A Tides Center Project
LEADERSHIP COUNSEL
FOR
JUSTICE & ACCOUNTABILITY

Eric Rapport
Central Valley Water Board
erapport@waterboards.ca.gov
(530) 224-4998

February 17, 2017

Re: Fresno County Draft Local Agency Management Plan

Dear Mr. Rapport:

We are writing to provide comments on Fresno County's Draft Local Agency Management Plan ("Draft LAMP"). Through these comments, we aim to help the County development a Final LAMP that complies with state law and regulatory requirements and advances public health goals while protecting the rights of Fresno County property owners, preventing the imposition of an undue burden on low-income homeowners, and ensuring the long-term viability of the County's existing and historic unincorporated communities.

Leadership Counsel works alongside residents of disadvantaged communities in California's San Joaquin and Coachella Valleys to advocate for sound policy and eliminate barriers to opportunity on the basis of wealth, race, income, and place. Through our work with residents of Fresno County's disadvantaged unincorporated communities, we are keenly aware of the need for integrated solutions that provide residents with access to safe, affordable, and sustainable drinking water and waste water services.

The Draft LAMP is an important step towards establishing a framework for preventing drinking water contamination and unsanitary conditions through proper maintenance of non-sewer wastewater depositories and treatment systems in Fresno County. However, as set forth below, the Draft LAMP requires revisions to ensure that the Final LAMP is consistent with state and federal laws and regulations and includes effective solutions that do not impose undue burdens on low-income residents and residents of existing unincorporated communities. Please contact us if you would like to find a time to discuss in person the issues and recommendations set forth herein.

1. **Notify OWTS Owners of Violations and Compliance Options in all Threshold Languages**

The Draft LAMP states that the County will enforce corrective action under the LAMP through the County's Administrative Fines Ordinance (County Municipal Code Chapter 1.13). The Ordinance establishes procedures for the issuance of notices of violation which shall encourage the recipient to contact the enforcement officer for the violation to establish a correction schedule and empowers the enforcement officers to grant time extensions for the correction of violations. However, despite the large percentage of Fresno residents who do not speak English and speak

languages other than English at home[1], the Ordinance does not specify that notices of violation will be provided in languages other than English nor does it indicate that assistance will be available to residents in their spoken language to develop correction schedules and obtain time extensions pursuant to Chapter 1.13.

Lacking or inadequate translation during the course of corrective action by the County will hinder the efficient, effective, and fair resolution of violations. In addition, federal and state law requires state and local agencies to provide appropriate translation to ensure provision of information and services to the public in languages spoken by substantial numbers of non-English speaking residents. *See* Gov. Code §§ 7290, *et seq.*; 11135(a). Executive Order 13166. The Final LAMP must demonstrate how the County will comply with language access laws and ensure that residents with limited or no English language abilities receive notices of violation in their spoken language and are provided and made aware of adequate translation services to allow them to communicate with enforcement officers to develop correction schedules, obtain time exemptions, and effectively utilize other County services to achieve compliance without the imposition of fines whenever possible. *See* Fresno County Municipal Code, § 1.13.010 ("the intent of this process is to encourage the correction of violations prior to the issuance of an administrative citation or the imposition of a fine").

2. The Draft LAMP Must Specify That the County Shall Grant Variance Requests to Setback Requirements and Building Permits for OWTS Replacement and Construction on Existing Properties

The Draft LAMP states that property owners may receive a variance to the 50 foot setback requirement between septic tanks and adjoining private property lines. pp. 27-28. For many pre-existing small lots in established unincorporated communities in Fresno County, it may be impossible to satisfy the 50 foot setback requirement for installation of new or replacement septic tanks and denial of a variance or other authorization would effectively bar continued residential use of the property and potentially constitute a regulatory taking of private property. Therefore, to protect private property owners' rights under the state and federal constitutions and the viability of the County's existing unincorporated communities, the Final LAMP must specify that variances and building permits[2] **shall** be granted for septic tank replacement or installation on existing properties in a manner consistent with public health goals.

In addition, to avoid the imposition of an undue financial burden on low-income property owners, the Final LAMP should provide that the County shall waive variance fees for septic tank replacement or installation in such circumstances to low-income property owners who earn less than 80% of Area Median Income.

---

[1] According to the U.S. Census Bureau, 28% of residents speak Spanish and 4.3% of residents speak Hmong at home in Fresno County.

[2] For new subsidivions, Section 101.9, "Building Permits," should require applicants to provide a plan for the development of an adequate septic dispersal systems, in addition to requiring a finding of adequate lot area and soil conditions.

3. **The Final LAMP Must Clarify That Maximum Septic Tank Density Established in Section 1400 Does Not Apply to Existing Properties**

Draft LAMP Section 1400.1 states that, "Septic system density will be limited to one system per two acres." This provision would prevent septic tank replacement on existing properties in established unincorporated communities, where most parcels sizes are well-under two acres in size and located adjacent to other residential and commercial properties with septic tanks, and would therefore result in regulatory takings and undue burden on property owners who could no longer use their property for residential use. The Final LAMP must specify that Section 1400.1 applies only to new development on new property subdivisions and not to existing properties and in existing communities.

4. **The Final LAMP Should Identify and Make Available Funds to Support Technical Assistance and Compliance Cost for Low-Income Property Owners**

While important for controlling sanitation and groundwater contamination, the Draft LAMP's requirements are likely to result in a significant and in many cases, untenable, financial burden for Fresno County's low-income property owners. For the County's most economically vulnerable populations, the cost of compliance will be prohibitive. Without a source of funding to reduce the economic burden of compliance on low-income homeowners, the goals of the policy cannot be achieved.

Therefore, the Draft LAMP should include a program for the County to identify and pursue state and federal sources and investigate the creation of a local funding source to subsidize compliance cost and fund technical assistance for compliance for low-income residents and communities without the ability pay in full. Subsidies provided could cover, at a minimum, part or all of the cost of bringing septic tanks up to the standards set out in the LAMP, to abandon OWTS, to provide information about adequate OWTS conditions for permitting purposes, to conduct site evaluations, to conduct nitrogen loading analyses, and to facilitate consolidation with public sewer systems, including through subsidies for lateral connections.

5. **The Final LAMP's Water Quality Assessment Program Must Include Additional Specificity, Require Domestic Well Testing at the Time of Construction, & Provide Funding for Technical Assistance and Well Testing Fee Waivers for Low-Income Homeowners**

   a. **The Assessment Program Must Specify Timelines & a Public Process for Development and Implementation**

The Draft LAMP's description of the Assessment Program does not indentify timelines for its development and implementation and a public process that allows for and incorporates public input. The Final LAMP must set forth timelines and a public process to ensure timely preparation and the receipt and incorporation of public input into the Assessment Program.

b. The Assessment Program Should Require Testing of Domestic Wells At the Time of Construction, and should Provide for Funding for Technical Assistance and Subsidization of Well Testing Costs for Low Income Property Owners

As required by the State's OWTS Policy, the Draft LAMP includes a commitment to maintain a water quality assessment program that consists of data from regulated small water systems, wells that are part of the GAMA program, and domestic wells tested at the time of well installation at the request of the property owner. However, given the crisis of contamination of groundwater in the Central Valley, and the lack of critical data on groundwater and drinking water quality, the Final LAMP must include stronger requirements and support for domestic well testing.

The Final LAMP must require testing of domestic wells at the time of construction, rather than only allowing property owners to request testing, in order to ensure the availability of adequate information about groundwater quality for residents who depend on groundwater as their source of drinking water and to allow the County monitor the impact of septic systems and other contaminant sources on groundwater. In addition, the Final LAMP should include a program for the development of a comprehensive well testing program implemented with state and federal funding. The Final LAMP should accordingly identify and commit to pursue state and federal funds and identify local funds to (a) subside the cost of testing domestic wells for low-income property owners so that these fees can be waived for qualifying property owners, and (b) fund technical assistance for well testing from providers such as Self Help Enterprises, RCAC, Leadership Counsel, and others.

State OWTS Policy 9.2.5 requires LAMP outreach programs to include the provision of information to well owners about volunteer monitoring programs within local agencies' jurisdictions. The County must revise the Draft LAMP to produce a Final LAMP that meets this requirement. We recommend that the Final LAMP provide for County coordination with existing well testing programs and require participation in this program for any new wells constructed.

6. The Final LAMP Should Require Notice Of Failing Septic Systems to Residents On Private Wells And Water Systems Sourced From Groundwater

The Draft LAMP requires notification of water systems in cases of septic system failure. In addition, the Final LAMP should also require notification of all domestic well owners and small groundwater water systems at risk of exposure to groundwater contamination as a result of a failed septic system. Domestic well owners and small groundwater systems are severely disadvantaged by the lack of accessible information about the quality of the water on which their users depend for drinking water. Providing information on septic contamination only to surface water-dependent water systems would only further entrench this disadvantage. The Final LAMP must provide for notice adequate to ensure that anyone potentially impacted by contaminated drinking water due to septic contamination in Fresno County is provided with adequate notice.

7. The Final LAMP Should Include Provisions to Require and Facilitate System Consolidation Wherever Possible

Leadership Counsel commends Fresno County for encouraging the installation of sewer instead of septic systems. However, the LAMP must go farther and require consolidation whenever feasible, consistent with state policy. Rather than encouraging consolidation only in certain cases (where the nearest building served by sewer is less than 200 feet away and the cost of consolidation is not more than twice the cost of replacing the OWTS), the LAMP should provide for the completion of the SB 244 analysis by the County[3], which must include identification of water and sewer service deficiencies and opportunities to address those deficiencies, including consolidation, and a comprehensive plan to prioritize and pursue sewer consolidation opportunities using available local, state, and federal funding.

9. The Final LAMP Must Include A Satisfactory Education and Outreach Program Pursuant to OWTS Policy Section 9.2.5

Section 9.2.5 requires LAMP to include an "[e]ducation and/or outreach program including informational materials to inform OWTS owners about how to locate, operate, and maintain their OWTS..." In response, the Draft LAMP states that Fresno County will make literature on the proper operation and use of septic systems available to the public in its office and on its website. p. 21.

While an important first step, the Draft LAMP's response to Section 9.2.5 is not a satisfactory "program" to facilitate progress towards the goal of informing OWTS owners about how to operate and maintain their OWTS. According to the Miriam Webster Dictionary, a "program" is "a plan or system under which action may be taken toward a goal." The provision of information at County offices and on the County website is unlikely to result in the education of many Fresno County residents about the proper maintenance and operation of their septic systems. Most residents are unlikely to ever visit County offices, or the particular offices where the County may display informational materials concerning septic tanks. Residents, especially low-income and elderly residents, residents with limited or no English language abilities, and residents in unincorporated areas lacking high-speed internet access, are unlikely to access the County's website and review materials posted regarding septic tanks.

The County must revise the Draft LAMP to include a program under Section 9.2.5 that is likely to actually result in the education of OWTS owners by making information available to residents in an accessible manner. For instance, the program could include outreach to community service and community facilities districts serving unincorporated communities through staff presentations and the provision of materials. CSDs and CFDs can then share the information with their members. The County could also make flyers for distribution with County bills (e.g., trash service, tax-related) or to provide to CSDs and CFDs with basic information and information about how to access additional information for distribution in customers' utilities

[3] The County was required to complete its SB 244 analysis upon the adoption of its Housing Element for the 5th Cycle Planning Period, which was due December 31, 2015. The County has not yet adopted or released a public draft of this analysis.

and service bills. The program should specify that informational materials will be made available in Spanish and Hmong, the threshold languages for Fresno County, in addition to English.

Leadership Counsel is available to work with County staff to discuss the County's options for a satisfactory and successful outreach and education program for inclusion in its Final LAMP.

* * * * *

Thank for your consideration of our comments and look forward to working with the Water Resource Control Board and Fresno County towards the development of a LAMP that satisfies state standards and advances the state's public health goals.

Sincerely,

Amanda Monaco

Amanda Monaco
Policy Advocate

Ashley Werner

Ashley Werner
Senior Attorney

cc: Fresno County Environmental Health Department