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10 *State Water Resources Control Board*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO
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14 **CALIFORNIA MANUFACTURERS AND**
15 **TECHNOLOGY ASSOCIATION AND**
16 **SOLANO COUNTY TAXPAYERS**
ASSOCIATION,

17 Petitioners,

18 v.

19 **STATE WATER RESOURCES CONTROL**
20 **BOARD,**

21 Respondent.

Case No. 34-2014-80001850

**STATE WATER BOARD'S
SUPPLEMENTAL RESPONSE BRIEF**

Dept: 44
Judge: Hon. Christopher E. Krueger
Trial Date: n/a
Action Filed: May 29, 2014

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1 Drinking Water files that treatment systems for the three wells have been online for
2 approximately one year. (Bartson Supp. Decl., ¶ 5.)

3 Petitioners' survey also fails to include systems which have completed Hexavalent
4 Chromium compliance projects at substantial cost. Neither California Water Service Company
5 Willows nor California Water Service Company Dixon¹ are included on the survey. The total for
6 research and construction for the two treatment systems was approximately \$8,800,000, of which
7 over \$7,000,000 has been spent. State funding was provided through Proposition 50 as a
8 demonstration study to develop the treatment technology to ensure compliance with the MCL for
9 Hexavalent Chromium for these two systems. Proposition funding of \$5 million was allocated
10 and the balance was provided by the two water systems. (Bartson Supp. Decl., ¶ 6.)

11 Petitioners' survey also failed to include the City of Glendale Public Water System.
12 Glendale managed and completed a major research effort over nearly a 10-year period to identify
13 and evaluate technologies for removing Hexavalent Chromium from drinking water supplies.²
14 The cost for the study was \$10.5 million dollars, and it included installing treatment at one of the
15 sources with elevated Hexavalent Chromium. The information on treatment options developed
16 by the project provided a broad benefit to the regulated community, stakeholders and the State
17 Water Board and served as part of the basis for the adoption of the MCL. (Bartson Supp. Decl., ¶
18 7.)

19 Petitioners' survey listed some public water systems that are unlikely to spend additional
20 funds to come into compliance because the public water systems will be consolidated with other
21 public water systems. In these cases, the costs for the consolidation will likely be either paid
22 from funds administered by the State Water Board or paid by the system that will result from the
23 consolidation. In particular, the Rosamond Community Services District Consolidation project
24 would connect the Antelope Valley, First Mutual and 60th Street water systems as part of a
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26 ¹ This entity is distinct from the City of Dixon water system, which is listed on
27 Petitioners' survey.

28 ² This extensive study was referenced in the State Water Board's February 8, 2016,
Opposition Brief at pages 4:23-26 and 7:17-19, and is in the administrative record for this case.
(AR 377-502, 3581-3600, 3601-3603.)

1 regional consolidation project. This project would be designed to resolve the Hexavalent
2 Chromium compliance issue for each of these three systems. These consolidation projects are
3 also designed to improve system reliability and provide a greater economy of scale. (Bartson
4 Supp. Decl., ¶ 8.)

5 Petitioners' Survey shows that the North Edwards Water District (NEWD) has not yet
6 expended any funds for a project to comply with the MCL for Hexavalent Chromium. However,
7 NEWD is currently undertaking a construction project designed to resolve violations of the MCLs
8 for both Arsenic and Hexavalent Chromium. The project includes the consolidation of the
9 NEWD system with two nearby public water systems that have violated the MCL for Hexavalent
10 Chromium: Sunset Apartments and Fountain Trailer Park. To date, NEWD has expended
11 approximately \$2.9 million of the estimated total \$7.8 million cost of the project, according to the
12 State Board's Division of Financial Assistance. (Bartson Supp. Decl., ¶ 9.)

13 Finally, Petitioners' survey states that Mesquite Mine has an Estimated Total Spend of
14 "unknown," and that it "has not developed a compliance plan." Mesquite Mine, however, has
15 used its existing Reverse Osmosis system to come into compliance with the Hexavalent
16 Chromium MCL. (Bartson Supp. Decl., ¶ 10, and Bartson Opening Decl., ¶ 18.)

17 These omissions and discrepancies show that actual expenditures by Public Water Systems
18 have been far higher than what Petitioners' data shows. Under the circumstances, it is
19 disingenuous to characterize expenditures to date as "insubstantial."

20 **II. PETITIONERS' DISCUSSION OF THE *POET* CASE IS INAPPLICABLE.**

21 Petitioners argue that the MCL should be suspended during a remand because the *POET*
22 holding is limited to CEQA cases. (Petitioners' Supp. Br. at p. 6.) However, the key case in this
23 context is *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, as
24 discussed by the State Water Board in its March 10, 2017, Opening Supplemental Brief. That
25 case was a challenge to a permit issued pursuant to the federal Clean Water Act, not a CEQA case.
26 Consistent with that case, the Court should order an interlocutory remand, allow the State Water
27 Board time to prepare a new economic feasibility analysis, and retain jurisdiction, while leaving
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1 the existing MCL in place so that public health remains protected and the significant expenditures
2 that have been made by Public Water Systems are not wasted.

3 **CONCLUSION**

4 For the reasons stated above, the Court should issue an interlocutory order that requires the
5 Board to redo its economic feasibility analysis and to submit it to the Court for review within 180
6 days. During the interim, the MCL should remain in effect.

7 Dated: March 24, 2017

Respectfully Submitted,

8 XAVIER BECERRA
9 Attorney General of California

10 
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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **California Manufacturers and Technology Assoc. v. State Water
Resources Control Board**
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 24, 2017, I served the attached **STATE WATER BOARD'S SUPPLEMENTAL RESPONSE 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:

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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 24, 2017, at Sacramento, California.

Mercedita Schwarzkopf
Declarant


Signature