

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JANUARY 26 - 27, 2017

Prepared on January 9, 2017

ITEM NUMBER: 7

SUBJECT: Consideration of Proposed Resolution Adopting the Human Right to Water as a Core Value and Directing Its Implementation in Central Coast Water Board Programs and Activities

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THIS ACTION: R3-2017-0004, Adopting the Human Right to Water Resolution

SUMMARY

This item recommends approval of the Human Right to Water Resolution R3-2017-0004 (HRTW resolution, included as Attachment 1) which adopts the human right to water as a core value and directs its implementation in Central Coast Water Board programs and activities. The Central Coast Water Board has a strong history of supporting and integrating safe drinking water and environmental justice considerations into board programs and activities. The proposed HRTW resolution provides an opportunity for the Board to memorialize the human right to water as a top priority value and consideration, integrated into the decision making throughout all of our programs and their implementation. Approval of this resolution also offers the Central Coast Water Board the opportunity to provide clear direction to staff and transparency to stakeholders regarding the value of the human right to water.

DISCUSSION

Background

On September 25, 2012, California became the first state in the nation to legislatively recognize the human right to water. Governor Brown signed into law AB 685 (Water Code Section 106.3, Attachment 2) which declares that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” Effective January 1, 2013, the “Human Right to Water” (HRTW) law calls on all relevant state agencies to consider the human right to water “when revising, adopting, or establishing policies, regulations, and grant criteria” relevant to domestic water uses.

The State Water Board and the nine Regional Water Quality Control Boards (collectively, the Water Boards) administer the Porter-Cologne Water Quality Control Act (Wat. Code, Div. 7, § 13000, et seq.), which establishes a comprehensive statutory authority for water quality control. The Water Boards protect water quality and beneficial uses of the State’s waters, including

drinking water and domestic uses, through their authority under the Porter-Cologne Water Quality Control Act and the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S. C. § 1251, et seq.) (Clean Water Act). The HRTW law does not require the Water Boards to develop new policies, regulations, or grant criteria.

At the March 2016 Central Coast Water Board Meeting, Board Members discussed the HRTW law, viewed a “Thirsty for Justice”¹ documentary regarding the human right to water throughout the state, and heard comments from environmental justice representatives. The Board indicated their support for a human right to water resolution and requested that staff develop a resolution for Board consideration that included specific actions and timeframes.

Building Upon State Water Board and Central Valley Water Board HRTW Resolutions

The Central Coast Water Board’s proposed HRTW Resolution is based upon Water Code section 106.3, and includes similar language to HRTW Resolution No. 2016-0010² adopted by the State Water Board on February 16, 2016, and HRTW Resolution R5-2016-0018³ adopted by the Central Valley Water Board on April 21, 2016. Both of these HRTW resolutions were adopted by the respective Boards with opportunities for public review and comment.

Building upon the State Water Board and Central Valley Water Board HRTW resolutions, the proposed HRTW resolution for the Central Coast Region identifies categories of activities related to prioritization, implementation, outreach and participation, performance monitoring and reporting, and partnership. The proposed HRTW resolution also includes specific text to cover activities related to non-point source programs and enforcement, as well as implementation of the Sustainable Groundwater Management Act. The proposed HRTW resolution for the Central Coast Region also includes the following additional citations, starting on page 3 of the proposed resolution:

“...Therefore be it resolved that, the Central Coast Water Board:

- *(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.*
- *(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.*
- *(12) Directs Central Coast Water Board staff to prepare, implement and regularly update a work plan that includes specific actions and time schedules to ensure the human right to water is achieved throughout the Central Coast Region.*
- *(14) Directs Central Coast Water Board staff to provide opportunities for communities that lack adequate, affordable, or safe drinking water to engage in board activities and provide meaningful input to board decisions that affect their communities.*

¹ <https://vimeo.com/87513817>

² http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0010.pdf

³ http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/resolutions/r5-2016-0018.pdf

- *(16) Directs Central Coast Water Board staff to eliminate impediments to data access, and work with the State Water Board and other appropriate agencies 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...*

Integrating the Human Right to Water into Central Coast Water Board Programs and Activities

The Central Coast Water Board members and staff have a strong history of supporting and integrating safe drinking water and environmental justice considerations into board programs and activities. Some examples of this include:

- In November 2013, staff attended a convening of state agencies to discuss implementation of the HRTW law, hosted by the UC Berkeley International Human Rights Law Clinic, in coordination with the Governor's Office.
- At the December 2013 Central Coast Water Board Meeting, the Executive Officer provided Central Coast Water Board Members with detailed information regarding the HRTW law and environmental justice issues and related staff work in the Central Coast region.
- In October 2014, Board Member Monica Hunter and staff Angela Schroeter attended the United States Government Consultation on Environmental Issues Relating to United Nations Universal Periodic Review which discussed climate change, water issues, and environmental and public health protections for vulnerable communities.
- In December 2014, a staff survey confirmed that staff routinely evaluates how the HRTW law applies to their program activities and work assignments.
- In February 2015 and March 2016, Board members and staff participated in EJ/Drinking Water tours conducted by the Environmental Justice Coalition for Water (EJCW) to provide an opportunity for communities affected by drinking water contamination to discuss the impact and burden of unsafe drinking water.
- At the March 2016 Central Coast Water Board Meeting, Board members further discussed the HRTW law, viewed a "Thirsty for Justice" documentary regarding the human right to water, and heard comments from environmental justice representatives.

Staff prioritizes work that protects drinking water and human health and the expectation is that we coordinate both internally and with county and state agencies and other stakeholders, and work together effectively at all levels of organizations, including shifting our workloads, to address these issues. Staff will continue to prioritize the following types of activities consistent with the proposed HRTW Resolution:

- ***Groundwater Assessment and Protection (GAP) Program*** - The GAP program prioritizes projects that conduct domestic drinking water well outreach and sampling within the Central Coast Region with an emphasis on high-risk nitrate areas and disadvantaged communities to ensure that well owners are informed regarding the nitrate health risk issues.
- ***Irrigated Lands Regulatory Program (ILRP)*** – The ILRP prioritizes actions to reduce pollutant loading to drinking water sources and requires groundwater monitoring of domestic drinking water wells and notification to well users where drinking water wells are contaminated. Where drinking water wells with impairment exist, ILRP staff is working with growers to identify nitrate loading problem areas and implement strategies to reduce nitrate over-application as a long-term solution to groundwater nitrate

impairment.

- **Grants Program** – The Grants Program prioritizes grant projects that provide interim replacement water (e.g. bottled water) and identify long-term drinking water solutions for disadvantaged communities, as part of regional Settlement Fund Programs, Integrated Regional Water Management Funding Programs, Bond Fund Grant Programs, and the Cleanup and Abatement Account. In addition, the Grants Program also prioritizes grant projects that employ innovative approaches that will result in widespread treatment and reductions of pollutant loading to drinking water sources.
- **Site Cleanup Program (SCP)** – The SCP prioritizes cleanup sites that impact public health and drinking water. Consistent with Resolution 92-49, the SCP requires responsible parties to cleanup groundwater to protect and restore beneficial uses, including drinking water, and requires responsible parties to provide replacement drinking water if appropriate. An important part of SCP administration is to put these sites in cost recovery, which requires the responsible party to fund the cleanup, so that the Water Board has sufficient staff resources to oversee cleanup and ensure closure.
- **Permitting Programs (Landfill Program, WDR, NPDES)** – Staff are in the process of working to identify and prioritize permits that discharge pollutants to drinking water. In addition, when revising landfill waste discharge requirements (WDRs) or requiring corrective actions for landfills, staff evaluates potential down-gradient receptors, which include drinking water wells. Wastewater permitting staff is also evaluating methods to effectively manage residual waste from drinking water treatment systems to minimize loading, while addressing the urgent need to provide safe drinking water to affected communities. Permitting staff is also involved in ensuring and encouraging the safe and compliant use of recycled water for various uses, including indirect potable reuse. A related effort is to ensure that all permitting groundwater monitoring data is electronically uploaded to GeoTracker to enable effective data sharing, stakeholder data access, and cross-program coordination.
- **Total Maximum Daily Load (TMDL) Program** – TMDL Program staff routinely include drinking water beneficial uses in TMDL assessments and also incorporate HRTW findings in relevant TMDL documents to protect drinking water beneficial uses, including areas where surface water recharges groundwater that is a drinking water source.
- **Enforcement Activities** – Enforcement staff routinely prioritize enforcement cases that involve drinking water contamination. In these situations, requirements to provide replacement water to ensure public health is the highest priority, followed by requirements to conduct site investigation, minimize pollutant loading and conduct remediation/cleanup.
- **Environmental Justice Activities** - Staff routinely assists, coordinates and/or participates in environmental justice events and training. For example, staff worked with EJCW to assist tours in February 2015 and March 2016 and an environmental justice community forum in November 2016. The purpose of these events is to provide Board Members and staff with an opportunity to meet directly with communities in a local and informal forum to hear the community member perspectives on drinking water contamination and EJ issues. In addition, staff proactively conducts outreach to environmental justice groups and communities affected by nitrate and other pollutant contamination in drinking water to inform them of opportunities to provide input to the decision making process.

Central Coast Water Board staff also routinely coordinates with other state and local governmental agencies, non-profit organizations, impacted communities, and private businesses, to work toward realizing the human right to water within the Central Coast Water

Board's programs and projects. For example, staff coordinates closely with State Water Board Division of Drinking Water staff, as well as county environmental health and public works staff from Monterey, San Luis Obispo, and Santa Barbara counties to identify at-risk drinking water supply locations and solutions for them.

Human Right to Water Accountability

As stated in the proposed Resolution, staff will maintain a HRTW work plan and provide regular progress reports to the Board regarding its implementation. The purpose of the work plan is to provide transparency and accountability to the Board and public about the status of activities related to the human right to water; it is not a regulatory document and is not enforceable. The workplan may receive Board input, but does not require Board approval. A draft HRTW workplan for 2017 is included as Attachment 3. The proposed HTRW Resolution will not expand the legal scope of the human right to water as described in Water Code section 106.3, nor will it impose new requirements on the regulated community, expand any obligation of the Central Coast Water Board to provide water or otherwise alter existing law.

COMMENTS

A draft of the HRTW resolution was released for a 30-day public comment period beginning on December 6, 2016 and ending on January 6, 2017. The Central Coast Water Board received four (4) letters commenting on the draft HRTW resolution (included in Attachment 4) from the following organizations and individuals:

- Environmental Justice Coalition for Water (EJCW), Community Water Center, Clean Water Action, San Jerardo Cooperative, Inc., Johnson Road Community Residents, Food and Water Watch, Carpe Diem West, Environmental Working Group, the Otter Project and Monterey Coastkeeper, Comite Civico del Valle, Water Flows Free, Sol Communications, Tri Valley, CARES, Khalid Kadir – UC Berkeley Lecturer, and Food Empowerment Project
- Grower-Shipper Association of Central California (GSA)
- Ronald J. Martin, PhD. and Laura Rosenberger on behalf of Fresnans Against Fracking
- Laura Rosenberger Haider

Comments from EJCW et al., Fresnans Against Fracking, and Laura Rosenberger Haider all support the proposed HRTW resolution. In particular, EJCW et al., strongly supports the preparation of a workplan with specific activities and time schedule to implement the HRTW law, and also supports efforts to consider drinking water affordability and to provide opportunities for affected individuals and communities to engage in the regulatory process.

Comments from GSA express concern with the proposed HRTW resolution. GSA states that the proposed HRTW resolution would 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. In particular, GSA comments include the following specific concerns:

- GSA disagrees with the statement in resolve paragraph 1 identifying the human right to water as a top priority.
- GSA disagrees with resolve paragraph 11, stating that Central Coast Water Board must first develop policies that allow for and incentivize local and regional efforts for protecting drinking water and providing replacement water, prior to implementing such policies. In

addition, GSA disagrees with the inclusion of the language “protecting drinking water” in this paragraph.

- GSA disagrees with finding paragraphs 11 and 13, stating that the reference to Anti-Degradation Policy is inappropriate and that information about Board activities related to drinking water is not relevant to the proposed resolution.
- GSA disagrees with resolved paragraphs 2, 4, 6, 7, 8, 13, 14, and 16, stating that 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 dischargers are regulated within the Central Coast region.

Summary Response to Comments

In 2012, the Governor signed the Human Right to Water law (Water Code Section 106.3) declaring the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Consistent with Water Code Section 106.3, the proposed HRTW resolution identifies the human right to water as a top priority and provides clear communication to staff and stakeholders regarding the value of the human right to water.

Over the past several years, the Central Coast Water Board has expressed the need to continue to prioritize efforts to identify and evaluate impacts to drinking water, minimize pollutant loading to drinking water sources, support efforts to ensure safe and affordable drinking water and assist disadvantaged communities impacted by drinking water pollution, and to provide meaningful opportunities for those affected by drinking water pollution to provide input to the Board and engage in the decision-making process. Per the Board’s direction, staff is providing a proposed HRTW resolution for Board consideration to address these issues. The proposed HRTW resolution is based upon Water Code Section 106.3, consistent with the Basin Plan, and builds upon similar resolutions adopted by the State Water Board and Central Valley Water Board.

Staff disagrees with GSA comments that the proposed HRTW resolution is inconsistent with the Basin Plan, the HRTW law, and disagrees that proposed HRTW resolution is underground regulation.

The Water Board’s mission is to preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. Furthermore, the mission of the Central Coast Water Board is to develop water quality objectives and implement plans that will best protect the area’s waters while recognizing our local differences in climate, topography, geology and hydrology. The Central Coast Water Board’s Basin Plan establishes water quality objectives for drinking water and also recognizes water quality is an important factor in determining use and benefit; For example, drinking water has to be of higher quality than the water used to irrigate pastures. Thus, water quality objectives for drinking water generally protect other beneficial uses, such as agricultural and industrial uses. However, in some cases (e.g nutrients) drinking water objectives are not sufficient to protect aquatic life beneficial uses.

The proposed HRTW resolution identifies the human right to water as a top priority for the Central Coast Water Board and also ensures the human right to water is considered in a wide range of activities and projects. The proposed HRTW resolution explicitly does not expand the legal scope of the human right to water as described in Water Code section 106.3, alter the

Central Coast Water Board's authority and obligations under applicable law, or impose any new requirements on the regulated community. Additionally, the existing Anti-Degradation Policy provides an opportunity for the Central Coast Water Board to determine if any degradation of high quality waters is consistent with the maximum benefit to the public.

Based on the public comments received and internal feedback staff has included changes to the proposed HRTW resolution. For example, in response to GSA comments regarding resolved paragraph 11, staff is including edits to clarify that the proposed HRTW resolution "Directs Central Coast Water Board staff to ~~implement~~ consider 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.

CONCLUSION

The proposed Resolution R3-2017-0004 adopts the human right to water as a core value and provides clear direction to staff regarding its implementation in Central Coast Water Board programs and activities, as well as providing transparency to stakeholders regarding the significance of incorporating HRTW in our programs' implementation. The language builds upon existing resolutions adopted by the State Water Board and Central Valley Water Board, and advances the work already in progress to prioritize and implement the human right to water into programs and activities for the Central Coast Region.

Consistent with the proposed Resolution R3-2017-0004, staff will provide regular progress reports to the Board regarding implementation of the human right to water work plan. Additionally, staff will describe how the human right to water was considered when submitting recommendations to the Board on items affecting drinking water sources, as appropriate.

RECOMMENDATION

Adopt Resolution No. R3-2017-0004 as proposed, incorporating the Human Right to Water as a core value and directing its implementation into Central Coast Water Board programs and activities.

ATTACHMENTS

1. Proposed Resolution No. R3-2017-0004
2. Water Code Section 106.3
3. 2017 Work Plan – Implementing the Human Right to Water
4. Public Comment Letters