



The Environmental Justice Coalition for Water

Water Justice for All

January 6, 2016

Jean-Pierre Wolff, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
Email: centralcoast@waterboards.ca.gov

Subject: Comment to the Proposed Human Right to Water, Resolution No. R3-2017-0004

Dear Jean-Pierre Wolff:

The below signatories appreciate the opportunity to comment and applaud the Central Coast Regional Water Quality Control Board's (Board) direction to further implement the human right to water. This right was officially recognized by the legislature in 2012 with the passage of A.B. 685, followed by the State Water Board in 2016 (Resolution No. 2016-0010), and soon thereafter by the Central Valley Regional Board (R5-2016-0018). Many of us have supported the human right to water from the outset, and we continue that strong support today to the Board's proposed resolution.

Our organizations include environmental justice advocates, Central Coast community members, and academic, non-profit, and private institutions from throughout California.

The proposed resolution is especially robust in comparison to other previously adopted orders and resolutions. In particular, we strongly support the proposed "work plan" that staff are required to prepare annually, and which is to include, "specific actions and time schedule for implementing the human right to water." This feature is unique to the Central Coast, and our organizations believe its prospective nature will greatly benefit the implementation process for achieving clean, safe, accessible, and affordable water for all human beings. We look forward to working with staff on the preparation of this work plan in the future.

We also applaud the Board for its recognition that the analysis of affordable water must include the total cost of water—including operation and maintenance supply costs—in comparison to household incomes. We believe the ideal affordability scale of analysis should be at the individual household level, as this is consistent with the legislative proclamation of a human right to water. While this is the ideal, we recognize that practical, technical, and other cost constraints may prevent this detailed level of analysis in all circumstances. However, this should not detract from maintaining the overarching goal of safe, clean, accessible, and affordable water for all human beings.

Further, we strongly support the Board's direction that staff must consider affordability and avoid transferring the costs of drinking water contamination when implementing regulatory programs and conducting enforcement activities. We believe polluters and dischargers should be held accountable for their activities that may cause or contribute to the impairment of safe, clean water supplies. Forcing polluters and dischargers to internalize the costs of remediation, as opposed to imposing that cost onto other community members, is a vitally important step in implementing the human right to water.

The below signatories also applaud the Board's recognition that outreach and participation is a necessary component towards achieving the human right to water, that impacted communities must be meaningfully engaged, and that drinking water quality information must be made available to communities that lack safe, clean, accessible, and affordable water. We strongly support community engagement as a tool to communicate, convene, and collaborate towards implementing the human right to water, and we welcome the opportunity to assist the Board whenever possible in this pursuit.

Finally, we laud the Board's recognition that disadvantaged communities will benefit from technical and compliance assistance to develop capacity to evaluate solutions towards achieving safe, clean, affordable, and accessible water. Here, replacement water is an important interim solution for communities without access to safe water, and our member organizations that work in this field look forward to continuing and expanding projects to provide bottled water to communities in need, with the assistance of Board staff.

Thank you,

Colin Bailey
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The Environmental Justice Coalition for Water

Water Justice for All

Laurel Firestone
Co-Director
Community Water Center



**COMMUNITY
WATER CENTER**
EL CENTRO COMUNITARIO
POR EL AGUA

Horacio Amezquita
General Manager
San Jerardo Cooperative, Inc.

Jennifer Clary
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Steve Shimek
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The Otter Project
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Stan Keasling
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Marylia Kelley
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Lauren Ornelas
Founder/Executive Director
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Grower-Shipper Association of Central California
“OUR MEMBERS: PARTNERS PRODUCING PROSPERITY”

Jean-Pierre Wolff, Chair
California Regional Water Quality Control Board Central Coast Region
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San Luis Obispo, CA 93401
centralcoast@waterboards.ca.gov

SUBJECT: Draft Resolution No. R3-2017-0004, Adopting the Human Right to Water as a Core Value and Directing its Implementation in Central Coast Water Board Programs and Activities (Human Right to Water Resolution)

Dear Chair Wolff:

The Grower-Shipper Association of Central California (Grower-Shipper) appreciates the opportunity to provide comments on Draft Resolution No. R3-2017-0004, Adopting the Human Right to Water as a Core Value and Directing its Implementation in Central Coast Water Board Programs and Activities (Draft Resolution). The Grower-Shipper Association is a trade association that includes growers of vegetables, strawberries, mushrooms, and wine grapes operating in Monterey, Santa Cruz, San Benito and Santa Clara Counties. More than 100 Grower-Shipper members will be impacted by the Draft Resolution. Grower-Shipper has reviewed the Draft Resolution and has significant concerns with many of the proposed revisions. We provide comments conveying our concerns here.

Notably, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) Draft Resolution appears to mimic an almost identical resolution adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) and one adopted by the State Water Resources Control Board (State Water Board). However, in this case, the Central Coast Water Board proposes to alter the Resolution substantially by including different and new additional language. The proposed additions are of concern because not only is the Draft Resolution then in conflict with what was adopted by the State Water Board, but it alters the intent and purpose of the Human Right to Water statutes as well as the Central Coast Water Board’s authority under the Porter Cologne Water Quality Control Act (Porter-Cologne). These substantive differences and our concerns therewith are explained below.

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1. Prioritization Language Changes

The first issue pertains to priorities with respect to implementation of the Human Right to Water. *State Water Resources Control Board Resolution No. 2016-0010* (State Water Board Resolution), *Whereas paragraph 6* states as follows:

“Preventing and/or addressing discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources of waters of the state, are among the Water Boards’ highest priorities....”

In contrast, Draft Resolution *Whereas paragraph 7* states:

“Preventing and/or addressing discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources of waters of the state, are the Central Coast Water Board’s highest priorities...”

While Grower-Shipper understands the need to protect human health, the finding as proposed fails to find a balance between ensuring that individuals within the Central Coast region have access to safe and affordable drinking water and that economic activities associated with discharges are also key to the region’s economic health. Further, the Central Coast Water Board’s charge is to protect and maintain all beneficial uses, including aquatic life, agricultural, industrial, recreational and other beneficial uses of the water. To claim here that one beneficial use is the Central Coast Water Board’s “highest” priority is in conflict with Porter Cologne, which states “activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Wat. Code, § 13000.)

Further, altering the Central Coast Water Board’s priorities through this Draft Resolution is in conflict with the Water Quality Control Plan for the Central Coastal Basin (June 2011) (Central Coast Basin Plan). For example, the Basin Plan’s Implementation Chapter establishes planning goals that pertain to the utilization of the basin’s water resources and guidelines for control of waste discharges. (Central Coast Basin Plan, p. IV-2.) The first stated goal is to “[p]rotect and enhance all basin waters, surface and underground, fresh and saline, for present and anticipated beneficial uses, including aquatic environmental values.” (Id.) There are no planning goals in the Central Coast Basin Plan that state addressing discharges that threaten the human right to water is the Central Coast Water Board’s highest priority. Accordingly, the finding should be revised to be consistent with State Water Board Resolution No. 2016-0010.

2. Incentivization Language Changes Regarding Replacement Water

Next, resolve paragraph 12 of the State Water Board’s Resolution states as follows: Encourages Regional Boards to consider developing policies that allow for and incentivize local and regional efforts for providing replacement water where appropriate while long-term water quality solutions are developed and implemented.

In contrast, the Draft Resolution at resolve paragraph 11 states as follows:

Directs Central Coast Water Board staff to implement policies that allow for and incentivize local and regional efforts for protecting drinking water and providing replacement water where

appropriate while long-term water quality solutions are developed and implemented, including related to the Sustainable Groundwater Management Act.

The revisions to this paragraph as proposed in the Draft Resolution change the intent and context with respect to the resolved paragraph as adopted by the State Water Board. First, prior to implementing policies related to the statements in this paragraph, the Central Coast Water Board needs to develop such policies, as is directed in the State Water Board’s Resolution. For example, multiple stakeholders in the Central Valley region (including staff from the Central Valley Water Board) have just completed development of a comprehensive, region-wide Salt and Nitrate Management Plan (SNMP), which will now be developed into water quality control plan amendments for consideration by the Central Valley Water Board. The SNMP proposes a number of policies that incentivize replacement water while long-term efforts towards obtaining balance and restoration of impacted groundwater aquifers are underway. To our knowledge, the Central Coast Water Board has no similar SNMP as is directed by the State Water Board’s Recycled Water Policy, and has no other developed policies adopted by the Central Coast Water Board with respect to incentives for replacement water. Until such policies are developed and adopted into the Central Coast Basin Plan, it is inappropriate for the Draft Resolution to direct staff to “implement” such policies.

Second, the proposed changes as compared to the State Water Board’s Resolution expand the intent and purpose of this resolve paragraph. By including reference to “protecting drinking water”, the Draft Resolution expands the scope of this paragraph to encompass policies related directly to discharges. Other policies and programs exist with respect to this issue (i.e., waste discharge requirements and conditional waivers) and inclusion here dilutes the intent of the resolved paragraph, which is to incentivize replacement water programs while longer term programs are developed.

Accordingly, this paragraph should be revised to mimic that in the State Water Board’s Resolution.

3. Language Not in the State Resolution but Included in Central Coast Regional Board

The Draft Resolution includes many additional whereas and resolve paragraphs that are not in the State Water Board’s Resolution. The intent and purpose for the additional language is unknown, and is unnecessary. In some instances, the proposed additions are also inconsistent with underlying laws and policies. For the reasons explained here, all of the additional whereas and resolve paragraphs need to be deleted.

A. Whereas paragraphs 11 and 13

Whereas paragraph 11

“The State Water Board’s Anti-Degradation Policy (Resolution No. 68-16), establishes the policy of the state to regulate disposal of wastes into surface and groundwaters “to achieve the highest water quality consistent with maximum benefit to the people of the State.”

State Water Board Resolution No. 68-16 stands on its own as a separate policy and reference to the policy here is unnecessary and inappropriate. This Draft Resolution is supposed to be about implementation of the Human Right to Water statutory provisions – not Resolution No. 68-16. Further, to take one component from Resolution No. 68-16 and imply that it is directly related to the Human Right to Water misstates the complete intent and purpose with respect to Resolution

No. 68-16 as well as reference to what constitutes maximum benefit to the people of the state. Unless the Draft Resolution intends to provide a balanced and objective explanation with respect to application of Resolution No. 68-16, short hand reference to it here is inappropriate and needs to be deleted. Moreover, Resolution No. 68-16 is about protecting high quality waters and sets forth the findings that regional boards need to make if they are to permit degradation to high quality waters. It is not “the policy of the state to regulate disposal of wastes into surface and groundwaters.” The proposed paragraph is inaccurate in its reference and characterization of Resolution No. 68-16 and thus the paragraph needs to be deleted.

Whereas paragraph 13

“Central Coast Water Board staff routinely provide status reports to the Central Coast Water Board on environmental justice activities, including implementation of the human right to water in disadvantaged communities with impacted groundwater. On February 27, 2015 and March 7, 2016, Central Coast Water Board Members participated in environmental justice tours to meet with community members to discuss their successes and challenges associated with drinking water contamination.”

It is not clear to Grower-Shipper as to the relevance of this paragraph to the Draft Resolution. Thus, it should be deleted.

B. Resolved Paragraphs 2, 4, 6, 7, 8, 13, 14, and 16

For ease of reference, we recite the resolved paragraphs of concern first, and then provide our comments in response to these proposed provisions below.

Resolution paragraph 2:

“Will promote achievement of the human right to water through effective prioritization, implementation, outreach and participation, performance monitoring and reporting, and partnership.”

Resolution paragraph 4:

“Will promote policies that advance the human right to water and discourage actions that delay or impede opportunities for communities to secure safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”

Resolution paragraph 6:

“Directs Central Coast Water Board staff to prioritize regulatory programs and activities to prevent and/or address discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources of waters of the state.”

Resolution paragraph 7:

“Directs Central Coast Water Board staff to regulate discharges to minimize loading to attain the highest water quality which is reasonable, considering all demands being made on those waters and the total values involved. (Wat. Code, §§ 13000, 13050, subds. (i)-(m), 13240, 13241, 13263; State Water Board Resolution No. 68-16.)”

Resolution paragraph 8:

“Directs Central Coast Water Board staff to consider affordability and avoid transfer of costs to communities affected by drinking water contamination, when implementing regulatory programs and conducting enforcement activities.”

Resolution paragraph 13:

“Directs Central Coast Water Board staff, as resources allow, to engage meaningfully with communities that lack adequate, affordable, or safe drinking water, including providing community outreach.”

Resolution paragraph 14:

“Directs Central Coast Water Board staff to provide opportunities for communities that lack adequate, affordable, or safe drinking water to engage in Water Board activities and provide meaningful input to Water Board decisions that affect their communities.”

Resolution paragraph 16:

“Directs Central Coast Water Board staff to maximize the availability and accessibility of data and information regarding drinking water quality to support the development of solutions and inform all stakeholders, including communities that lack adequate, affordable, or safe drinking water.”

The resolved paragraphs recited immediately above would arguably dramatically change the Central Coast Water Board’s priorities, and legal duties to protect and maintain all beneficial uses, and departs from the Central Coast Water Board’s existing Basin Plan. First, the Central Coast Water Board’s statutory duties are to formulate and adopt Basin Plans for all areas of the region, and such Basin Plans are required to conform to the policies set forth in Water Code section 13000 (which includes the need to regulate to the highest level that is reasonable, considering all demands being placed on the waters), and to control discharges of waste that may impact waters of the state in a manner that is consistent with adopted Basin Plans. (See Wat. Code, §§ 13240, 13263(a), 13269(a)(1).) In doing so, the Central Coast Water Board must take reasonable actions, and balance the many needs placed on waters of the state, and consider all beneficial uses. As indicated above, the Central Coast Water Board has an adopted Basin Plan that establishes beneficial uses, water quality objectives and a program of implementation. Any change to existing priorities and programs of implementation need to be reflected in the Basin Plan, meaning that the Basin Plan needs to be amended in accordance with Porter-Cologne. Making such changes in a resolution as is being proposed here is an underground regulation and must be rejected by the Central Coast Water Board.

The proposed resolved paragraphs would constitute an underground regulation because they would specifically impact the Central Coast Water Board’s activities, and the way that they intend to regulate dischargers within the Central Coast region. For example, resolved paragraph 8 arguably expands the Central Coast Water Board’s considerations to new substantive issues that are not currently part of the statute or the Basin Plan. Grower-Shipper comments not to argue against consideration of such concerns, but that policies with respect to such considerations need to be adopted according to the law, and need to be included in the Basin Plan.

Moreover, the resolved paragraphs greatly expand the intent and purpose of the Human Right to Water. Water code section 106.3(b) specifically states that consideration of the Human Right to Water shall be considered when revising, adopting, or establishing policies, regulations, and grant criteria” Accordingly, the Human Right to Water statutes apply to quasi-legislative, or regulatory actions, of state agencies. It does not directly apply to quasi-judicial actions, monitoring and reporting programs, and other actions that the Central Coast Water Board may take. These resolved paragraphs inappropriately expand the Human Right to Water, and actions

beyond the Human Right to Water, to all of the Central Coast Water Board's authorities, including quasi-judicial actions.

In conclusion, the resolved paragraphs are inconsistent with the Central Coast Water Board's Basin Plan, and the Human Right to Water statute. To expand the Central Coast Water Board's policies, it must first amend the Basin Plan pursuant to Porter-Cologne. Such changes cannot be done in a resolution of the type provided here.

Sincerely,

A handwritten signature in black ink that reads "Abby Taylor-Silva". The signature is written in a cursive, flowing style.

Abby Taylor-Silva
Vice President, Policy & Communications

From: Denker, Sharon@Waterboards
To: Schroeter, Angela@Waterboards
Subject: FW: in support of Resolution No. R3-2017-0004
Date: Friday, January 06, 2017 2:50:31 PM
Attachments: [Support Letter - Central Coast RWQCB - Resolution No. R3-2017-0004FAF.docx](#)
Importance: High

From: Laura Rosenberger Haider [mailto:lauragreen.rosenberger@gmail.com]
Sent: Friday, January 06, 2017 1:44 PM
To: WB-RB3-centralcoast
Subject: in support of Resolution No. R3-2017-0004

January 06, 2016

Angela Schroeter
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
Email: centralcoast@waterboards.ca.gov

Subject: Comment to the Proposed Human Right to Water, Resolution No. R3-2017-0004

Dear Angela Schroeter:

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include the total cost of water—including operation and maintenance supply costs—in comparison to household incomes. We believe the ideal affordability scale of analysis should be at the individual household level, as this is consistent with the legislative proclamation of a human right to water. While this is the ideal, we recognize that practical, technical, and other cost constraints may prevent this detailed level of analysis in all circumstances. However, this should not detract from maintaining the overarching goal of safe, clean, accessible, and affordable water for all human beings.

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Thank you,

Ronald J. Martin, PhD. (President of FAF) and Laura Rosenberger (Secretary) in behalf of Fresnans Against Fracking are also signing this letter.

Schroeter, Angela@Waterboards

From: Denker, Sharon@Waterboards on behalf of WB-RB3-centralcoast
Sent: Monday, January 09, 2017 7:46 AM
To: Schroeter, Angela@Waterboards
Subject: FW: R3-2017-0004

From: Laura Rosenberger Haider [<mailto:lauragreen.rosenberger@gmail.com>]
Sent: Friday, January 06, 2017 4:59 PM
To: WB-RB3-centralcoast
Subject: R3-2017-0004

Clean water should be a human right. The about 20 active unpermitted unlined pits in the central coast in which toxic oil company wastewater is disposed is a threat to water. Environmental Working Group even found radium in concentrations on the average of 1000 times higher than the public health goal in fracking wastewater.