



December 31, 2013

Jeanne Chilcott
Central Valley Regional Water Board
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RE: Comments to Notice of Preparation for Central Valley Salt and Nitrate Management Plan

Dear Ms. Chilcott,

We submit these comments in response to the Notice of Scoping for the required Substitute Environmental Document (SED) for the proposed Central Valley Salt and Nitrate Management Plan (SNMP) which may ultimately be incorporated into Sacramento-San Joaquin and Tulare Lake Basin Plans. Our comments focus on the responsibility of the Central Valley Water Quality Control Board (CVWQCB or Board) to consider the impact of any proposed change on the quality and reliability of drinking water sources for low income communities and communities of color that rely for their drinking water supply on groundwater that is currently or may in the future become contaminated (vulnerable communities). The Board must consider, as part of this analysis, the impact that any proposed change will have on those communities and individuals relying on private wells and small water systems that often draw water from shallow points in the aquifer. **The Central Valley Water Board must analyze and address the *distribution of environmental impacts and any disparities affecting low-income people and people of color, to ensure that the benefits and burdens of the SNMP Area are fairly distributed.***

As noted in the staff report for the CEQA Scoping Meeting of August 28, 2013 (Staff Report), “drinking water sources throughout the region are impacted by nitrates and high levels of salts, which affect the quality of life of many communities. These conditions have been evident and worsening since the 1970s, with nearly a quarter million residents in Tulare Lake Basin impacted by nitrates in groundwater.” The comments we submit herein are intended to ensure that the

final SNMP adopted as a result of this process improves water quality for those communities most impacted by this phenomenon.

Water quality control plans are part of a “certified regulatory program,” and therefore require development of a Substitute Environmental Document pursuant to the California Environmental Quality Act (“CEQA”). Through said document the Board must comply with CEQA’s mandate to disclose the environmental effects of a proposed water quality control plan and must “identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures and / or through the selection of feasible alternatives.” Public Resources Code § 21159, *et seq.*; *see also, Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1233 (1994).

Under California law, “environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Gov. Code, § 65040.12, subd. (e). Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution or inequitable investments should not be focused on sensitive populations or on communities that already are experiencing its adverse effects. Agencies subject to CEQA, including state and regional water boards, must promote these principles. Pub. Res. § 71110, *et. seq.*

In evaluating the environmental effects of the SNMP, the water board must consider the effects of the project on vulnerable communities. CEQA and its Guidelines require consideration of “economic, environmental, and social factors,” particularly, “the goal of providing a decent home and satisfying living environment for every Californian.” CEQA Guidelines, §15021. CEQA Guidelines, and the guidelines governing water boards, specifically require responsible agencies to determine if a proposed project will expose “sensitive receptors” to pollution. *See e.g.*, 14 C.C.R., Appendix G; 23 C.C.R., Appendix A. Moreover, “CEQA requires a lead agency to consider whether a project’s effects, while they might appear limited on their own, are ‘cumulatively considerable’ and therefore significant.” Pub. Res. Code, § 21083, subd. (b)(3). Consideration of cumulative effects is especially crucial for vulnerable communities, who may already be burdened by pollution from existing sources. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 723-24 (Cal. Ct. App. 1990) (EIR inadequate since it failed to study effects of all proposed power projects in San Joaquin Air basin); *Los Angeles Unified School District v. Los Angeles*, 58 Cal. App. 4th 1019, 1025-26 (Cal. Ct. App. 1997) (EIR inadequate since it failed to study increased noise pollution in relation to existing levels of noise pollution). Under CEQA, an agency is required to find that a “project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]” Pub. Res. Code, § 21083, subd. (b)(3); *see also*, CEQA Guidelines, § 15126.2.

The SED must explicitly and robustly identify and assess mitigations for impacts that potentially impact vulnerable communities. This includes the impacts, disaggregated by race and income, related to: access to water that meets water quality objectives in the short and long term, costs related to accessing potable water, and other public health factors (including those related to chronic diseases).

1. The Central Valley Water Board Must Assess Each Alternative for Impact on Vulnerable Communities and Populations

The Board must assess each alternative as a whole and its constituent parts for its impact on vulnerable communities. Each alternative developed by the water board must assess its impact on communities currently relying on contaminated drinking water sources, communities potentially subject to contaminated drinking water sources, drinking water systems of differing sizes and private wells. This assessment should include both health impacts and financial impacts of the alternative and such communities and water systems. The SED must assess each alternative's impact on vulnerable and environmental justice communities in the short and long term, on current drinking water sources and on potential drinking water sources, on vulnerable communities in the aggregate, vulnerable communities in identifiable hydrologically relevant regions, and in each potentially impacted community. In each analysis, the SED must assess the maximum impact that each alternative may have on communities and individuals that will potentially be impacted by the SNMP and programs and policies that derive their authority from the SNMP and / or modified basin plan.

Not only must each alternative be assessed holistically for its impact on vulnerable communities but each critical component and each mitigation measure, as discussed below, must be assessed for such impact. The assessment should assess the impact on vulnerable communities as a whole and include specific information with respect to numbers of communities and residents impacted by each alternative and the impact of each alternative on specific geographies, communities and individuals as discussed above:

- The SED must assess each proposed change to the Beneficial Use Classification system, including but not limited to the creation of new beneficial uses, the creation of beneficial use subcategories such as “limited” or “restricted” MUN beneficial uses, the use of interim designations in water bodies that are not specifically named in the Basin Plans, and de-designation of existing beneficial uses in specific water bodies or categories of water bodies. The SED must include an analysis of how any proposed change will impact drinking water quality for any person, including those individuals and communities relying on private wells and wells serving fewer than fifteen people. The SED must conduct this analysis over the short and long term.
- Similarly, the SED must assess the impact of each modified Water Quality Objective (WQO) for the above-mentioned modified MUN uses.

- The SED must assess each proposed change to the delineation of water bodies and any change to the manner in which water bodies are delineated. The SED must analyze the impact of any proposed alternative management zones or delineation thereof, including but not limited to using vertical and horizontal gradients to identify management zones or using user-defined management areas. This assessment must include an assessment of the maximum impact of “holistic” salt and nitrate management within each of these defined zones on current drinking water sources, future drinking water sources and on different levels of each subject aquifer. The SED should describe how baseline water quality for each zone including different levels of each zone will be measured and how monitoring will be used to ensure short and long term water quality in each management zone and in different levels of each zone.
- Additionally, the SED must identify and assess how each management zone will be determined or defined and under what circumstances a management zone will be changed or redefined in the future.
- Similarly the SED should include an analysis of the impact of differing management structures for water bodies or “management zones” such as alternative groundwater management structures. Such analysis should consider different water management goals for shallow or deep groundwater.
- The SED must assess the health and fiscal impact of any proposed change to Water Quality Objectives (WQOs) including the elimination or modification of any relevant secondary MCL, the modification or identification of points of compliance, the use of averaging to assess compliance with relevant MCLs, and a finding that secondary MCLs are applicable to treated drinking water.
- The SED must also assess how any alterations of how the current WQO for Nitrates is implemented, including but not limited to any change in the water bodies or drinking water sources or potential drinking water sources that are subject to the WQO, relevant points of compliance, and implementation of any other factors that would change in any way the determination of whether or not WQOs are being met. The analysis must include the health and fiscal impact of any proposed change on current and potential beneficial uses of the subject groundwater and any proposed mitigations must also assess the health and fiscal impact of any mitigation on all subject current and potential beneficial uses of subject groundwater.
- The SED must assess the maximum potential impact on vulnerable populations and communities of any changes to implementation plans designed to protect drinking water sources and potential drinking water sources. Specifically, **the SED must assess the**

impact of any proposed change in point(s) of compliance and must assess how any proposed point of compliance will be identified and how such proposed point(s) of compliance will relate to the water being utilized for drinking water - both respect to the depth of water and with respect to the location of any applicable well and with respect to current and potential drinking water sources.

- The SED must assess any proposed **new or modified implementation provision** related to variances, compliance schedules and alternative compliance strategies” The Board must analyze the maximum potential impact of any proposed variance or exemption to current and potential drinking water sources and assess any possible conditions or variables attached to each variance or exemption. Similarly, the SED must analyze any proposed alternative compliance strategies for their maximum potential short and long term impact on all drinking water sources – both current and potential sources. To the extent that any alternative compliance strategy relies on treatment or monetary compensation, rather than groundwater protection, the SED must assess its potential impact on groundwater quality and compliance with relevant state law.
- The SED must do a full analysis of any conditional exceptions or specific considerations that would relax groundwater protections. Again, this analysis must consider the maximum impact that any conditional exception would create.
- The SED must assess any change to the manner in which WQOs are applied or assessed including any expanded discretion granted to the Board to alter compliance strategies and compliance standards, the use of assimilative capacity for groundwater, any redefinition of points of compliance and any expanded use of exceptions or exemptions. The SED must assess both the health and economic impacts of any such change.
- The SED must assess any change to evaluation practices that determine compliance and mitigation based on discharges to and quality of first encountered groundwater.
- The SED must assess the impact of any addition, expansion or elimination of any technical or regulatory procedures designed to implement the SNMP and protect water bodies, including reliance on assimilative capacity in a water body, the geographic and hydrologically relevant assignment of assimilative capacity, the calculation of assimilative capacity and how available assimilative capacity could be managed

As noted above, any proposed change in the SNMP must be analyzed for its compliance with and relationship too established legal requirements including but not limited to Porter Cologne, and state anti-degradation policy (Resolution 68-16).

- The SED must assess how any changes to monitoring policies impact vulnerable communities.
- Finally, the SED must assess how each potential assessment procedure or combination thereof will protect water bodies and will protect drinking water sources of vulnerable populations and communities.

We welcome any questions regarding these comments and look forward to reviewing the to-be-released substitute environmental documentation for the SNMP to ensure that it effectively and fairly promotes the Board's responsibility to protect the water for all residents within its jurisdiction. Should you have any questions, please do not hesitate to contact Phoebe Seaton at pseaton@leadershipcounsel.org or by phone at 559-369-2790.

Sincerely,



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