

July 29, 2024

Will Bowman
Drinking Water Capacity & Compliance Assistance Division
Office of Ground Water and Drinking Water (MC-4606M)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted electronically via: <https://www.regulations.gov>

RE: Water System Restructuring Assessment Rule EPA-HQ-OW-2022-0678

Mr. Bowman,

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposed Water System Restructuring Assessment Rule (WSRAR or draft rule). ACWA shares EPA's goal to help states and public water systems (PWS) sustainably provide safe, affordable, and reliable drinking water. We believe water system restructuring, when appropriately applied, is a valuable tool in this effort.

ACWA is the largest statewide coalition of public water agencies in the country. Our more than 470 public agency members collectively are responsible for 90 percent of the water delivered to communities, farms, and businesses in California. For more than a century ACWA and our members have been working to provide high quality, reliable water supplies in an environmentally sustainable and fiscally responsible manner.

Our comments focus primarily on three components of the proposed rule, the importance of aligning it with state programs, liability protection for agencies that take on a non-compliant system, and the need for increased federal funding resources to help PWS address deficiencies in water systems.

I. Alignment with State Programs

ACWA is grateful that EPA recognizes the importance of working with states to implement the WSRAR. As EPA notes, states vary greatly and a solution that works in one state may not work in another. We believe state empowerment is the best course of action to address consolidation of PWS that are unable to comply with National Primary Drinking Water Regulations (NPDWR). California currently has an active program focused on addressing the issues identified in the WSRAR.

In 2015 and 2016 California Governor Edmund G. Brown Jr. signed legislation giving the State Water Board the authority to require consolidation of systems that consistently fail to meet drinking water standards. In 2019, Governor Newsom signed legislation, supported by ACWA, that established the State Water Board's Safe and Affordable Funding for Equity and Resilience (SAFER) program.

The SAFER program includes a detailed assessment methodology, technical assistance, reorganization and consolidation authority (including mandatory consolidation), and financial assistance. Since 2019 the SAFER program has helped more than 250 struggling water systems return to compliance with drinking water standards. This effort included consolidation/restructuring of more than 100 systems.

As EPA works to finalize the WSRAR, we recommend the agency retain provisions that empower states. In addition, we ask that EPA recognize California's SAFER program as being compliant with WSRAR.

II. Liability Protection and Enforcement Relief

The EPA specifically requested public comment on the liability and enforcement relief provisions of WSRAR. EPA acknowledges that a PWS which takes on a non-compliant system should not be held responsible for violations that occurred prior to reorganization. We agree with this principle. However, the enforcement relief and liability protection provided under the draft rule appear to be shorter and less flexible than what is currently allowed in California.

Concerns about assuming liability for a non-compliant water system has historically been a significant barrier to restructuring and consolidation of water systems. By way of example, in 2014 prior to the establishment of broader statewide consolidation authority, two of ACWA's members joined together to provide water services to a rural community that did not have a safe supply of water. Addressing liability issues was a critically important part of the plan to take over service from a private water company that had been in violation of maximum contaminant levels for nitrate.

The Eastern Municipal Water District (EMWD) and the Elsinore Valley Municipal Water District (EVMWD) took over water services from a private firm, the County Water Company of Riverside, which was going out of business and had been in violation of drinking water requirements. Liability issues needed to be addressed before EMWD and EVMWD could assume service responsibilities. In response to concerns about liability the state legislature unanimously passed Senate Bill 1130. The liability protections provided by this legislation were a key factor that helped pave the way for EMWD and EVMWD to take over water supply services to a community that was in need of safe drinking water. We encourage EPA to align the liability protection and enforcement relief of WSRAR with existing state policies like those established in California.

III. Increased funding

Throughout the proposed rule EPA notes the importance of providing a supply of water that is both safe and affordable. These two principles resonate closely with ACWA's mission. There are a number of reasons a PWS may fall out of compliance with drinking water standards. One of the primary reasons is limited financial resources.

In its fiscal year 2025 budget request EPA requested a total of \$2.365 billion for the Clean Water and Drinking Water State Revolving Fund (SRF) Programs. While ACWA's members are grateful for this request it was more than \$300 million below current fiscal year funding. The SRF programs are the largest source of federal funds for states to provide assistance for water quality programs. Both programs are oversubscribed and demand for them will continue to grow as additional contaminants such as PFAS compounds are regulated. We urge EPA to work with congress to increase the amount of funding available to address water infrastructure and water quality issues. ACWA stands ready to support EPA in this effort.

IV. Conclusion

We offer the above comments in the hope that they are collaborative and constructive. ACWA thanks EPA for the opportunity to provide comments and for its work to address water quality needs. ACWA looks forward to working with you on this important effort. Please let us know if we can provide additional information or be of assistance.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ian Lyle', written in a cursive style.

Ian Lyle
Director of Federal Relations
Association of California Water Agencies (ACWA)