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## Lahontan Regional Water Quality Control Board

July 18, 2014

Daron Banks  
Roberta Chavira-Walker  
Carmela Spasojevich  
Via email

Dear Mr. Banks, Mrs. Chavira-Walker and Mrs. Spasojevich:

I wanted to respond to your mid-June 2014 inquiries regarding application of the Maximum Contaminant Level (MCL) recently adopted by the California Department of Public Health (now known as the Division of Safe Drinking Water or DSDW) and continuation of the whole house replacement water program for the Hinkley Compressor Station Site Cleanup.

On July 1, 2014 the MCL, or drinking water standard, became effective for hexavalent chromium (chrome-6). California is the first state in the nation to establish a MCL specifically for chrome-6, which underscores the state's commitment to protecting drinking water. This new standard is one fifth the current total chromium standard of 50 parts per billion (ppb), which includes both trivalent chromium (chromium-3) and chrome-6. The federal MCL for total chromium is 100 ppb.

Because the MCL for chrome-6 is in effect, the Lahontan Regional Water Quality Control Board (Water Board) can no longer require replacement water for those domestic wells with levels of chrome-6 below 10 ppb. I realize this is frustrating because you believe the replacement water should be continued until the United States Geological Survey (USGS) background study is completed; unfortunately, we have to comply with existing law, and have no authority to continue requiring the current replacement water program.

Our legal counsel has previously explained that our ability to require Pacific Gas & Electric Company (PG&E) to provide replacement water is limited by a 2005 precedential decision issued by the State Water Board entitled "In the Matter of the Petition of Olin Corporation and Standard Fusee, Incorporated, Order WQ 2005-0007" (referred to as the "Olin Order"), which was discussed in depth in our Order R6V-2011-0005A1, requiring the issuance of whole house replacement water. In that Order, the State Water Board determined that for the purposes of determining whether a well is "affected" under Water Code section 13304, allowing the regional board to require the provision of replacement water, a well is only considered "affected" when the discharge causes the water to exceed a drinking water standard. The State Water Board concluded, "Any other approach would require regional water boards to make individual,

possibly inconsistent public health and toxicological determinations or, in the alternative, to require replacement drinking water whenever there is *any* detection of a contaminant.” (Olin Order at p. 6, emphasis added.)

The State Water Board required that, “regional water boards should defer to Office of Environmental Health Hazard Assessment and DSDW in determining safe drinking water levels.” This is in contrast to setting cleanup levels, which the State Water Board noted, “are more appropriately within the expertise and professional purview of the water boards.” The State Board, therefore, made it clear that the regional boards could not require replacement water for any impairment of water quality. The impairment had to cause an increase in contamination above the drinking water standard before the regional board could require replacement drinking water.

Although you may feel that the drinking water standard for hexavalent chromium is too high, once the DSDW has made its determination, the other state agencies must accept that standard, and do not have the ability to second-guess that decision. Although it is higher than the public health goal (PHG), the MCL is still protective of health. Health & Safety Code §116365(a) requires DSDW to establish the MCL at a level as close to the contaminant’s PHG as is technologically and economically feasible, placing primary emphasis on the protection of public health. Moreover, the DSDW performed a series of rigorous analyses that considered, among other things: the occurrence of hexavalent chromium in drinking water sources statewide; the methods, feasibility and costs of detection; and treatment and monitoring technology. The DSDW also considered over 18,000 public comments from public and private stakeholders during the regulatory process, including from public water systems. The chrome-6 MCL will be reviewed again in 2019.

Implementation of this MCL will be a major step in protection of public health, as there are over 128 water systems whose water exceeds the 10 ppb level established in the new requirement. It will, however, also result in increased costs for these communities whose water source contains levels of chrom-6 that currently exceeds that 10 ppb level. In its “Notice of Proposed Rulemaking,” DSDW estimated that the cost of compliance for local government could be \$16.5 million annually, \$1.8 million annually for state government, and \$1 million for privately owned water systems. [CAL. DEP’T PUB. HEALTH, Notice of Proposed Rulemaking, Subject: Hexavalent Chromium MCL (DPH-11-005), *supra* n. 11, at 10-11]

Currently, all of the domestic wells within Hinkley contain chrom-6 below the MCL. I believe this new standard poses an opportunity for the Hinkley community to reframe or revise the perceptions about the safety of drinking water in Hinkley because the levels of chrome-6 in current residential wells are much lower (better) than the state’s drinking water standard. I am hopeful that the citizens of Hinkley can dispel health concerns about their community, not live in fear, and no longer be stigmatized by the past. Property values will hopefully increase, and reflect this reality, and banks should no longer have any concerns about loaning money to Hinkley citizens based upon concerns about the safety of the levels of chrome-6 in domestic wells.

The setting of the drinking water standard at 10 ppb does not, however, affect the Water Board's authority requiring cleanup. Under current Water Board orders, PG&E must continue to clean up the discharges from the compressor station site. The Water Board has the authority to require clean up to background levels in accordance with State Water Board Policy 92-49 and a new cleanup and abatement order will be updated with specific cleanup requirements and will be considered by the Water Board in 2015. In addition, the USGS background study will continue, and the results of that study will be incorporated into the Water Board's requirements, as necessary.

If you have any questions regarding this letter, please contact me at (530) 542-5412 or Lauri Kemper, Assistant Executive Officer, at (530) 542-5436.

**Original Signed By**

PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

Lyris list: PG&E

MLK/dk/T: EO Response-MCL Change Request 7-9-14 corrected version 8-21-14