bend Mobile Home Park	Anna Diaz, Sam Hedge, System Operator	$750,000	$0
Tierra Buena Mobile Home Park #1	Kevin Timms	$10,000	$0
Calvary Christian Center	Kevin Timms	$12,000	$0
Teichert Construction	Brett Lehman	Unknown	$0
UC Davis	Lew Pollock – Superintendent, Water and Gas	$0[29]	$0
Kenwood Village Water Company	Karen Ball	$200,000	$10,000 (5%)
Waller Tract Water District	La Juana Nix	$500,000[30]	$0

[24] System states it cannot afford treatment. Current CrVI concentration at 10.4 ppb.
[25] CrVI concentration at 13 ppb.
[26] 3 impacted wells. Additional annual operation and maintenance costs of $74,100.
[27] Spending $10,000/month on CrVI compliance since October, 2014.
[28] System has shut down one well.
[29] One well with CrVI concentration at 12 ppb put on standby and not used. Will rely on surface water from City of Davis.
[30] CrVI concentration at 15 ppb in 2015. Plan to consolidate with City of Indio due to well collapse and CrVI compliance cost.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
Buena Vista Migrant Center	Water Sampling Services	$500,000[31]	$25,000 (5%)
Avalon Dairy Farm (formerly Costa Dairy Farm)	John Cockran	Unknown[32]	$0
Fountain Trailer Park	Barbara Gonzalez	$0[33]	$0
Baker Community Services District	Jacob Overson	Unknown[34]	$10,000
City of Vacaville	Bonnie Robison	$14,367,000	$392,000 (2.7%)
Pine Grove Trailer Park	Larry Tardie, Macy Burnham	$120,000[35]	$0
Lancaster Water Company	Art Kearin	$1,500,000[36]	$800 (0.05%)
Elkhorn Road Water System #04	Bill Fenwick, Roger Anton	$90,000[37]	$800 (0.9%)
Oasis Gardens Water Company	Chad Finch	$300,000	$0
Venture Estates Mutual Water Company	Diana Cooley	$300,000[38]	$0
City of Woodland	Sherry Salas	$40,000,000	Unknown[39]
Campbell Soup Supply Company, LLC	Thomas Maulhardt, Environmental Supervisor	$100,000-$300,000[40]	$17,500 – $22,500[41] (5.8%-22.5%)
Ingomar Packing Company	Josh Handley, Water Resource Supervisor	$130,000[42]	$0
JG Boswell Tomato Company	Jose Lemus	$173,116[43]	$0

[31] System anticipates state funding to cover capital costs.

[32] System reports it may have to destroy homes.

[33] Consolidated with North Edwards Water District. CrVI concentration at 13.25 ppb.

[34] BCSD describes itself as "a very small water district" that expects to incur costs in the millions of dollars and does not have a rate base sufficient to support such costs.

[35] CrVI concentration at 11-15 ppb.

[36] LWC states it would have to purchase property to accommodate treatment system and cannot afford treatment cost.

[37] CrVI concentration at 11-12 ppb. Cost estimate based on drilling a new well.

[38] CrVI concentration ranges from 3.5–12 ppb.

[39] Shifted to surface water with Davis and other local cities, but still need some groundwater to meet current demand.

[40] The broad range of costs reflects options ranging from shutting down the currently used groundwater well to installing a treatment system. Respondent is concerned that CrVI concentrations in the alternate well may increase over time, necessitating treatment.

[41] This expenditure includes engineering feasibility studies and hiring a consultant to prepare a compliance plan pursuant to SB 385.

[42] Estimate is for installation of a new well.

[43] Company estimates additional ongoing operation and maintenance costs of $10,750 per year.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
Martin's Mobile Home Park	Doris Martin, Owner	Unknown	$0
Mesquite Mutual Water Company	Mike Mills, Operator	Unknown[44]	$0
Pilot Travel Center #168	Lu Damerell/Eric Morton	$85,000	$50,000 (58.8%)
City of Newman Water Dept.	Koosun Kim, Public Works DIrector	$1,800,000[45]	Unknown
Los Osos Community Services District	Margaret Falkner, Utility Compliance Technician	$500,000	$0
Newberry Elementary School	Katy Hilton	$1,600[46]	$1,200[47]
Sunnyslope Water District	Don Ridenhour, General Manager	$20,000[48]	$0
Galindo Housing Facility	Dolores Gallindo	Unknown[49]	$0
Amezcua-Garcia Water	Oscar Amezcua	Unknown[50]	$0
Jewel Date Co. Inc	Steve Denis	Unknown[51]	$0
Thermal Mutual Water Company	Carmen Fernandez/Mike Mills	Unknown[52]	$0
Carver Tract Mutual Water Company	Dee Rodriguez	Unknown[53]	$0
Monterey Mushrooms Water System[54]	John Peacock	$120,000	$10,000 (8.3%)
Mushroom Farms Water System[55]	John Peacock	$120,000	$10,000 (8.3%)
Elkhorn School Water System	Don Rosa	$3,000,000[56]	$32,000 (1%)
Averydale MWC	Deborah Wolfe	Unknown[57]	$0

[44] System plans to merge with Coachella because it cannot afford treatment for 40 connections.
[45] Amount represents combination of treatment for nitrates and CrVI.
[46] System notes 2 connections have CrVI concentrations of 15ppb. System is "currently purchasing bottled water."
[47] Percentage expenditure is not relevant because system is not currently treating source water.
[48] System notes having to shut down 2 wells and blend to stay under 10 ppb.
[49] System seeking consolidation with Coachella Valley Water District at unknown cost. CrVI concentration at 19 ppb.
[50] System plans to consolidate with City of Coachella at unknown cost.
[51] System is presently testing a new well to see if CrVI concentration will be below MCL. Consolidation is not an option.
[52] CrVI concentration at 15ppb. System expects state to cover costs for connection to Coachella because it qualifies as disadvantaged system.
[53] System plans to consolidate with City of Indio at an unknown cost. CrVI concentration at 12ppb.
[54] System #2701940, located in Morgan Hill, CA. CrVI concentration at 15.7 ppb.
[55] System #2701876, located in Royal Oaks, CA. CrVI concentration at 14 ppb.
[56] CrVI concentration at 17 ppb. System notes it will attempt to blend with nearby system.
[57] System has not received a request for a compliance plan from the State.

Agency / Water System	Contact	Estimated Total Spend	Amount Spent to Date (and % of total spend)
Mesquite Mines Inc.	Betty Zataray	Unknown[58]	Unknown
Mobile Estates FN	Chuck Seymour	Unknown[59]	Unknown
West Park Properties	Rita West	Unknown[60]	Unknown
Phelan Piñon Hills Community Services District	George Cardenas, Engineering Manager	$19,000,000[61]	$160,000 (0.84%)

[58] CrVI concentration is 12.1ppb. System has not developed a compliance plan.
[59] System reports waiting on permits to connect to Eureka County.
[60] System notes uncertainty on course of action. It was advised to consolidate due to inability to afford treatment and notes that consolidation is also expensive.
[61] Includes 12 miles of pipeline, a blending tank and booster stations.

Exhibit 3

To the Declaration of Clifton J. McFarland

DECLARATION OF STEVE BIGLEY

I, Steve Bigley, declare as follows:

1. I am the Director of Environmental Services at the Coachella Valley Water District (CVWD). I have served in my current position for three (3) years, and I have worked for CVWD for twenty-eight (28) years. In addition to my current position as Director of Environmental Services, I have previously served as Engineering Manager, Water Quality Manager/Laboratory Director, Water Quality Specialist, Water Resource Associate, Engineering Technician and Laboratory Technician for CVWD. I hold a Bachelor's of Science degree in Environmental and Systematic Biology from the California Polytechnic State University at San Luis Obispo. I make this declaration of my own personal knowledge, and, if called as a witness, could and would competently testify to the matters stated in this declaration.

2. As Director of Environmental Services at CVWD, I oversee the water quality, water resources, environmental compliance, wastewater source control, and laboratory divisions. Among other things, my work includes managing water quality treatment research, environmental review, and regulatory compliance with drinking water standards, including, but not limited to, the new Maximum Contaminant Level (MCL) for Chromium 6 described in more detail below.

3. CVWD provides drinking water to approximately 110,000 connections serving about 300,000 customers within its service area. CVWD relies solely on groundwater for drinking water supply, and employs approximately 95 groundwater wells for that purpose.

4. I am aware that effective July 1, 2014, the State of California (State) adopted a new MCL of 10 parts per billion (ppb) for Chromium 6 in drinking water. Based on initial compliance monitoring performed in 2015, CVWD identified 30 wells producing groundwater containing chromium 6 levels above the new MCL.

5. On September 4, 2015, Senate Bill 385 was signed by the Governor, authorizing the State to grant time for public water systems to come into compliance with the new MCL without being deemed in violation of the MCL. CVWD has an approved compliance plan that establishes the process by which CVWD will seek to obtain compliance with the MCL by January 1, 2020.

6. In accordance with CVWD's currently approved compliance plan, CVWD has developed the Chromium 6 Treatment Facilities Project ("Project") to employ the ion exchange technologies at 25 of its wells producing groundwater containing Chromium 6 levels above the MCL. CVWD will also need to develop plans to replace and/or install treatment facilities for 5 additional wells determined to produce groundwater containing Chromium 6 above the MCL in 2015 but were not included in the Project due to community opposition or well site constraints. In addition, results for the required triennial repeat monitoring recently performed by CVWD for wells that met the MCL during the initial compliance determination show 4 of these wells not included in the Project now have Chromium 6 levels above the MCL.

7. The estimated cost to implement CVWD's Chromium 6 Treatment Facilities Project and to replace and/or install treatment facilities on 9 additional wells not included in the Project to meet the currently approved compliance plan is $278,000,000 in capital costs only (not including maintenance and operations). This estimated cost is accurate because it is based on fixed price proposals that CVWD received through its competitive procurement process for the Project. These proposals were used to estimate the costs for the remaining 9 wells not included in the Project that will need to be replaced and/or treated to meet the MCL. Although CVWD has not yet awarded contracts to construct the Project, the estimated costs are reliable given that they are based on proposals generated through a competitive process.

8. To date CVWD has spent approximately $14,700,000 on implementation of its compliance plan. These costs are for consultant services, design documents and environmental review.

9. Given the uncertainty created by the litigation over the MCL, it is difficult for CVWD to plan its expenditures related to the MCL. If, after preparing and considering an economic feasibility analysis, the State were to adjust the MCL upward, CVWD's capital cost would be significantly reduced. For example, if the MCL were set at 15 ppb, CVWD's estimated capital costs would be reduced by approximately $163,000,000 and if the MCL were set at 20 ppb, CVWD's estimated capital costs would be reduced by approximately $232,000,000.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of March 2017 at Palm Desert, California.

STEVE BIGLEY

Exhibit 4

To the Declaration of Clifton J. McFarland

DECLARATION OF ADÁN ORTEGA

I, Adán Ortega, declare as follows:

1. I am the Executive Director of the California Association of Mutual Water Companies ("CalMutuals"). Among other things, my work as the Executive Director of CalMutuals includes providing regulatory analysis and support for compliance with drinking water standards including, but not limited to, the new Maximum Contaminant Level for Chromium 6 of 10 parts per billion (the "MCL"). I make this Declaration of my own personal knowledge and, if called as a witness, could and would competently testify thereto.

2. CalMutuals was founded in 2013 to bring together California's mutual water companies, facilitate the exchange of information, offer resources, and represent members through grassroots activities and statewide lobbying. CalMutuals currently has about 240 members, which includes some of the smallest water systems in California.

3. In California, a "mutual water company" is defined by Public Resources Code section 2725 as "any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating and reclaiming water."

4. Mutual water companies were the original purveyors of drinking water in California, beginning in the 1800s. Mutual water companies gave way to publicly-owned utilities as California became more urbanized in the mid-1900s. Today, mutual water companies provide water to over 1.3 million Californians in rural areas that have no alternative supplies and in some urban pockets. Most mutual water companies are small, and typically serve as few as a handful of households or as many as several hundred households.

5. Late last year, I contacted representatives of the Petitioner California Manufacturers and Technology Association ("CMTA") to ask about the status of its litigation against the State Water Resources Control Board and inquire about the Court's November 15, 2016 Order of which I was aware through my work with CalMutuals.

6. At CMTA's invitation, on or about January 9, 2017, I attended the meet-and-confer conference between CMTA and the State Water Resources Control Board ("State Board")

and provided input regarding the effect of the MCL on members of CalMutuals based on information I obtained in my capacity as Executive Director and through the organization's outreach. Generally, most of CalMutuals' members cannot afford and will not be able to raise the funds that would be required to construct the infrastructure needed to comply with the MCL. Even for those mutual water companies that may be able to raise the funds that would be required, the additional capital costs and corresponding increases in water rates would create a significant economic hardship.

7. Following the conference I agreed to cooperate with the California Municipal Utilities Association ("CMUA") in its efforts to obtain information through a survey to determine the total amount of capital costs (past and future) that water suppliers, including mutual water companies, will need to spend to comply with the MCL, and how much of those amounts have actually been spent to date.

8. Through my work as the Executive Director of CalMutuals and coordination with CMUA and representatives for other water purveyors including Steve Bigley of the Coachella Valley Water District, CalMutuals has been able to obtain information, including in response to the above-referenced survey, from a number of members who will be impacted by the MCL. Owen Sharpe of San Andreas Mutual Water Co. also provided assistance. I understand this information has been compiled into a chart by CMUA.

9. This information indicates that the costs of compliance with the MCL will be substantial or potentially unaffordable for a number of mutual water companies; that while some mutuals might be able to comply, their costs will dramatically affect rates; that a number of them cannot afford the costs associated with submitting a compliance plan; and that a number of mutuals who cannot afford the costs associated with a compliance plan have been deemed in violation of the MCL by the State Board; several examples of which are discussed in more detail below.

10. Monterey Bay Academy is a private secondary boarding school located in Santa Cruz County. The Academy estimates that it will cost $2 million to achieve compliance with the current MCL. About $30,000 has been spent to date. The funds would have to be raised by

private donations, as it is infeasible to pass these costs on through tuition bills. The Academy's Board of Directors is confronting hard choices between funding classes, roads or water treatment. The Board may consider moving the school.

11. The Aptos Ridge Mutual Water Company is a mutual water company with 17 connections in Santa Cruz County. With so few members to spread the costs among, the costs of treatment are unaffordable. Aptos Ridge is considering drilling another well and splitting the connections between the two wells. This would result in two systems with fewer than 10 connections, which would make the two systems exempt from the MCL. Aptos Ridge notes that there are about 1500 homes in the surrounding Pajaro Basin with individual wells—all presumably over the current MCL—but not regulated.

12. The Lancaster Water System owns no property on which to locate a treatment plant. Acquiring property and constructing a plant would cost an estimated $1.5 million. With only 80 connections, the cost per connection would be about $20,000, a level of expenditure that would create financial hardship.

13. As to compliance, on or about September 4, 2015, Senate Bill 385 was signed by the Governor, authorizing the State give public water systems additional time in which to come into compliance with the new MCL without being deemed in violation of the MCL. However, because of their small size and budgets, a number of CalMutuals' members are having trouble even financing the cost of obtaining compliance plans. As one example, I understand that the San Andreas Mutual Water Company in Santa Cruz County incurred approximately $35,000 in costs for its compliance plan. This represented approximately 40% of its annual operating budget.

14. As to violations, it is my understanding that the State Water Board has issued notices of violation ("NOVs") to about 48 public water systems because these systems are not purveying water in compliance with the current 10 ppb MCL and have not submitted compliance plans with the Board. I am aware of a number of members of CalMutuals who received NOVs. In general, these members did not submit compliance plans either because: (1) they could not afford to retain a consultant to complete the compliance plan; or (2) if they could afford a compliance plan, they would not have been able to afford the interim compliance steps that would

have been specified in any such compliance plan.

15. One of the solutions to the unaffordability of the MCL that has been suggested by officials at the State Board is system consolidation. System consolidation refers to a situation in which a larger water system extends water service to the members of a mutual water company, or where the operators of a larger water system take over the operations of the mutual water company. But even this has limitations as the legislature would have to act to grant the larger system a waiver from liability for the levels of hexavalent chromium exceeding the MCL, in addition to any other deficiencies in the absorbed systems. Additionally, this is a solution that may work for some mutual water companies located in urban pockets. However, for most mutual water companies, which are located in rural areas, consolidation would involve installing many miles of pipeline to connect to the members of the mutual water company, and the costs would be prohibitive.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9 day of March 2017 at Fullerton, California.

ADÁN ORTEGA

Exhibit 5

To the Declaration of Clifton J. McFarland

DECLARATION OF SCOTT ROGERS

I, Scott Rogers, declare as follows:

1. I am the Utilities General Manager for the Coachella Water Authority (CWA), a municipal utility created by the City of Coachella (City) and serving the City. I have held this position for 10 months. Prior to obtaining my position as Utilities General Manager at CWA, I worked in the water and water quality field for more than 20 years. Among other positions, I have served as Engineering and Water Quality Manager for the Indio Water Authority, Senior Engineer for Riverside Public Utilities, Senior Planning Engineer for California American Water, and Senior Engineer for Brown and Caldwell and Project Manager for RH2 Engineering. I make this declaration of my own personal knowledge and, if called as a witness, could and would competently testify to the matters stated in this declaration.

2. Under the direction of the City Manager, the Utilities General Manager for CWA plans, coordinates, and supervises water and wastewater services; develops and administers an annual operating and capital budget for the utilities; ensures compliance with all state and federal environmental and regulatory requirements; supervises all utility personnel and works with organized labor representatives; and performs other duties as required. A specific obligation of the Utilities General Manager is to plan for the implementation of drinking water standards, including, but not limited to, the new Maximum Contaminant Level for Chromium 6 described in more detail below.

3. CWA provides water to approximately 8,000 connections in the City and to a total of approximately 45,000 residents. The CWA system is comprised of 6 groundwater wells with a total pumping capacity of approximately 12.6 million gallons per day.

4. Chromium 6 is a naturally occurring constituent in groundwater in the Coachella Valley.

5. I am aware that effective July 1, 2014, the State of California (State) adopted a new Maximum Contaminant Level (MCL) for 10 parts per billion for Chromium 6 in drinking water. Based on previous testing, it is believed that all of CWA's six active groundwater wells can produce water in concentrations above the new MCL.

6. On September 4, 2015, Senate Bill 385 was signed by the Governor, authorizing the State to grant time for public water system to come into compliance with the new MCL without being deemed in violation of the MCL. CWA has an approved compliance plan that establishes the process by which CWA will seek to obtain compliance with the MCL by January 1, 2020.

7. In accordance with CWA's compliance plan, CWA currently plans to employ a strong base anion exchange technology at 5 of its 6 wells, and will remove one well from production. As part of its compliance plan, CWA will need to regenerate spent resin associated with the strong base anion exchange technology, and has completed design of the facility to the 15-percent level for such regeneration at an offsite facility.

8. The current estimated cost of implementing the compliance plan is $36,200,000.

9. To date, CWA has spent $400,000 on its implementation of the compliance plan. These costs consist of consultant costs necessary to prepare the compliance plan, to design the treatment technology, to permit the treatment technology and to implement rates to implement the cost of treatment. CWA has not, as yet, commenced the physical and facility improvements necessary to implement the compliance plan.

10. If, based on a reassessment of the economic feasibility of the MCL, the MCL were to be set at a level higher than the current 10 ppb, CWA's compliance costs could be significantly lower.

11. The area served by CWA is designated as a disadvantaged community. The average median income of residents is $37,408 according to the five year estimates by the American Community Survey. The increased costs associated with implementation of the compliance plan will result in significant financial burdens to most CWA customers.

12. To pay for the costs of the compliance plan, CWA will have to dramatically increase its water rates. Plan implementation will require up to compounded water rate increases of approximately 120% per average customer over the next 5 years.

13. The increases required to pay for the compliance plan will thus result in water rate increases for the average customer from approximately $43.80 per month to $96.36 per month.

Such a water rate increase will result in an affordability index increase from 2.2% to 4.2%. The affordability index measures the annual water costs versus the median household income. According to the Environmental Protection Agency, an affordability index of more than 2.5% for water is not affordable. Therefore, water rates of 4.2% of MHI would be considered to be unaffordable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9 day of March 2017 at Coachella, California.

Scott Rogers

SCOTT ROGERS

Exhibit 6

To the Declaration of Clifton J. McFarland

<u>**DECLARATION OF JOHN W. DONLEVY, JR.**</u>

I, John W. Donlevy, Jr., declare as follows:

1. I am the City Manager for the City of Winters (the "City"). The City is located in western Yolo County and has a population of approximately 7,200 people. I have served as City Manager for the City for 15 years. I have also held positions in municipal government for 33 years, including serving in various professional positions in four municipalities in the Counties of Los Angeles (Pico Rivera), Orange (Dana Point), San Bernardino (Grand Terrace) and Yolo (Winters). I make this declaration of my own personal knowledge, and, if called as a witness, could and would competently testify to the matters stated in this declaration.

2. As City Manager, I serve as the Chief Administrative Officer of the City, responsible for the day-to-day administration of City business. Among other things, my responsibilities include overseeing the operations of the City's Public Works Department, which provides drinking water to the residents of the City. This work includes overseeing the City's compliance with drinking water standards, including, but not limited to, the new Maximum Contaminant Level for Chromium 6 as discussed in more detail below.

3. The City provides drinking water to its approximately 7,200 residents through approximately 2,042 water connections. The City pumps drinking water from five wells into a single distribution system.

4. Chromium 6 is a naturally occurring constituent in the groundwater from which the City pumps.

5. I am aware that effective July 1, 2014, the State of California (State) adopted a new MCL of 10 parts per billion (ppb) for Chromium 6 in drinking water (the "MCL"). Based on previous testing, it is estimated that four of the City's five groundwater wells are impacted by naturally occurring Chromium 6 at levels that might exceed the new MCL. Previous testing has indicated that Chromium 6 levels in the City five wells averages 13.64 ppb with levels as low as 7 ppb and as high as 21 ppb.

6. On September 4, 2015, Senate Bill 385 was signed by the Governor, authorizing the State to grant time for public water systems to come into compliance with the new MCL

without being deemed in violation of the MCL. The City has an approved compliance plan that establishes the process by which the City will seek to obtain compliance with the MCL by January 1, 2020.

7. In accordance with the City's currently approved compliance plan, the City intends to construct a centralized Chromium 6 treatment facility ultimately sized for 3,900 gallons per minute (gpm), two 0.75 million gallon storage tanks, and a 4,000 gpm booster pump station to provide potable water to the system. This new treatment facility will be located in the northwest section of the City on vacant land and would need to have water transmission pipelines to and from the site. In addition, the City proposes to construct two new wells and to convert several existing wells for distribution of non-potable source water for use in irrigation or landscaping.

8. The anticipated cost to implement the City's currently approved compliance plan ranges from a high of $47,000,000 to a low of 27,900,000 in capital costs only (not including maintenance and operations). The range in the cost estimate stems from several factors, including whether the City's newly constructed wells are able to produce water below the new MCL.

9. To date, the City has spent approximately $126,000 on implementation of its compliance plan. These costs are for consultants, design documents and environmental review.

10. The City is currently under contract for a test well, prospecting for Chromium 6 compliant water with costs expected to exceed $200,000 for the evaluation and in excess of $4.5 million for a new well. The City will spend the majority of water capital cash funds on hand to fund this exploration.

11. The City currently has 1,982 residential customers to spread the capital costs for Chromium 6 compliance. Based on current construction estimates, the debt will exceed between $14,000 and $23,700 per residential unit.

12. 252 (12.7%) of the 1982 residential customers are in low to very low income housing units and have incomes at either 80% to 50% (or lower) of Area Median Income (AMI) for Yolo County. This does not include seniors (60 and older) and other fixed income residents which make up almost 17% of the City population.

13. The impacts on the non-profit affordable housing providers in Winters will be

devastating. Because only a limited percentage of rate increases can be passed along to tenants and based on certain affordability restrictions, the restricted multi-family housing providers in Winters will ultimately need to absorb increases between $45,000 to $93,000 annually, impacting the overall financial viability and operability of the complexes.

14. The City's largest water customer is the Winters Joint Unified School District who will see water rates rise by approximately $15,902.64 to $25,517.28 annually.

15. To fund the construction of its compliance plan, the City will need to adjust its water rates. The estimated impacts to monthly customer water bills for Chromium 6 capital expenditures will include increases between $93.23 and $150.46 per month (i.e., annual increased costs of $1,118-$1,805.52).

16. Currently, it is anticipated that the typical residential unit will see their water bill increase from the current rate of $45.51 to between $138.74 to $195.97 per month, an increase of 305% to 431% for Chromium 6 compliance alone.

17. The financing for Chromium 6 compliance will ultimately absorb capital financing limits which are necessary for other system improvements and maintenance.

18. The current operational costs for the City of Winters Water System is approximately $1.5 million. The estimated annual operations and maintenance costs for Chromium 6 compliance is estimated in excess of $702,000 or more, an almost 45% increase.

19. The Governor's call for water conservation has been taken very seriously in Winters, with a reduction of almost 27% which has correlated to a significant drop in revenues to operate the system. Concurrent with increases for Chromium 6 compliance, the City will need to increase rates to maintain revenues for overall system viability.

20. Given the uncertainty created by the litigation over the MCL, it is difficult for the City to plan its expenditures related to the MCL. If, after preparing and considering an economic feasibility analysis, the State were to adjust the MCL upward, the City's compliance costs could be significantly reduced.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of March 2017 at Winters, California.

JOHN W. DONLEVY, JR.

Exhibit 7

To the Declaration of Clifton J. McFarland

SCWC

January 5, 2017

Honorable Felicia Marcus
Chair, State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Email: Felicia.Marcus@waterboards.ca.gov

Re: Hexavalent Chromium (Cr6) MCL Superior Court Order

Dear Honorable Chair Marcus:

We are writing to address a recent Superior Court order issued by Judge Christopher Krueger in California Manufactures and Technology Association, et al, v. State Water Resources Control Board, a mandamus action contesting the validity of the maximum contaminant level (MCL) for hexavalent chromium (Cr6) adopted by the Department of Public Health (DPH) in May, 2014. We have followed this case with interest given its potential implications for drinking water purveyors who are subject to the Cr6 MCL. On August 28, 2016, the court issued a tentative ruling indicating that it was considering whether to vacate the MCL on grounds that DPH failed to evaluate the economic feasibility of compliance by affected drinking water purveyors and the economic impacts on small business and individuals in the state as required by state law.

Following oral argument on the tentative order, the court, on November 15, 2016, issued an order requesting additional briefing on a number of issues. Among those issues, the court indicated that it is still concerned with the lack of an economic feasibility evaluation, but asked whether it is necessary to invalidate/suspend the existing MCL pending the determination of a new MCL that includes an economic feasibility analysis. In addition, the court asked for input on the impact of invalidating the current MCL on utilities that have already taken actions to comply with the current MCL. In particular, the court expressed concern about the extent to which some public water systems "have already spent substantial sums complying, or attempting to comply, with the current MCL." The court also asked for input on the timeframe it should prescribe for revision of the MCL and on the impacts of invalidation on the SB 385 MCL compliance extension process.

On behalf of the Southern California Water Committee and its water purveyor members, which includes a large percentage of the drinking water purveyors in the state, we are writing to offer our assistance in responding to the court's request for additional information. In general compliance with any MCL requires a system to undertake a number of key steps including: identification of the water quality in the source water relative to the water quality required; performing bench-scale and pilot-scale tests to identify and select effective water treatment options; evaluation and confirmation of the compatibility of the selected treatment option with the existing water system; design of the water treatment system; evaluation of the environmental impacts of implementing the selected treatment option and alternatives; preparation of the engineering and technical designs for the treatment plant; site preparation and land acquisition when needed; acquiring the necessary local and regulatory agency permits needed to construct and operate treatment facilities and mitigate waste impacts to water and air resources; construction of the treatment facilities; demonstration testing and optimization and quality assurance that the treatment plant will deliver the water quality desired; training of operating personnel; integration of the treatment plant with the rest of the system to bring the treatment plant into operational status and, finally, operation and maintenance of the system once constructed for decades to come.

It is apparent that most of the affected water purveyors are at the early stages of this assessment and have spent only a small fraction of the total costs that will be incurred when full compliance with the new MCL is completed:

1. The majority of the 66 water systems that requested compliance extensions pursuant to SB 385 are still exploring the identification and selection of water treatment compliance options, and only a small amount of ratepayer dollars has been committed to particular compliance strategies. Coachella Valley Water District (CVWD), the water purveyor with the largest number of affected water sources, was one of the first agencies to begin researching available technologies to meet the MCL. CVWD has not installed any treatment facilities in response to the MCL and is now pilot testing a new technology before making a treatment technology selection. CVWD has spent approximately $13 million to date to test different treatment technologies, evaluate the impacts of using these technologies and develop a shovel-ready proposed project estimated to cost $228 million. This estimate does not include replacement or treatment costs needed for 5 wells that could not be treated using the selected technology.

2. Of the approximately 200 affected systems that must comply with the new MCL there are about 1360 wells impacted. Total capital and operations and maintenance costs, on a per well basis, are on average about $3 million, yet only a small percentage of that total has been spent to date statewide.[1] Expenditures to date are predominantly for initial studies to assess the water quality and determine the most cost-effective treatment remedy for the system. These costs are small by comparison to the initial capital and ongoing operations and maintenance costs facing these systems.

3. Many small water systems (200 service connections or less), including both publicly owned systems and mutual water companies, did not request a compliance extension because they do not have a rate base sufficient to cover expected compliance costs. These systems are seeking alternate means of compliance, such as through consolidation with larger systems where possible or solicitation of federal and state grant funding for capital expenditures.

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[1] Annualized statewide cost estimates to achieve the Cr6 MCL have been reported at up to $4 billion or more in a review of the California Department of Public Health Economic Analysis Supporting the Draft California MCL for Hexavalent Chromium in Drinking Water, prepared for the American Water Works Association, the California-Nevada Section of the American Water Works Association, the Association of California Water Agencies and the California Water Association, by Water Quality Treatment Solutions, Inc.(WQTS), 12/31/2013, at pages 9-11.

Some are confronting the possibility of operating out of compliance or shutting down and leaving their customers without a reliable source of drinking water.

4. All 66 affected systems working towards full compliance pursuant to SB 385 expect to sustain ongoing operations and maintenance costs for the life of the system. These costs are likely to be much higher than the initial capital costs for new treatment capacity and are not permitted to be offset by governmental grant funding.

5. Several systems expect to abandon some wells that are currently in production in an effort to reduce Cr6 treatment costs. These actions could compromise system reliability and ability to accommodate growth within their service areas.

Many of the systems affected are facing severe revenue limitations and cannot absorb the additional cost of meeting the current Cr 6 MCL without substantial rate increases. These systems will be forced to defer discretionary, but mission critical expenditures necessary to deliver fundamental ratepayer benefits including water supply reliability, drought resiliency and water affordability.

Because we are approaching a time when the far more burdensome costs of treatment infrastructure and operation and maintenance will begin in earnest for the affected systems, the court would be well advised to vacate the current MCL while the Water Board reconsiders economic feasibility and other costs of compliance.

For water systems to proceed beyond the initial preparatory phases, it is essential that the MCL is clearly established and unlikely to change. Design and engineering is specifically targeted to deliver water quality at certain MCL values. If the MCL changes, then the design and engineering phase will need revision to achieve the MCL, and alternative design and engineering options may become more feasible for these wells.[2] Thus, proceeding forward without clarity in the final MCL might result in wasted design, engineering, pre-construction and other expenditures for some wells in our systems. It does not make sense for affected systems to continue investing limited resources toward implementation of the existing MCL given the possibility that a meaningful economic feasibility analysis could lead to a different standard.

We understand that the court order may compress the timeframe for water system compliance with the Cr6 MCL under SB 385. Therefore, we ask that the Water Board include a reasonable compliance period with the final MCL established through the remand process. Consistent with the 1996 amendments to the Federal Safe Drinking Water Act, the State Board should provide water purveyors 5 years from the effective date of the final revised MCL to install facilities needed to comply with the MCL. This compliance period provides time for the research needed to develop, test and implement the most cost effective treatment technologies to meet a revised MCL. Including an appropriate compliance period in

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[2] Systems strive to always meet design specifications, i.e., an MCL. This requires designing the treatment system for water quality variability, typically ±2-3%. Thus wells with water quality at the MCL might need some form of treatment if the variability might lead to a noncompliance with the MCL.

the regulation, as Congress provided under federal law, will mitigate any concerns related to the timing of SB 385.

Thank you for consideration of our concerns.

Sincerely,

Charley Wilson
Executive Director
Southern California Water Committee

cc: The Honorable Matthew Rodriquez, Secretary, California Environmental Protection Agency
SectyRodriquez@calepa.ca.gov
The Honorable Gordon Burns, Undersecretary, California Environmental Protection Agency
Gordon.Burns@calepa.ca.gov
The Honorable Tam Doduc, Member, State Water Resources Control Board
Tam.Doduc@waterboards.ca.gov
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 621 Capitol Mall, 18th Floor, Sacramento, California 95814-4686. On **March 10, 2017,** I served the within document(s):

DECLARATION OF CLIFTON J. McFARLAND IN SUPPORT OF SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES PURSUANT TO THE COURT'S NOVEMBER 15, 2015 ORDER

☐ **BY E-MAIL:** by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

☒ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 10, 2017,** at Sacramento, California.

Linda Puzar

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