XAVIER BECERRA
Attorney General of California
RANDY L. BARROW
TRACY L. WINSOR
Supervising Deputy Attorneys General
NICHOLAS STERN (SBN 148308)
RUSSELL B. HILDRETH (SBN 166167)
Deputy Attorneys General
State Bar No. 166167
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-7853
Fax: (916) 327-2319
E-mail: Russell.Hildreth@doj.ca.gov
Attorneys for Respondent
State Water Resources Control Board

EXEMPT FROM FILING FEES [GOV. CODE, § 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION AND SOLANO COUNTY TAXPAYERS ASSOCIATION,

Petitioners,

v.

STATE WATER RESOURCES CONTROL BOARD,

Respondent.

Case No. 34-2014-80001850

DECLARATION OF MARK BARTSON IN SUPPORT OF STATE WATER BOARD'S OPENING SUPPLEMENTAL BRIEF

Dept: 44
Judge: Hon. Christopher E. Krueger
Trial Date: August 26, 2016
Action Filed: May 29, 2014

I, Mark Bartson, declare:

1. I am the Section Chief for the Technical Operations Section of the Drinking Water Program Management Branch, Division of Drinking Water, State Water Resources Control Board (State Water Board). I have personal knowledge of the facts stated in this declaration and would competently testify to the following if called upon to do so. I submit this declaration in support of

the State Water Board's Opening Supplemental Brief, filed pursuant to the Court's Orders dated November 15, 2016, and January 17, 2017.

2. I have a Bachelor of Science degree in Civil Engineering from San Diego State University, San Diego, California. I am a Registered Civil Engineer in the State of California, License number C 37874.

3. I was employed with the Department of Health Services, in the Division of Drinking Water and Environmental Management, first as Sanitary Engineer, then Associate Sanitary Engineer, and then Senior Sanitary Engineer from May 1, 1981 through December 31, 1999, and again from July 2005 to June 30, 2007. From July 1, 2007, to June 30, 2014, I was employed by its successor, the State Department of Public Health, in the Division of Drinking Water and Environmental Management. In May 2008, I became the Section Chief for the Technical Operations Section of the Technical Programs Branch of the Division of Drinking Water and Environmental Management.

4. Effective July 1, 2014, responsibility for administering and enforcing the Safe Drinking Water Act (Health & Saf. Code, §§ 116270 et seq.) was transferred from the State Department of Public Health to the State Water Board, specifically to the Division of Drinking Water, and I was transferred to the State Water Board, where my position is currently Section Chief, Technical Operations Section, Program Management Branch, Division of Drinking Water. All references to Division of Drinking Water prior to July 1, 2014, refer to the administration and enforcement of the Safe Drinking Water Act under the State Department of Public Health. All references to Section Chief prior to July 1, 2014, refer to my position as Section Chief at the State Department of Public Health.

5. The Division of Drinking Water is responsible for administering the California Safe Drinking Water Act (Health & Saf. Code, Division 104, Part 12, Chapter 4) and its implementing regulations, including enforcing the Act and regulations against public water systems in California. Public Water Systems are defined in Health and Safety Code section 116275, to include all water systems, without regard to whether they are public agencies or

private entities, so long as they serve a minimum number of persons or service connections and otherwise meet the statutory definition.

6. One of the units under my supervision as Section Chief is the Regulatory Development Unit which is responsible for the development of drinking water regulations, including Maximum Contaminant Levels (MCLs), in California. In some cases, MCLs are developed in response to the adoption of an MCL at the Federal level by the United States Environmental Protection Agency. In other cases, MCLs are specific to California and do not have a corresponding federal MCL. There are a total of 91 MCLs in effect in California. The MCL for Hexavalent Chromium is 0.010 mg/l (equivalent to 10 ug/l). There is no Federal MCL for Hexavalent Chromium (although there is a Federal MCL for total chromium).

7. Also under my supervision is the Drinking Water Treatment Technologies Unit, which has the primary role of providing technical guidance for the development and evaluation of drinking water treatment technologies. The Senior Sanitary Engineer in this unit works closely with Public Water Systems' technical staff, consultants, research groups, and Division of Drinking Water technical staff in the development and evaluation of water treatment technologies. This Senior Engineer has been actively involved in various studies and pilot plants to develop and improve treatment technologies for Hexavalent Chromium.

8. In my capacity as the Senior Engineer for the State Proposition 50 funding program from July 2005 through May 2007, I managed a technical and administrative staff responsible for coordinating the funding for water system improvement projects, such as new water system supply sources, water treatment facilities and water transmission or distribution systems. Through this experience I became familiar with the typical steps in planning, designing and constructing Public Water System facilities.

9. I have reviewed information, reports, data and surveys from the twenty-four Division of Drinking Water District Offices and thirty Local Primacy Agencies who are collectively responsible for the enforcement of drinking water regulations, including the MCL for Hexavalent Chromium. To develop this information, staff members under my direction surveyed District Offices and the Local Primacy Agencies directly.

10. Division of Drinking Water staff evaluate and track the compliance status of Public Water Systems statewide with each MCL for each drinking water source. Public Water Systems often have multiple sources of water. A source is typically a well, spring, or surface water supply.

11. As of January 2017 there were approximately 7,588 permitted Public Water Systems in California. Approximately 4,430 of the permitted Public Water Systems are required to monitor for Hexavalent Chromium. (Only Community Water Systems and Non-Transient, Non-Community Water Systems are required to monitor; Transient Water Systems, where most of those drinking the water do not remain for long periods of time, such as gas stations, are not required to monitor.) As of January 2017, approximately 197 of the 4,430 Public Water Systems required to monitor have or had one or more sources that exceed the MCL for Hexavalent Chromium.[1] Of these 197 impacted Public Water Systems, approximately 65 have taken corrective action or are in compliance because additional monitoring showed no further exceedances. Most of these 65 Public Water Systems came into compliance by removing one or more wells from service, performing additional monitoring, or installing a treatment system to reduce the level of Hexavalent Chromium to less than the MCL in the water delivered to the public. Of the 197 impacted Public Water Systems, an additional 99 Systems submitted a Compliance Plan in accordance with Health and Safety Code section 116431 (Senate Bill 385), which requires them to come into compliance by January 1, 2020. Systems that follow a Compliance Plan that meets the requirements of Health and Safety Code section 116431 are, by law, not considered to be out of compliance. Approximately 33 of the permitted Public Water Systems that have or have had a source that exceeded the MCL have neither come into compliance nor submitted a Compliance Plan. Of those 33 Public Water Systems, approximately 22 serve fewer than 200 service connections. The following table summarizes this information:

[1] These 197 Systems had a total of 449 sources that exceeded the MCL.

Permitted Public Water Systems	7,588
• Systems required to monitor for Hexavalent Chromium	4,430
o Systems with one or more sources > MCL	197
▪ Systems that have taken corrective action or come into compliance with additional monitoring	65
▪ Systems that submitted a Compliance Plan	99
▪ Systems still out of compliance and without a Compliance Plan	33
➢ Small Water Systems still out of compliance and without a Plan	22

12. There are several methods for bringing a Public Water System into compliance with the MCL. These methods include treatment, consolidation with a nearby Public Water System, blending, developing a new source (well or surface water), purchasing water from an adjacent Public Water System, removing a source from service permanently, or placing a source into standby mode, which allows the system to use the source for emergency purposes. Consolidation, either physical or operational, is an especially useful means for Public Water Systems serving fewer than 200 service connections to come into compliance. Another method available to small Public Water Systems serving fewer than 200 service connections is the use of Point of Use or Point of Entry Water Treatment Devices (POU/POE) at each home and business served by the System. These devices are in lieu of the other, centralized methods, and they can be less expensive. Sections 64417 thru 64420 of Title 22 of the California Code of Regulations specify the requirements that must be met by the Public Water Systems to allow the use of POU/POE in lieu of centralized treatment.

13. For the 132 Public Water Systems currently with a Compliance Plan or still out of compliance, approximately 40 have identified treatment as the likely best alternative, approximately 20 have identified consolidation, approximately 15 have identified the development of a new source, and the remaining approximately 50 Systems are still evaluating multiple options and have not yet identified the most likely compliance alternative.

14. The proposal and adoption of an MCL creates a strong incentive for Public Water Systems and industry to research and develop better and cheaper treatment technologies. If the MCL is suspended or invalidated, that incentive goes away.

15. There have been significant developments in the treatment technologies available for Hexavalent Chromium. These developments in treatment technologies have resulted in reduced capital costs and reduced operation and maintenance expenses to levels below what was described in the Final Statement of Reasons. Most recently, an alternative treatment method is being evaluated by the Coachella Valley Water District that is likely to result in significant cost savings, perhaps as high as 50% in construction costs. The development of this alternative was stimulated by the establishment of the MCL for Hexavalent Chromium.

16. An example of a system that has taken corrective action to avoid non-compliance with the MCL for Hexavalent Chromium is the Indio Water Authority. This Public Water System self-funded an improvement project that provided treatment at 3 wells and placed 13 of their 20 wells into standby mode to avoid violating the MCL. The standby wells can be used to meet peak demand. This System serves approximately 88,000 people through about 22,800 service connections. The cost of the treatment project was $6.8 million dollars.

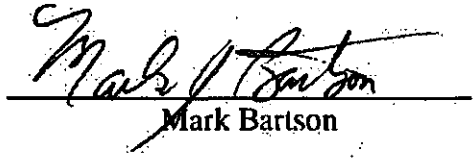
17. Other Water Systems which have successfully installed treatment facilities to avoid violations include the Soquel Creek Water District (serving about 37,000 people), the California Water Service Company – Dixon (serving about 9,300 people), and the California Water Service Company – Willows (serving about 7,000 people).

18. Some Public Water Systems have been able to achieve compliance in ways that are less complex and costly than the installation of centralized treatment. Examples of this include the following: The Beaumont Cherry Valley Water District (serving about 44,000 people) placed 3 wells in standby; the Sacramento Suburban Water District (serving about 170,200 people) removed from service the 5 wells (out of 60 wells total) that exceeded the MCL; and the Mesquite Mine Water System (serving about 324 people) used their existing Reverse Osmosis system.

19. In the event the MCL were to be suspended or invalidated, my major concerns would be the delay in providing safe drinking water to consumers and the impact of this

disruption on projects that are currently in construction or moving towards construction. In my opinion, there will be unrecoverable costs related to the delay for many Public Water Systems. For instance, Systems may have to repay agencies, such as the United States Environmental Protection Agency, that have funded their projects. Some Systems will have additional unrecoverable costs from the need to suspend their projects and associated contracts for an unknown period of time, followed by an eventual need to reinitiate the work. In some cases there will be extra costs due to missing seasonal optimal construction cycles (especially in areas of the state where construction is either more complicated or more costly during the rainy months). In any case, there would be significant additional unrecoverable costs triggered by suspending projects pending additional review of the MCL. These costs include public funds as well as private funds that may have been expended. In my opinion, a suspension or invalidation of the MCL would slow the development of improved solutions. This would be likely to lead to delays for many communities in providing water meeting the MCL for Hexavalent Chromium.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 8, 2017, in Sacramento, California.



Mark Bartson

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **California Manufacturers and Technology Assoc. v. Department of Public Health**
No.: **34-2014-80001850**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 10, 2017, I served the attached **DECLARATION OF MARK BARTSON IN SUPPORT OF STATE WATER BOARD'S OPENING SUPPLEMENTAL BRIEF** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Andrew L. Collier, Esq. DOWNEY BRAND LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 *acollier@downeybrand.com* *Attorneys for Petitioners*	Clifton J. McFarland, Esq. MITCHELL CHADWICK LLP 3001 Lava Ridge Court, Suite 120 Roseville, CA 95661 *cmcfarland@mitchellchadwick.com* *Attorneys for Petitioners*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 10, 2017, at Sacramento, California.

Michelle Fowler
Declarant

Signature

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