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Re: Discussion Draft of the Groundwater Workplan Concept Paper

Dear Members of the State Water Resources Control Board,

On behalf of Clean Water Action ("CWA"), Community Water Center ("CWC"), California Rural Legal Assistance, Inc. ("CRLA"), Environmental Justice Coalition for Water ("EJCW"), and Leadership Council for Justice and Accountability ("Leadership Council"), we respectfully submit these comments on the State Board Discussion Draft of the Groundwater Workplan Concept Paper.

Introduction

As representatives of environmental justice communities, our organizations work extensively at the local, regional, and state level to ensure that all communities have equitable access to safe, affordable, and accessible drinking water. Virtually every community we work with relies on groundwater, so our organizations are greatly concerned about the severity of groundwater contamination and associated impacts to environmental justice communities. The State Water Board's February report on *Communities that Rely on Contaminated Groundwater* indicates that a *majority* of California residents rely upon a contaminated water source for all or part of their raw water supply. In addition, the State Board's report on nitrate contamination indicates that without action, by 2050, eighty percent of the population of the Salinas Valley and Tulare Lake Basin will be impacted by nitrate contamination.

We appreciate the priority placed on groundwater by the State Board, as reflected in this concept paper. Our organizations hope that the plan in its next iteration can be strengthened to more aggressively address those actions and decisions that are within the purview of the Board, and provide specific direction for other agencies that can be implemented through administrative action. The situation, as you know, is critical, particularly for those communities that rely entirely upon groundwater and upon the Board's ability to protect it.

This concept paper also provides the State Board with the opportunity and obligation to incorporate the *Human Right to Water* into its groundwater strategy. The intent of the legislation is to ensure that all Californians have access to affordable, accessible, acceptable and safe water and sanitation in sufficient amounts to protect their health and dignity. In accordance with domestic law and human rights principles, access for human consumption should be prioritized over other water uses—including water for agriculture and industry—and should be non-discriminatory. Special attention must be given to those who do not have access to safe water.

To ensure that the law is properly implemented, the State Board should give preference and adopt policies that advance the human right to water, refrain from adopting policies or regulations that run contrary to securing equal access to safe drinking water, and identify the consequences that its actions have on access to safe drinking water in California. This approach also requires that individuals and communities have meaningful opportunity to participate in decision-making affecting their access to safe and affordable water. The Board should adopt an inclusive and transparent approach to decision-making by fostering participation by communities that historically have been impacted by source water contamination. The Board should also publically disclose efforts to consider the human right to water policy as well as the impact of these efforts on its final action.

1. Managing California's Groundwater – Regional Leadership

We agree that regional leadership is key to the successful management of groundwater supplies and provides an opportunity for local residents to be engaged in decisions affecting their health and community. However, we would point out that regional groundwater management is not new, but has historically been the state's preference. The result is widespread contamination, over-drafted aquifers, and communities who have struggled for decades to achieve safe drinking water. Much as we support and encourage regional solutions, we are not in favor of delaying State Board action in the hopes that regions will act to address issues of long standing.

2. Implementing the Vision

We agree with the components of the vision articulated in the concept paper, but would add one more – transparency. The State and Regional Water Boards are unique among the state's water agencies in that their business is conducted in the public eye. Current groundwater management is better exemplified by what we don't know. Information is often difficult or impossible to access, particularly for communities trying to understand how to improve their water supply. One specific example is the inability for the public to access well log data – public information in 49 states – that would help them identify or eliminate potential new well locations.

3.1 Sustainable Thresholds

We have concerns about the proposed action to clarify how the Board's Anti-degradation policy applies to groundwater. In *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board,* 210 Cal. App. 4th 1255, the California Court of Appeals provided clear direction on the application of the policy to groundwater. It would be appropriate for the State Board to update its guidance to the regional boards to ensure that the policy is being fairly implemented in accordance to the court's guidance. In particularly, the analysis required to show that degradation is in the best interest of the people of the state of California must include a detailed analysis of the physical, economic and social impacts of allowing continued degradation, including tangible and intangible economic and social costs imposed on those dependent on contaminated drinking water, the environment and society at large. The troubling practice of using costs of regulation to dischargers absent a similar impact analysis on communities must end.

3.2 Monitoring and Assessment

Publicly Accessible Data

This Concept Paper acknowledges that sufficient monitoring and consistent data availability are essential to the identification of groundwater problems and the ability of local, regional, and state agencies to assess appropriate management actions. The value of widely accessible and transparent data extends to environmental justice communities and other individuals engaged in and/or impacted by groundwater conditions. Fostering the understanding of environmental justice communities enables them to think and care for themselves, to engage as autonomous individuals in the development of groundwater policy, and to more accurately communicate the public health risks to which they are exposed.

Several of the data collection and reporting *Potential Water Board Actions* point to a desire on the part of the State Board to improve the public's ability to use already accessible data. However, none of these recommendations address the very real trend towards more aggregated and opaque data reporting practices, such as those being implemented in the Central Coast and Central Valley. Practices that directly or indirectly conceal individual well locations impinge on the quality and quantity of data available through Public Records Act requests and Geotracker and present data in formats that are inaccessible or confusing limits public awareness, insulates the problem and further endangers the public.

The Central Coast Regional Water Quality Control Board ("Regional Board") recently rejected a recommendation to further increase the location skew for domestic well location data reported by Central Coast Groundwater Coalition ("CCGC"). It should be noted, however, that well location data reported by CCGC as part of their efforts to comply with the Irrigated Lands Regulatory Program, is still obscured by a half-mile radius, even though there is no statutory requirement for this obfuscation. For communities that rely on domestic wells, many of them disadvantaged and many who are at risk of being exposed to high levels of nitrate contamination, there is an urgent public interest that would be served if these communities and individuals could have easy and convenient access to data on the location of wells that have high levels of nitrate contamination. Providing these community members with as precise as information as possible, would allow them to ascertain if they are affected by contaminated water, and put them on notice regarding their exposure to health risks.

Water Board Action: The State Board should promote policies that directly address the public's need for easy and convenient access to GeoTracker data by moving away from obfuscation of well location data absent a discrete and tangible concern that clearly outweighs the public interest.

Water Board Action: The State Board should uphold high standards for justifying disclosures that fall short of the fullest possible disclosure of records to the public. The State Board should accomplish this by providing clear protocol for reporting of data on GeoTracker prioritizing the public's right-to-know.

Water Quality Monitoring for Communities Not Served by Public Water System

Communities not served by a public water system, including those reliant on private domestic wells, are especially vulnerable to the impacts of contaminated groundwater because these water systems are largely unregulated and undergo little to no water quality testing.

The Governor's Drinking Water Stakeholder Group is finalizing a report on needed improvements in groundwater monitoring and data management. The Group analyzed several state agency and county drinking water monitoring programs and identified a significant gap in monitoring and data requirements for wells that are not part of a public water system's supply. Unique among those counties surveyed, Monterey County conducts regular water quality sampling for systems with 2-14 connections. These results indicate that nitrate contamination among these small systems is widespread, as more than 20% of the systems exceed the nitrate Maximum Contaminant Level. Test results of wells sampled as part of the GAMA program and the Central Coast Domestic Well project indicate that drinking water contamination is also widespread among private domestic well systems, but these projects just represent the "tip of the iceberg." There are an estimated 12,000 private domestic wells in Monterey County, 20,000 private domestic wells in Tulare County, and over 450,000 private domestic wells across California.

We support the State Board's inclusion of point-of-sale water quality sampling and notification of groundwater users in high-risk areas, but contend that the Concept Paper must go further in its recommended actions. Many of the individuals reliant on these water systems are renters and/or face significant obstacles that compromise their ability to acquire water quality testing services.

Water Board Action: Provide guidance to GAMA program staff and other entities receiving contracts for domestic well sampling projects on outreach to disadvantaged communities and document inclusion of disadvantaged communities in domestic well testing projects.

Water Board and Actions for Others: Require more comprehensive ongoing testing of private domestic wells through implementation of either statewide requirements or more robust voluntary programs.

Monitoring of Pesticides & Other Constituents of Emerging Concern

As the California Department of Public Health's Safe Drinking Water Program shifts into a program under the State Water Board, the State Board should utilize this opportunity to reengage with other state agencies such as the Department of Pesticides Regulation and Department of Toxic Substances Control to monitor pesticides and other contaminants in groundwater aquifers.

The US EPA has updated human health benchmarks for pesticides in drinking water to reflect the latest scientific information. It has also announced a principle of using the authority from multiple statutes to more effectively protect drinking water, by sharing data collected under different statutes. The State Water Board should also utilize interagency agreements to share data to more effectively monitor pesticides and constitutes of emerging concern such as perchlorate in groundwater aquifers.

Water Board Action: Solicit input from stakeholders regarding monitoring for constituents of emerging concern. Consider a mechanism where exceedance of a particular contaminant in a Clean Water Act Section 303(d) impaired water body would trigger groundwater testing of contaminant in groundwater as well.

3.3 Governance and Management

Early in the document, the Groundwater Concept Paper points out the role of groundwater management in the, "treatment of groundwater at the point of extraction or use for drinking water purposes." Local governments play a critical role in addressing the water needs of disadvantaged communities (DACs) and face capacity constraints of their own. Integration that allows scarce public dollars to accomplish more is a good idea and one we support. Specifically, we support programs that allow local entities to identify and assist at-risk communities and promote shared solutions that can help to address the needs of those communities. The state's limited resources must be allocated wisely to provide sustainable and affordable solutions for the most at-risk communities.

Integrated Regional Water Management (IRWM)

The Concept Paper identifies IRWMs as regional entities with groundwater management capacity. Indeed, IRWMs provide many opportunities for consolidation of groundwater data collection, technical capacity, and regional water governance. Our organizations have previously outlined continued and ongoing challenges preventing disadvantaged communities and tribes from successfully participating in the IRWM process. If this program is going to continue to be supported by the administration and funded by public dollars, we recommend several changes in addition to those identified by the Concept Paper that are specific to the IRWM grant program. These changes extend to activities pertaining to funding, but for simplicity we will include them here.

Actions for Others:

- Local IRWMs should be required to facilitate development of DAC needs and prioritization directly with local DACs, and integrate those priorities into all aspects of the IRWM, including implementation grant applications. DAC water needs must be represented within IRWMs and other planning efforts.
- All DWR grant programs (both planning and implementation) should support development of DAC projects, including outreach and needs identification, feasibility studies, and application preparation and development.
- The scope of activities covered by a technical assistance set-aside should be expanded to include, at minimum: engineering and feasibility studies, project design, MHI surveys,

preparation of applications, community outreach and engagement, and funding to participate in ongoing IRWM governance activities.

- Provision of technical assistance must be culturally and linguistically appropriate, and when possible, provide funding directly to local technical assistance organizations and other stakeholder groups.
- All regional IRWMs must program at least 10% of funding to address DAC and tribal needs, including outreach, needs assessment, project inclusion in the plan, planning projects, project implementation grants, and other key areas.
- DWR scoring criteria must be updated to reflect DAC and tribal needs as a basic requirement of IRWM plans, not just another scoring factor
- Guidelines and criteria for determining DAC benefits and critical needs should be developed by DWR in partnership with DAC representatives.

Land Use Planning Guidelines

Contaminated groundwater disproportionately impacts disadvantaged *unincorporated* communities, which often lack the governance, technical capacity, and economies of scale to undertake large scale mitigation measures. Moreover, many of these communities have faced a long history of discriminatory land use policies that excluded them from decades of infrastructure investment. Senate Bill 244 (Wolk, 2011) added language to the Water Code requiring local cities and counties to include an analysis of the presence of island, fringe, or legacy unincorporated communities, as defined, and further requires Local Agency Formation Commissions, as part of their municipal service reviews, to identify the infrastructure needs of disadvantaged communities within the spheres of influence of local government agencies. This requirement will provide critical information that can help us target appropriate assistance to these communities.

Actions for Others: Provide incentives to speed up the implementation of this requirement.

Creation of Regional Authorities

In areas of the state with severe and widespread DAC impacts, we believe that the establishment of a regional coordinating authority is warranted. Many DACs lack sufficient organization and representation required to develop, implement and maintain drinking water solutions. In areas with high concentrations of disadvantaged communities, the number of issues and diversity of interests are difficult to address given the limited scope and resources of local entities (water districts, counties, neighboring communities, Integrated Regional Water Management or IRWMs, and Non-Governmental Organizations (NGOs)) and the various State agencies as each and every DAC require specific analysis and support. A regional authority could focus on securing the necessary resources (financial, technical, data) so that disadvantaged communities without safe drinking water and adequate water infrastructure become self-sustained, long-term and affordable water systems. While the details of such an authority have yet to be established and would be varied due to local conditions, such an entity could work towards the following:

- Shared management and services for basic water system activities;
- Shared infrastructure or full consolidation of small water systems;

- Efficiencies, additional capacities, and reduced overhead;
- Community outreach and data collection and analysis of community needs, particularly for communities without public water systems;
- Facilitated stakeholder-driven development of shared solutions, and on-going communication, outreach, and organization of community participation;
- Engineering and governance feasibility studies and pre-planning services;
- Project planning, design and environmental review;
- Funding for implementation of shared solutions, including construction, implementation of new or modified governance structures.
- Significantly increase consolidation of two or more water system consolidations as one larger system to spread costs and create more economies of scale and increase affordability

The Groundwater Concept Paper includes a recommendation taken from the *Recommendations Addressing Nitrate in Groundwater* Report that directs the legislature to establish a framework of statutory authorities so that existing agencies can provide some of these services to disadvantaged communities. We contend that the State and Regional Boards can go further to support the development of regional solutions for disadvantaged communities. For example, the Central Coast Regional Board recently completed a mapping project of local small and state small water systems that advocates and communities can use to identify opportunities for regional consolidation. This mapping tool is one product of the ongoing collaboration between Regional Board staff and environmental justice advocates in the Central Coast, whereby advocates and Regional Board staff often exchange on-the-ground information for technical support.

State Board Action: Provide guidance to Regional Boards on policies to support regional solutions in environmental justice communities. Such guidance can be integrated as a broader effort to document implementation of the AB 685.

3.4 Funding

The State Board report on nitrate contamination determined that roughly $20 to $36 million per year is needed to provide both short-term and long-term solutions to communities with nitrate contaminated drinking water. Nearly two years since the release of this report, a stable funding source has not been established to fill this need. Thus, the Concept Paper reiterates the State Board's recommendation on the establishment of such a fund. In addition, we recommend several additions to the Concept Paper list of actions supportive of the development of long-term solutions in disadvantaged communities, several of which have already been articulated as part of our comments on the IRWM program.

Funding for Regional Solutions

In keeping with our earlier comments on regional authorities for disadvantaged communities with contaminated drinking water, we suggest an additional recommendation supportive of the implementation of consolidations and regional solutions.

Actions for Others: The Drinking Water Program, as part of its Drinking Water Plan, should establish new funding priorities to incentivize the development of regional solutions as well as straightforward consolidations. These priorities could include; better enforcement of water contamination; funding for disadvantaged communities and schools to identify, plan, design and implement water projects including regional mechanisms; consolidation of water systems; and funding for water system operations and affordable treatment technology or replacement sources to replace contaminated drinking water sources.

Funding for Data Collection and Management

In addition to the recommendations we put forward on data accessibility, several of the Concept Paper actions guiding better integration and accessibility of data are very promising, but will require additional funding that is not specifically mentioned in the Concept Paper. The GDWSG discussed several funding challenges to the implementation of improvements to groundwater monitoring and data collection per the earlier mentioned report that go beyond the need for a stable funding source for the GAMA program.

State Board Action: Specifically identify the funding need and potential funding sources for the implementation of the "Monitoring and Assessment" recommended actions.

3.5 Oversight and Enforcement

Improved Enforcement of Existing Regulatory Tools

Our nonprofit organizations are very concerned about the impacts of groundwater contamination and lack of proper oversight and enforcement to curtail ongoing pollution of drinking water sources by local groundwater management entities. Collectively, we have been part of countless processes to better regional and state level oversight and enforcement, such as Irrigated Lands Regulatory Program (ILRP), and in most cases, have found even after extensive work, these programs do not sufficiently protect water quality objectives or beneficial uses. We believe effective oversight and enforcement begins with the development of the following key regulatory components:

State Board Actions:

- Collect basic information on farm practices and water quality to establish a baseline and effectively evaluate management practices;
- Include mechanisms to ensure adoption of best management practices (BMPs or BPTC), resulting in real farm-level changes to protect groundwater;
- Establish effective mechanisms to ensure accountability by setting clear standards for compliance that ensure that dischargers are not contributing to exceedances of water quality objectives and are minimizing degradation, and by ensuring that the Board has effective enforcement mechanisms to compel compliance;
- Provide adequate staff level funding for staff at the State Water and Regional Water Boards, for enforcement programs such as Clean Up and Abatement Account and Supplemental Environmental Project (SEP) programs.

Ensure a Strong Regulatory Backstop

Integration of the State Board, Department of Water Resources, and Department of Fish and Wildlife constitutional and statutory authorities to protect the public trust, prevent the waste and unreasonable use of the State's water resources, and initiate actions to protect those resources *must* be integrated into the Concept Workplan. Integration of these authorities should not even be in question.

Additionally, the State Board address the structural and political barriers that dissuade regional groundwater management entities from effectively using their *existing* authorities to protect groundwater quality and quantity, authorities that are rarely used despite the alarming rates of contamination and widespread overdraft. The ability of these regional entities to execute these authorities is in many cases politically compromised due to the very make-up of the agencies governance body and/or regional political pressures. For example, three out of the nine seats on the Monterey County Water Resources Agency are reserved for agricultural entities. It is not beyond reason that the composition of this board may impact the agencies attitude towards the impacts of the industry on water quality and quantity.

Given the strong emphasis on local authorities to regulate and manage groundwater supplies, it is not only necessary that these authorities be integrated into the workplan, but also that there is oversight, enforcement of existing regulatory tools and procedural backstops to effectuate the broad purposes of protecting water quality and quantity. Protecting the public trust, preventing unreasonable use and safeguarding our water resources should not be contingent on structural formations or political leanings of the groundwater management agencies found within a region. On the contrary, more should be done to ensure that local agencies diligently and proactively protect and prioritize water quality.

Conclusion

We appreciate and thank you for providing us the opportunity to comment on this discussion draft of the Groundwater Concept Paper utilizing the lens of how these recommendations impact disadvantaged communities. We are very interested in working with you to ensure that the recommended actions are protective of water quality and quantity, provide concrete information by which to assess the impacts on groundwater and improve the protection of communities dependent upon groundwater for their drinking water supply.

Sincerely,

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