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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

**Central Valley Regional Water Quality
Control Board Order R5-2026-XXXX
Approving Modesto Management Zone
Implementation Plan And Amending
Waste Discharge Requirements Orders to
Incorporate the Nitrate Control Program**

SWRCB File No.

PETITION FOR REVIEW

Pursuant to California Water Code Section 13320, subdivision (a) and Section 2050 of Title 23 of the California Code of Regulations, Petitioners Defensores del Valle Central para el Agua y el Aire Limpio (“Defensores”), Clean Water Action (“CWA”), and Environmental Law Foundation (“ELF”) (collectively “Petitioners”) hereby jointly petition the State Water Resources Control Board (“State Board”) to review and direct amendments to the June 3, 2026 action of the Central Valley Regional Water Quality Control Board (“Regional Board”) conditionally approving the Modesto Management Zone Implementation Plan (“MZIP”) and Amending Waste Discharge Requirements Orders to Incorporate the Nitrate Control Program (the “Order”). (Exhibit A.) The issues raised in this petition were raised before the Regional Board in timely written comments and direct testimony (*See*, e.g., April 22, 2026 letter attached as Exhibit B), and this petition is timely filed within thirty days of the June 3, 2026 Order.

I. NAME AND ADDRESS OF THE PETITIONERS, AND MANNER IN WHICH THEY ARE AGGRIEVED.

Defensores is an association of residents of the San Joaquin Valley advocating for access to safe drinking water and healthy communities, including by promoting and enforcing policies and practices that decrease pollution, degradation of the environment, and other negative impacts from dairies (e.g., odor and flies) and irrigated agriculture on vulnerable communities. Defensores is reachable through its attorneys of record, Leadership Counsel for Justice and Accountability, at 2210 San Joaquin Street, Fresno, California 93721. Defensores members rely on groundwater in the Central Valley as their primary source of tap water, and are thus deeply interested in ensuring that agricultural operations provide interim and long-term drinking water solutions, cease causing and contributing to pollution and nuisance, and restore polluted

groundwater basins. As the Order does not adequately achieve these three goals and associated requirements, Defensores is aggrieved by the Regional Board's action.

CWA is a 501(c)(4) organization based in Washington, D.C., with a program in California since 1990. CWA's address in California is 350 Frank H. Ogawa Plaza Suite 200, Oakland, CA 94612. CWA works to ensure access to safe drinking water; its California members, which include residents within the Regional Board's jurisdiction, have a right to access safe and affordable drinking water. That right is impeded by the continued and widespread discharge of nitrate from agricultural operations into Central Valley groundwater basins. Clean Water Action and its members are therefore aggrieved by the Central Valley Water Board's failure to adequately protect water quality in the Order.

ELF is a California nonprofit organization founded on Earth Day in 1991 that has a longstanding interest in reducing pollution to waters of the state and has a direct interest in effective implementation of the Nitrate Control Program. ELF is located at 1222 Preservation Park Way #200, Oakland, CA 94612. In furtherance of its mission of improving environmental quality for those most at risk, ELF has participated extensively in the development of the CV-SALTS program, including by providing written and oral comments to both the Regional Board and State Board during this lengthy process. ELF is aggrieved by the Order's failure to comply with governing law and direction from the State Board.

II. THE ACTION PETITIONERS REQUEST THE STATE BOARD TO TAKE

Petitioners request that the State Board direct the Regional Board to amend the Order to comply with the relevant Basin Plan, the State Board's direction in Resolution 2019-0057, the Porter-Cologne Water Quality Control Act, the Nonpoint Source Policy, the Antidegradation

Policy, and the Sources of Drinking Water Policy, including but not limited to by directing all of the following amendments:

1. Require that the Management Zone complete consolidation¹ and other centralized drinking water solutions for domestic wells and public water systems within a reasonable timeframe, regardless of the availability of public funding;
2. Require the Management Zone to provide operations and maintenance support for the term of the exception;
3. Direct the Regional Board to authorize an in-lieu contribution to the Safe And Affordable Drinking Water Fund as an alternative to providing long-term centralized drinking water solutions and associated operations and maintenance costs;
4. Require enforceable metrics to ensure that discharges from irrigated agriculture and dairy cropland cease causing and contributing to exceedances of water quality objectives at the end of the relevant time schedule;
5. Accelerate quantifiable interim milestones for irrigated agriculture;
6. Require dairies to comply with interim milestones and final compliance metrics, including incorporation of an interim milestone to achieve whole farm nitrogen balance within 8 years;
7. Remove all provisions requiring the Management Zone to develop plans for de-designation of groundwater basins at 15 and 20 years.
8. Incorporate measurable metrics, including project timelines, for long-term managed aquifer restoration, including by requiring real-world restoration pilot projects;
9. Direct revisions to the Antidegradation Analysis to comply with case law and State Board precedent.

In addition, Petitioners request that the State Board direct any other revisions necessary to reasonably protect beneficial uses, provide interim and long-term drinking water solutions, and require restoration of groundwater basins. Should the State Board determine that this Petition is not timely or procedurally improper on any other basis, Petitioners request that the State Board take up the issues in this Petition on its own motion.

¹ Petitioner uses the term “consolidation” to include extension of public drinking water service to households served by domestic wells and state smalls, in alignment with Health & Safety Code section 116681.

III. STATEMENT OF THE REASONS THE ACTION OR INACTION WAS INAPPROPRIATE OR IMPROPER

A. Introduction

California identified agriculture as a major source of nitrate pollution in California by 1989,² if not earlier. Nearly four decades later, despite the codification of access to safe drinking water as a human right,³ California residents still lack effective solutions to the environmental and health impacts resulting from the overapplication of nitrogen fertilizer. In approving Basin Plan Amendments (“BPA”) incorporating the Central Valley Salinity Alternative Solutions for Long-Term Sustainability (“CV SALTS”) Nitrate Control Program,⁴ the State Board adopted “understandings and directions” to the Regional Board to finally put the Central Valley on the path to effective drinking water source protection. Unfortunately, in adopting the Order, the Regional Board concluded that it was not bound by the State Board’s direction,⁵ and made many of the same errors that the State Board previously rejected.

Specifically, the basic premise of the BPA is that agriculture, dairies, and other nitrate dischargers are permitted lengthy compliance time schedules in exchange for a commitment to provide safe drinking water to impacted households and eventually restore polluted groundwater basins. The Regional Board’s Order, which establishes a 35-year “exception” for the Modesto Management Zone,⁶ fails on all counts. It does not ultimately require compliance on any time

² CDFA Nitrate Working Group, *Nitrate and Agriculture in California*, Feb. 1989. Available at: <https://www.cdfa.ca.gov/is/fldrs/pdfs/NitrateAndAgInCA-booklet.pdf>.

³ Water Code § 106.3.

⁴ See Resolution 2019-0057, available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2019/rs2019_0057.pdf.

⁵ See Response to Comments at p. 12, available at https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/2606/5_modesto_mz/modesto_mz_order_rtc.pdf [“The Draft Order is an independent action by the Board that complies with the BPA (and by extension the SWRCB approvals) but cannot violate the 2019 Resolution because the 2019 Resolution is not directly applicable to the Draft Order.”].

⁶ An exception is equivalent to a conditional time schedule authorized by Water Code section 13242 and 13263. See State Board Resolution 2019-0057 at p. 5; Regional Board Resolution 2020-0057 at Ex. A, p.

schedule, let alone one that is as short as practicable for all categories of dischargers. It does not ensure that all impacted households receive long-term drinking water solutions. And it does not set the Modesto Management Zone on a path to ultimately restoring groundwater basins, instead encouraging the Management Zone to propose illegal and premature de-designation of basins.

To ensure that CV SALTS is implemented consistently with law and binding policy, and as previously directed by the State Board, the State Board must take up this Petition and direct revisions to the Order.

B. The Order Fails To Achieve the Three Goals of CV-SALTS And Conflicts With Binding Law and Policy.

The Water Quality Control Plan for the Sacramento River Basin and San Joaquin River (the “Basin Plan”), as amended to incorporate the CV SALTS Nitrate Control Program, establishes three goals and associated requirements: (1) Ensure safe drinking water supply; (2) reduce salt and nitrate loading so that ongoing discharges neither threaten to degrade high quality waters absent appropriate findings by the Central Valley Board nor cause or contribute to exceedances of water quality objectives; and (3) implement long-term, managed restoration of impaired water bodies. The Order does not achieve these goals, violates associated Basin Plan requirements, and otherwise violates binding law and policy, as discussed below.

a. The Order Fails to Ensure Safe Drinking Water Supplies.

- i. The Management Zone Must Make Long-Term Drinking Water Solutions Available To All Impacted Drinking Water Users Regardless Of Availability Of Public Funding.*

Regional Board Resolution R5-2020-0057 requires the Management Zone to ensure safe drinking water supply for all impacted residents and to identify “how a drinking water supply

86, available at https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/resolutions/r5-2020-0057_res.pdf.

that ultimately meets drinking water standards will be available to all drinking water users.”⁷ In accord, State Board Resolution 2019-0057 specifies that the Management Zone must identify funding or cost-share agreements,⁸ and that “the unavailability of public funding is not an acceptable reason for dischargers to delay implementing Early Action Plans or emergency, interim, or permanent replacement water projects identified in approved Management Zone Implementation Plans.”⁹

The Order does not comply with these requirements because it does not ensure that long-term solutions for public water systems or domestic well centralized and consolidation projects are completed under any timeline.¹⁰ Instead, the Order requires:

Within 10 years of adoption of this Order, the Management Zone will work with the State Water Board DDW, SAFER program, and others to identify and develop potential TA and funding for consolidation and centralized treatment projects, to the extent such assistance and funding is available. Updates on this effort will be provided in the Annual Progress Report or 10-Year Exceptions Status Report.¹¹

The Order thus makes the Management Zone’s responsibility to support long-term solutions contingent on the availability of public funding without any implementation deadline for the completion of projects. The Basin Plan Amendment and Resolution 2019-0057 do not permit this caveat: dischargers must fulfill their responsibility to implement long-term drinking water solutions without unreasonable delay and regardless of public funding availability.

In response to comments, the Regional Board asserts that it would be inappropriate for it to require the Management Zone to fund “largescale public works projects that are carried out for

⁷ Regional Board Resolution 2020-0057 at p. 53.

⁸ State Board Resolution No. 2019-0057 at p. 4.

⁹ *Id.*

¹⁰ Order at pp. 25-26.

¹¹ Order at p. 25.

reasons beyond nitrate contamination.”¹² This response misses the mark for at least two reasons. First, Petitioners do not contend that the Management Zone needs to fund costs solely attributable to co-contaminants; merely that they plan and construct solutions for nitrate exceedances. Accordingly, any funding and other activities needed to implement long-term drinking water solutions would apply only to nitrate contamination and related solutions.¹³ Second, the response appears to overstate the issue of co-contaminant violations within the Management Zone.¹⁴ The existence of co-contaminants in some public water systems does not excuse the Management Zones from the requirement to make long-term drinking water solutions available to all drinking water users.¹⁵

The Regional Board also incorrectly contends in responses to comments that it does not have to comply with Board Resolution 2019-0057. In particular, the Regional Board refutes the assertion that it must comply with the above direction because such language “was not part of the directed revisions and so was not incorporated into the BPA.” This is a misinterpretation of the 2019 Resolution’s applicability.¹⁶ The language cited comes from a section of 2019-0057 that

¹² Response to Comments at p. 13.

¹³ Moreover, the Regional Board contends that it cannot direct the Management Zone to complete projects that require the consent of a public water system (e.g., consolidation). *Id.* at p. 13. However, the Regional Board can require the Management Zone to offer to complete these projects. Further, pursuant to Health and Safety Code section 116682, the State Board can mandate consolidation and extension of service where a public water system or domestic well consistently fails to provide an adequate supply of safe drinking water or is at risk of doing so.

¹⁴ The Modesto MZIP identifies one PWS serving a population of 27 within the Modesto Management Zone with both a nitrate and co-contaminant violation. Modesto Management Zone Implementation Plan at 43, Table 2-7. Available at: https://cawaterlibrary.net/wp-content/uploads/2025/04/VWC_Modesto_MZIP_09.05.23.pdf?acrobatPromotionSource=embeddedpdfs_chrome-native_view.

¹⁵ In the event that a long-term solution addresses both a nitrate exceedance and a co-contaminant without imposing additional cost, the Management Zone is required to implement that solution. Where a co-contaminant solution imposes additional cost that is avoidable while still addressing nitrate, the Management Zone is not responsible for the costs associated solely with the co-contaminant.

¹⁶ The Basin Plan Amendment and the State Board’s 2019-0057 Resolution specify that the Management Zone must identify funding or costshare agreements, and that “the unavailability of public funding is not an acceptable reason for dischargers to delay implementing Early Action Plans or emergency, interim, or

specifically states the Basin Plan Amendment is approved “*with the following understandings and directions*,” indicating that the State Board understood “the unavailability of public funding is not an acceptable reason” to delay emergency interim, or permanent replacement water projects.¹⁷ As noted above, the Basin Plan Amendment contains substantially the same requirement, stating that safe drinking water “will” be made available to “all drinking water users.”¹⁸ The State Board’s “understandings and directions” from its 2019 resolution continue to control and, regardless, the Regional Board offers no adequate justification for making long-term solutions contingent upon the availability of public funds.

ii. The Order Permits Unreasonable Delay In Implementation Of Long-Term Drinking Water Solutions.

With respect to households reliant on domestic wells where consolidation is not feasible, the Order provides that the Management Zone must offer long-term solutions to 100% of domestic wells within 18 years of the date of the Order.¹⁹ With respect to consolidation for domestic wells, the Order states that the Management Zone will coordinate with the Division of Drinking Water and Division of Financial Assistance regarding technical assistance and funding within 10 years, and assist with outreach to a feasible consolidation within 12 years.²⁰ With respect to households served by nitrate-impacted public water systems, the Order requires only

permanent replacement water projects identified in approved Management Zone Implementation Plans.” BPA at 52.

¹⁷ When the State Board uses the term “direction,” it intends such direction to be mandatory. (See, e.g., State Board Order WQ 2018-0002 at p. 1 [“direct[ing]” revisions to WDR adopted by the Regional Board]; p. 9 [discussing “precedential direction” of certain parts of the order]; State Board Order WQ 2023-0081 at p. 6 [When State Board issues precedential order, “we fully expect that the regional water boards will carefully follow our direction”].) Moreover, courts regularly treat the term “direct” or “direction” as providing a mandatory requirement. (See *In re Kearns’ Estate* (1950) 36 Cal.2d 531, 534 [the phrase “I hereby direct” is generally considered mandatory]; see also *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126-27 [using “direction” when discussing statute’s binding provisions].)

¹⁸ Regional Board Resolution at Ex. A, p. 53.

¹⁹ Order at pp. 24-25.

²⁰ Order at pp. 25-26. As noted above, there is no deadline in the Order to ever *complete* a domestic well consolidation as they are contingent upon available public funding.

that within five years the Management Zone develop a list of projects that it intends to help expedite, without ever requiring that any or all projects are actually completed.²¹

There is no justification in the Order for these extended timelines or lack of implementation milestones, and no analysis of whether they are short as practicable. The Regional Board should have looked to the timelines associated with projects implemented by the State Board to deliver interim and long-term solutions. Specifically, the State Board implements the Safe and Affordable Funding for Equity and Resilience (“SAFER”) program²² and administers the Drinking Water State Revolving Fund,²³ among other funding sources. The State Board thus has extensive experience in implementing projects to deliver interim solutions, decentralized treatment, consolidation, and centralized treatment. Rather than include associated metrics and milestones that incorporate the State Board’s expertise, the Regional Board adopted lengthy and arbitrary timelines (when it adopted any deadline at all) without evidentiary support.

This constitutes inappropriate and improper action and unreasonable delay, justifying State Board review.

iii. The Order Must Require Operations and Maintenance Support For The Term Of The Exception.

Regional Board Resolution 2020-0057²⁴ and State Board Resolution 2019-0057²⁵ require the Management Zone to address the impact that long-term solutions may have on operations and maintenance costs for impacted communities. Further, as discussed above, the Management Zone must make short and long-term solutions available to “all drinking water users,” which

²¹ Order at p. 26.

²² See SAFER Program Website, available at https://www.waterboards.ca.gov/water_issues/programs/grants_loans/sustainable_water_solutions/safer.html.

²³ See Drinking Water State Revolving Fund Website, available at https://www.waterboards.ca.gov/drinking_water/services/funding/SRF.html.

²⁴ Regional Board Resolution 2020-0057 Ex. A at p 53.

²⁵ State Board Resolution 2019-0057 at p. 8.

necessarily includes all necessary operations and maintenance costs for the selected drinking water solution. In the Order, the Regional Board requires the Management Zone to support operations and maintenance costs for decentralized solutions²⁶ for only five years.²⁷ The Regional Board similarly limits operations and maintenance costs to the cost of two years of bottled water delivery or two years of the cost of the new service, whichever is lower.²⁸

These provisions are arbitrary, inadequate, and fail to comply with the requirements in Resolutions 2019-0057 and 2020-0057 as they provide only limited support for operations and maintenance. The State Board must direct the Regional Board to revise the Order to require the Management Zone to support operations and maintenance costs for decentralized solutions and public water systems for the length of the exception. Without this relief, impacted households will be forced to bear increased costs because of nitrate pollution, a result that is in conflict with the goals and requirements of the CV SALTS Nitrate Control Program.

iv. The State Board Should Direct The Regional Board To Establish In-Lieu Contribution To The SAFER Program As An Option.

In comments on the Order, Petitioners requested that the Regional Board establish an option for the Management Zone to elect to make contributions to the Safe and Affordable Drinking Water Fund rather than implementing the long-term centralized drinking water solutions provisions of the Order and funding associated operations and maintenance costs.²⁹ This approach is far more likely to result in meaningful acceleration of consolidation and centralized treatment solutions because the State Board is already implementing these projects in many cases, and has the necessary expertise to do so. In response to comments, the Regional

²⁶ Used here to mean solutions like point of use filtration that do not involve a centralized solution like consolidation.

²⁷ Order at p. 24, ¶ 42(b)(i).

²⁸ See Order at p. 26.

²⁹ See letter dated April 22, 2026, attached as Exhibit B.

Board noted that it “appreciates this suggestion and will take it into consideration,” but ultimately declined to modify the Order due to the associated complexity and time needed to develop such an in-lieu contribution option.³⁰ Petitioners agree that time, thoughtfulness, and stakeholder engagement are needed to develop an in-lieu contribution option, and urge the State Board to do so during the review process sought by Petitioners.

b. The Order Does Not Require Compliance In A Time Period That Is As Short As Practicable For Each Category Of Dischargers.

The Porter-Cologne Water Quality Control Act (“Porter-Cologne”)³¹ and the relevant Basin Plan³² require that “all discharges of nitrate” ultimately come into compliance with water quality objectives by ceasing to cause and contribute to exceedances of water quality objectives, pollution, and nuisance. Similarly, the binding Nonpoint Source Policy, requires *inter alia* that nonpoint source control programs “achieve and maintain water quality objectives and beneficial uses”;³³ include management practices and other elements “to ensure attainment of the program’s stated purpose(s)” such that the Regional Board can make a finding “based on evidence that there is a high likelihood that the program will attain water quality requirements”;³⁴ and that any time schedule to achieve WQOs “may not be longer than that which is reasonably necessary to achieve an NPS implementation program’s water quality objectives.”³⁵

³⁰ Response to Comments at p. 20.

³¹ See Water Code, §§ 13242 [program to achieve water quality objectives], 13263 [waste discharge requirements must “implement any relevant water quality control plans that have been adopted”].

³² Regional Board Resolution 2020-0057 at p. 3 [MZIPs must include “a proposed final compliance date for ongoing discharges of nitrate to cease causing or contributing to exceedances of the applicable water quality objective in the receiving water” and comply with the Nonpoint Source Policy, and Exceptions must require that “all discharges of nitrate must cease causing or contributing to exceedances of water quality objectives in the receiving water within a term that is as short as practicable for each discharger or category of dischargers participating in the Management Zone but in no case is longer than 35 years.”]

³³ *Id.* at 12.

³⁴ *Id.* Emphasis added.

³⁵ Nonpoint Source Policy at p. 13. The State Board recently confirmed that in order to comply with the Nonpoint Source Policy, time schedules must not end midway, but must stretch all the way until compliance. (See 2023 Central Coast Order at pp. 23-24.)

Despite these requirements, the Order grants irrigated agriculture and dairies the maximum 35-year time schedule without sufficient justification or evidence, includes delayed and inadequate interim milestones, and includes no metrics to ensure compliance at the end of the time schedule. For these reasons, and as more fully described below, the Order does not comply with Porter-Cologne, the Basin Plan, or the Nonpoint Source Policy. Further, as discussed in Section C, *infra*, the Order violates the Antidegradation Policy, elevates agricultural water use over domestic, and causes disparate impact. The Order must be revised to accelerate interim milestones and final compliance schedules, and to include metrics to ensure that irrigated agriculture and dairies cease causing and contributing to exceedances of water quality objectives at the end of their respective time schedules.

i. The Finding That A 35-Year Time Schedule Is As Short As Practicable For Agriculture And Dairies Is Not Supported By Evidence.

The MZIP provides little justification for its request for 35 years of additional pollution from dairies and agriculture, stating simply that this time schedule is “as short as practicable due to the complex interrelationship between crop production and a crop’s basic need for nitrogen in the form of nitrate for plant growth and crop yield.”³⁶ Neither the Management Zone nor the Regional Board offer any data in support of this position. This conclusory statement alone in no way justifies a 35-year exception, nor does the speculative claim that shorter timelines would cause “a significant decrease in crop production as a result of compliance.”³⁷

In response to comments, the Regional Board made several arguments in support of its conclusion that 35 years is the shortest practicable time period, including: (1) that there is significant uncertainty in implementing a time schedule for a novel “multi-industry” program;

³⁶ Modesto MZIP at p. 124.

³⁷ *Id.*

(2) that the Regional Board is entitled to deference in its selection of a time schedule; (3) that the Regional Board attempted to balance the “burdens (monetary and otherwise) that participating dischargers will bear in implementing the various elements”; and (4) that the Regional Board has not yet developed strategies and metrics to ensure compliance.^{38 39}

As to the first response, the Regional Board appears to misunderstand the BPA and the State Board’s direction in Resolution 2019-0057. The Regional Board’s task is not to set one compliance time schedule for a “multi-industry” program, but to set time schedules that are as short as practicable for each discharger or category of dischargers.⁴⁰ To do so, the Regional Board was required to make findings, based on evidence, that each time schedule could not be practicably shortened for each discrete category of dischargers (e.g., dairies, irrigated agriculture, wastewater treatment plants, etc.). Instead, the Regional Board simply accepted the Management Zone’s proposal for the maximum 35-year time schedule for dairies and irrigated agriculture.

As to the Regional Board’s second response, it is not entitled to deference on review by the State Board.⁴¹ As to its third response, it is inappropriate for the Regional Board to consider

³⁸ Response to Comments at pp. 27-31.

³⁹ The Regional Board also contends that Petitioners raised no evidence suggesting that a shorter time schedule is practicable. But it is not Petitioner’s burden to produce evidence, it is the Regional Board’s burden to support its findings with evidence such that they are supported by substantial evidence and not arbitrary and capricious. *See, e.g., Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [an agency must “bridge the analytic gap between the raw evidence and the ultimate decision or order].

⁴⁰ *See* Resolution 2020-0057 at p. 3 [Regional Board acceptance of amendments to “Revise the Exceptions Policy to require that all discharges of nitrate must cease causing or contributing to exceedances of water quality objectives in the receiving water within a term that is as short as practicable for each discharger or category of dischargers participating in the Management Zone but in no case is longer than 35 years.”].

⁴¹ *See* WQ Order 85-7 [“The State Board is not subject to the exact standards which bind a court. Water Code Section 13320, which provides for State Board review of Regional Board action sets forth a standard of review which is different from ordinary judicial review in two important ways. First, under Section 13320(b) the State Board shall consider both the Regional Board record and ‘any other relevant evidence’ which it wishes in reviewing the order. Second, if the State Board decides the Regional Board action is ‘inappropriate or improper’, the State Board has several options, including remanding or reversing the Regional Board or taking the appropriate action itself. The scope of review thus appears to be closer to that of independent review.”]; WQ Order 80-1 [“Water Code § 13320 clearly indicates that we

the cost of providing replacement water in determining that 35 years is as short as practicable for dairies and irrigated agriculture. Petitioners note again that the central premise of CV SALTS is that dischargers provide access to safe drinking water in exchange for time schedules that can exceed the prior 10 year maximum. The provision of replacement water does not, however, automatically mean that irrigated agriculture and dairies automatically receive 35-year exceptions. To conclude otherwise requires ignoring the “short as practicable” language incorporated into the Basin Plan at the direction of the State Board.

And finally, the Regional Board’s fourth response is surprising in that it represents an express contradiction. On the one hand, the Regional Board contends that it has not developed the metrics and strategies that will result in compliance with water quality objectives.⁴² And on the other hand, as discussed more fully below, the Regional Board rejected Petitioner’s request to include individual compliance metrics in addition to township-level Groundwater Quality Protection Targets, contending that “township-scale compliance” is the “best practicable control for nonpoint source nitrate discharges on [a] large geographic scale.”⁴³ The Regional Board cannot both contend that the time schedule is justified by the need to develop additional compliance metrics and simultaneously reject the need to develop additional compliance metrics.

The State Board must independently review and direct revisions to the Regional Board’s approval of 35-year time schedules for agriculture and dairies.

- ii. *The Order Must Be Revised To Include Metrics To Ensure That All Discharges Cease Causing And Contributing To Exceedances Of Water Quality Objectives At The End Of The Relevant Time Schedule.*

As noted above, the State Board clearly directed in Resolution 2019-0057 that the BPA

are to exercise an independent review of Regional Board actions and that we can consider any relevant evidence necessary to effectuate and implement the policies of the State's water quality laws.”]

⁴² Response to Comments at p. 30.

⁴³ *Id.* at p. 21.

be revised such that exceptions “require that *all discharges* of nitrate must cease causing or contributing to exceedances of water quality objectives in the receiving water within a term that is as short as practicable for each discharger or category of dischargers...”⁴⁴ In complying with the State Board’s direction, the Regional Board adopted Resolution 2020-0057, which includes the same language and amended the BPA to state that, with respect to exceptions, “[d]ischarges of nitrate must cease causing or contributing to exceedances of water quality objectives in the receiving water within a term that is as short as practicable for each discharger or category of dischargers...”⁴⁵ The requirement that compliance with water quality objectives is ultimately achieved is consistent with the requirements of Porter-Cologne, the Nonpoint Source Policy, and the Antidegradation Policy, as discussed above.

However, the Order does not comply with these requirements because the Regional Board refused to include any metrics needed to assure that “all discharges” of nitrate ultimately cease causing or contributing to exceedances at the end of applicable time schedules. Rather, the Regional Board is once again relying on metrics to assess compliance that average water quality across large areas and do not ultimately protect groundwater quality. This is exactly the sort of approach, albeit on a smaller geographic scale, that the State Board rejected in 2019 when it directed the Regional Board to “[r]emove the option for management zones developed in accordance with the Nitrate Control Program to use a volume-weighted average to allocate assimilative capacity as an alternative compliance pathway.”⁴⁶

Specifically, the Order includes only two milestones to assess progress and compliance with water quality objectives for irrigated agriculture:⁴⁷ acceptable A/R ratios and Groundwater

⁴⁴ State Board Resolution 2019-0057 at p. 9 [emphasis added].

⁴⁵ Regional Board Resolution 2020-0057 at p. 3 and Ex. A, p. 85

⁴⁶ State Board Resolution 2019-0057 at p. 9.

⁴⁷ Although the Groundwater Protection Targets are not currently applicable to dairies, the Order directs that the Targets will be revised to include dairies as well. Order at pp. 9-10.

Protection Targets.⁴⁸ The acceptable A/R ratios are expressly not intended to be protective of groundwater quality, included instead as an interim milestone to bring fertilizer application into conformity with industry standards for each crop.⁴⁹ Accordingly, the Groundwater Protection Targets is the only other milestone or metric to ensure compliance, and the metric that 100% of townships must meet at the end of the time schedule.⁵⁰

Unfortunately, these township-level⁵¹ Groundwater Protection Targets do not assure compliance by all dischargers or prevent all discharges from causing or contributing to pollution or nuisance. While township compliance should remain an interim milestone to gauge the program's progress, it cannot be the final compliance metric for the Nitrate Control Program. This is because assessment of compliance at the township-scale allows for localized pollution or "hot spots."⁵² Consider, for example, a township with 1,000 acres of a relatively high-nitrate crop (e.g., almonds) and 22,040 acres of a relatively low-nitrate crop (e.g., grapes). In a township like this hypothetical, it is entirely conceivable that the high-nitrate crop could be causing and contributing to exceedances and for the average discharge in the township to meet Groundwater Protection Targets. As Dr. Jay Lund succinctly stated in the State Board's peer review of the Groundwater Protection Targets, "[w]ould all cars be considered to comply with a speed limit, if the average car complies?"⁵³

⁴⁸ Order at Ex. A, p. 4.

⁴⁹ *See Id.*; *See also* Regional Board Issuance Of Crop-Specific Multi-Year Nitrogen Efficiency Targets In The Irrigated Lands Regulatory Program (June 23, 2026), attached as Exhibit C.

⁵⁰ Order, Ex. A, at p. 4.

⁵¹ Townships are 36 square miles, equivalent to 23,040 acres.

⁵² *See* Final Response to the Request for External Scientific Peer Review of the Scientific Basis of the Central Valley Regional Water Quality Control Board's Groundwater Protection Formula, Values and Targets Framework ("Peer Review package") (May 4, 2026), attached as Exhibit D. Note that the Peer Review package was admitted into the record before the Regional Board at the June 3, 2026 Regional Board hearing.

⁵³ *Id.* at pp. 90-91.

Additionally, township-level compliance creates a collective action problem; it rewards bad actors by creating an incentive for growers who are not actively reducing their nitrate discharge to rely on those who are. Similarly, the Order does not explain or clarify how township compliance functions. Under a TMDL, for instance, where a TMDL program covers a large geographical area, loading is allocated to specific dischargers.⁵⁴ The Order does not prescribe a similar method for nitrate loading and is therefore unclear how specific individual dischargers can attain or maintain compliance, or how the program can be enforced.

In short, township-level metrics cannot assure that all dischargers and discharges cease causing and contributing to nitrate exceedances, and the Order thus does not comply with the State Board’s direction, the Basin Plan, or applicable law and binding policy. The Regional Board notes in response to comments that the Order also includes a blanket prohibition on causing or contributing to exceedances, but without associated metrics to measure and assure compliance, the blanket prohibition is legally inadequate.⁵⁵

iii. Interim Milestones For Irrigated Agriculture Are Unreasonably Delayed.

As noted above, for irrigated agriculture, the Order relies on two primary metrics to measure progress in reducing nitrogen discharges: compliance with acceptable A/R ratios, and groundwater protection targets, and sets the following interim milestones and final deadlines:⁵⁶

Nitrate Reduction Goal	<u>Year</u> <u>5</u>	<u>Year</u> <u>10</u>	<u>Year</u> <u>15</u>	<u>Year</u> <u>20</u>	<u>Year</u> <u>30</u>	<u>Year</u> <u>35</u>
<u>Percentage of Acreage¹ in Modesto Management Zone within acceptable A/R ratio range for that crop</u>	<u>75%</u>	<u>95%</u>	<u>100%</u>			
<u>Percentage of townships in Modesto Management Zone meeting GWP Targets for ILRP parcels</u>		<u>50%</u>		<u>75%</u>	<u>90%</u>	<u>100%</u>

⁵⁴ See, e.g. 40 C.F.R. § 130.2, subs. (g)-(i).

⁵⁵ See, e.g., *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1260 [“The wish is not father to the action”].

⁵⁶ Order, Ex. A, at p. 4.

Yet, the Order does not discuss any evidence that these milestones and final deadlines are as short as practicable. Why will it take 15 years for all growers to apply fertilizer within acceptable A/R ranges? There is no advance in technology or management practices needed for growers to bring their nitrogen applications down to industry standards for any given crop. And similarly, why will it take more than three decades for all townships to meet Groundwater Protection Targets? The Regional Board has provided no analysis of the number of townships that are currently meeting Groundwater Protection Targets, the number of townships that will struggle to meet Targets using available management practices, or any other analysis that would provide evidence supporting these time schedules.

The State Board must require more of an Order that will set expectations for dischargers for the next several decades. It must ensure that the Order is based on sound evidence and analysis, and it must require that interim milestones are as short as practicable. We ask that the State Board direct that all acreage in the Modesto Management Zone is meeting acceptable A/R ratio ranges within five years, that 95-98% of townships meet groundwater protection targets within 10 years, and that the Order ultimately includes additional metrics to ensure compliance within a time schedule that is as short as practicable.

iv. *The Order Must Include Enforceable Milestones And Compliance Metrics For Dairies.*

In 2019, Central Valley dairies publicly committed to reaching whole-farm nitrogen balance,⁵⁷ and the recently released Revised Draft Dairy Order suggests that existing dairies should be able to achieve whole-farm balance within eight years if they start now.⁵⁸ This

⁵⁷ Summary Representative Monitoring Report, April 2019, available at: <https://leadershipcounsel.org/wp-content/uploads/2019/10/Dairy-report.pdf>; see also Dairy Cares Comments on Draft Dairy Order, December 20, 2024, available at: <https://www.documentcloud.org/documents/27776021-dairy-cares-and-farm-bureau-letter-dairy-waste-rules/?q=year%20s&mode=document#document/p37>.

⁵⁸ State Of California State Water Resources Control Board Revised Draft Order WQ 2026-XXXX, at 77 n. 219.

commitment is not reflected in the Order. Instead, the Regional Board deferred incorporation of requirements for dairies, “pending the SWRCB’s final decision on Water Quality Petition A2283.”⁵⁹ While the Regional Board will ultimately need to comply with the State Board’s direction on review of the Dairy General Order, it is inappropriate and inconsistent with the BPA and applicable law to approve an exception without enforceable quantifiable milestones and final compliance metrics for dairies. The State Board must direct revisions that, at minimum, incorporate the industry’s proposal for whole-farm balance as an interim milestone.

c. The Order Must Be Revised To Remove Premature Consideration Of De-designation In 15-20 Years, And To Include Real World Restoration Projects.

i. De-Designation Is Premature And Not Authorized For Groundwater That Is Currently In Use As Drinking Water.

The Sources of Drinking Water Policy (State Board Resolution 88-63) sets forth affirmative requirements for designation of groundwater as supporting the MUN beneficial use, subject to the following exceptions.⁶⁰

(1) “The total dissolved solids (TDS) exceed 3,000 mg/l (5,000 &mhos/cm, electrical conductivity) and it is not reasonably expected by the Regional Water Board [for the ground water] to supply a public water system;”

(2) “there is contamination, either by natural processes or by human activity (unrelated to a specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices;” or

(3) “the water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day.”⁶¹

⁵⁹ Response to Comments at p 22.

⁶⁰ We note that the Sources of Drinking Water Policy does not set forth any criteria for de-designation of the MUN beneficial use after groundwater has been designated as supporting that use. As such, it cannot support de-designation.

⁶¹ State Water Board Resolution No. 88-63, 'Sources of Drinking Water Policy,' available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1988/rs1988_0063.pdf.

Of these three exceptions to the Sources of Drinking Water Policy, only exceptions (1) and (2) address groundwater pollution. Exception (1) does not apply to nitrate, instead applicable only to salinity. As such, only exception (2) might reasonably apply here, and it does not. Instead, exception 2 only allows de-designation when the water cannot be reasonably treated using “Best Management Practices or best economically achievable treatment practices” to achieve water quality objectives. In the case of nitrate pollution of groundwater, processes such as reverse osmosis are capable of treating the water to achieve drinking water standards. Thus, except in limited circumstances where water is not being used or cannot be treated for use as drinking water, de-designation is not permitted.

Moreover, even if de-designation were permitted by the Sources of Drinking Water Policy, consideration of de-designation is premature under the timelines set forth in the Order. In Resolution 2019-0057, the State Board “set a maximum of 50 years as a goal for restoring basins to achieve nitrate water quality objectives throughout the basins,” recognizing, “however, that some basins may require *more than 50 years* to achieve restoration or may qualify for de-designation of beneficial uses through the water quality control plan amendment process.”⁶² The Basin Plan Amendment further recognizes that in some scenarios, it would take more than 70 years for groundwater to meet the drinking water standard.⁶³

Here, the Order authorizes “a plan to submit a fully substantiated proposal for beneficial use de-designation(s) by Year 20” if restoration is “deemed not to be reasonable, feasible, and practicable.”⁶⁴ This assessment is required as part of the third Restoration Efforts Report, to be submitted within 15 years. This is wildly premature. The Order would require action to begin de-designating basins well before the termination of the 35 year exception, in violation of Resolution 2019-0057 and the BPA.

⁶² State Board Resolution 2019-0057 at Resolved ¶ 4.h. [emphasis added].

⁶³ BPA at p. 26.

⁶⁴ Order at p. 28.

Tens of thousands of residents living within the boundaries of the Modesto Management Zone rely on groundwater for all or some of their drinking water. The decision to potentially de-designate portions of the subbasin in the Modesto Management Zone necessarily means that beneficial uses will be unreasonably affected, leaving residents without a reliable source of drinking water. The Order allows up to 35 years for compliance and 50 years for restoration. It cannot reasonably evaluate de-designation plans only 20 years into implementation, particularly when it has concluded that 35 years is necessary to “allow dischargers to coordinate experimentation with large-scale nitrate reduction and groundwater restoration strategies.”⁶⁵ The de-designation provision also presents a perverse incentive to continue polluting in the short term such that the Management Zone is more likely to be able to show that restoration is not reasonable and feasible.

The State Board must direct the removal Paragraph 48.c. from the Order in recognition that de-designation is a “last resort”⁶⁶ that cannot be pursued in the foreseeable future.

ii. *The Order Should Be Revised To Direct Real-World Restoration Pilot Projects.*

We appreciate that the Order contains direction to the Management Zone to develop pilot projects to begin learning lessons regarding how to best restore groundwater basins. However, the Order does not require any real world pilots, instead allowing the Management Zone to rely only on desktop studies and modeling pilots. While desktop studies are appropriate pilot projects, they should not be the sole determinant of what ultimately must be a physical solution. Petitioners request that at least one of the pilots be a physical project and that at least one additional pilot or demonstration project be developed within the first 10 years. There are many

⁶⁵ Response to Written Comments at 31.

⁶⁶ This conclusion is one the Order itself recognizes. Citing the 2016 Antidegradation Analysis, the Order notes that the Board’s evaluation of the need to alter beneficial uses is a “last resort.” 44.

important lessons to be learned during implementation of the Order, and thoughtfully designed pilot and/or demonstration projects will be necessary to the success of restoration efforts.

C. The Order Does Not Comply With State Law Or Binding Policy.

As discussed above, the compliance provisions of the Order do not comply with Porter-Cologne, the Basin Plan, or the Nonpoint Source Policy because the Order fails to include adequate quantifiable milestones, authorizes time schedules that are not as short as practicable, and ultimately does not require that agriculture and dairies cease causing and contributing to exceedances of water quality objectives, pollution, and nuisance.⁶⁷ The restoration provisions of the Order also fail to comply with the Sources of Drinking Water Policy by directing the Management Zone to move forward with designation plans prematurely.⁶⁸ In addition, as discussed below, the Order fails to comply with the Antidegradation Policy, unlawfully elevates agricultural water use over domestic uses, and violates civil rights and anti-discrimination laws. For these reasons, the State Board must grant this petition and direct revisions to the Order.

a. The Order Does Not Comply With The Antidegradation Policy

Actions junior to the Basin Plan must be consistent with state water policies, including the Antidegradation Policy.⁶⁹ Here, the Order authorizes at least 35 years of continued contribution to exceedances, pollution, and nuisance. State Water Board Resolution 68-16, Policy with Respect to Maintaining High Quality Waters of the State (the “Antidegradation Policy”) establishes a state policy to regulate permits for disposal of waste into the waters of the state “so as to achieve the highest water quality consistent with the maximum benefit to the people of the State.” The Policy requires that any change to existing high quality water “will not result in water quality less than that prescribed in the policies.”⁷⁰ As the State Board recently clarified, the

⁶⁷ See Section B., b., *supra*.

⁶⁸ See Section B., c., *supra*.

⁶⁹ *Monterey Coastkeeper v. State Water Resources Control Bd.*

⁷⁰ Resolution No. 68-16.

baseline water quality for determining whether water is “high quality water” is “the best quality of the water since 1968...or a lower level if that lower level was authorized through a permitting or other regulatory action consistent with the federal antidegradation policy, if applicable, and the Antidegradation Policy.”⁷¹ Applicable policies include water quality objectives established in basin plans reasonably related to protection of beneficial uses.⁷²

Because the groundwater in the Modesto Management Zone is predominantly composed of high quality waters, it is subject to the Antidegradation Policy. The Order, by its own admission, authorizes limited degradation of groundwater.⁷³ Thus, the State’s Antidegradation Policy applies.

The Antidegradation Policy establishes a two-step process. The first step is if a discharge will degrade high quality water, it may be permissible if any change in water quality: (1) will be consistent with maximum benefit to the people of the state; (2) will not unreasonably affect present and anticipated beneficial use of such water; and (3) will not result in water quality less than that prescribed in water quality objectives or water quality control plans. The second step is that any activities that result in discharges to high quality waters are required to use the best practicable treatment and control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the state.⁷⁴ The Approval fails to comply with either step.

⁷¹ State Board Revised Draft Order WQ 2026-XXXX at 46 (“Revised Draft Dairy Order”). Available at: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/2026/revised-draft-dairy-order-06152026.pdf.

⁷² State Water Board, Guidance Memorandum “Questions and Answers” re Resolution 68-16, at pp. 6 - 7, no. 9 (Feb. 16, 1995).

⁷³ Order at 40 ¶ 65(a).

⁷⁴ State Water Resources Control Board, Guidance Memorandum (Feb. 16, 1995) p. 2; *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1256.

iii. *Degradation Authorized Is Inconsistent With The Maximum Benefit To The People Of The State*

The Order analyzes consistency with the maximum benefit to the people of the state in one paragraph that fails to consider or attempt to quantify costs to the public associated with granting agriculture and dairies 35 additional years to pollute. This approach is squarely in conflict with case law and State Board precedent, which requires the Board to evaluate existing and readily available information to assess and weigh costs to the public.⁷⁵ To ensure the degradation authorized by the Order is consistent with the maximum benefit to the people of State, the Board must also evaluate the severity and extent of water quality reduction.⁷⁶ Each of the four factors the Regional Board should have considered to support its maximum benefit analysis, discussed in turn below, demonstrates that the Order does not comply with the Antidegradation Policy.

1. Past, Present, and Future Beneficial Uses of Water

The past, present and probable beneficial uses of water in the Modesto Management Zone are varied and diverse, with domestic use a primary beneficial use. The Municipal and Domestic Supply Beneficial Use in particular has the potential for being severely impacted by degradation of groundwater due to nitrate discharges, even if that degradation is “short-term” or “localized” – although here it is neither. This is especially true given that “95% of the [San Joaquin] valley’s

⁷⁵ See *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1279 [“both costs to the discharger and the affected public must be considered”]; Revised Draft Order 2016-XXXX, In The Matter Of Review Of Waste Discharge Requirements General Order No R5-2013-0122 For Milk Cow Dairies In The Central Valley Region Issued By The California Regional Water Quality Control Board, Central Valley Region (June 15, 2026) [“Petitioners correctly point out that absent from the analysis is any consideration of potential costs to individuals reliant on the quality of the groundwater, the social costs to impacted communities, or the environmental costs associated with further lowering of water quality from ongoing discharges from the existing manure retention ponds.”].

⁷⁶ State Water Resources Control Board Administrative Procedures Update, July 1990. “Antidegradation Policy Implementation for NPDES Permitting.” Available at: https://www.waterboards.ca.gov/water_issues/programs/npdes/docs/apu_90_004.pdf.

population relies on groundwater for drinking”⁷⁷ and at least 26,000 residents within the Modesto Management Zone rely on groundwater.⁷⁸ Although the Order requires the offer of replacement water to presently impacted residents and communities, implementation of the CV SALTS BPA has thus far resulted in only about a quarter⁷⁹ of the likely impacted population receiving drinking water solutions. It is thus assured that the requirements to offer replacement drinking water in the short and long-term do not eliminate impacts of continued pollution to past, present, and future beneficial uses of groundwater in the affected groundwater basins.

Moreover, the Order relies on a now decade-old Antidegradation analysis⁸⁰ to determine that authorized “resultant degradation does not unreasonably affect present and anticipated beneficial uses of groundwater.”⁸¹ New information and data has been reported and developed in the interim, which the Regional Board must now consider and evaluate.⁸²

2. Economic and Social Costs

As stated by State Board Member Firestone, “we can’t bottle water our way out of” nitrate contamination.⁸³ With respect to this factor, the Regional Board failed to consider costs to the affected public. In considering “social” costs, consideration must be given to whether a lower water quality can be “abated” through reasonable means. In other words, the lower water quality

⁷⁷ Balazs et al., “Social disparities in nitrate-contaminated drinking water in California’s San Joaquin Valley” (Environmental Health Perspective 2011), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3230390/>.

⁷⁸ MZIP Table 2-7 Public Water Systems with Nitrate and Nitrate Plus Co-Contaminant Violations.

⁷⁹ See CV SALTS Dashboard, available at <https://cvsaltsnitrateprogramdashboard.com/>.

⁸⁰ Under the BPA, the standard is that ongoing discharges of nitrate must “cease causing or contributing to exceedances of the applicable water quality objective” by the end of the time schedule. The Antidegradation Analysis fails to analyze the NCP according to this standard.

⁸¹ Order at 44.

⁸² See State Board WQ Order 2018-002 at p. 80 [“As the data and our understanding evolves, of course, so too must the regional water boards’ analyses of maximum benefit and best practicable treatment or control.”].

⁸³ State Water Resources Control Board Board Meeting Session – Central Valley Regional Water Board October 21, 2025. “Board Meeting October 21, 2025” at 5:27:04. Available at: <https://www.youtube.com/watch?v=b2-abmkfhAM&t=19772s>.

should not result from inappropriate treatment facilities or less-than-optimal operation of treatment facilities.”⁸⁴ Further, in considering costs to the public, the Regional Board must also consider treatment and health costs.⁸⁵ The Order, underlying MZIP, and corresponding Antidegradation Analysis fail to adequately consider social and health costs to the affected public and permit degradation for decades with the goal of somehow achieving reduced loading and, at some undefined point, restoration “where possible.”⁸⁶ Further, impacts will persist beyond 35 years given the suggestion that restoration will not be possible everywhere, as well as the potential for de-designation.

The Order also does not adequately consider the economic and social costs borne by residents who have been living with the social, economic, and health effects of nitrate contaminated water for decades and will continue to do so until the goals of CV-SALTS are accomplished. Specifically, the Order and its underlying documents and analyses fail to consider the health impacts suffered by individuals or the community from nitrate contaminated water. The provision of alternate drinking water supplies does not adequately consider the social and health costs of residents within the Modesto Management Zone. Epidemiological literature on nitrate exposure and health highlights cancer risk, birth complications, and thyroid disease as the most prevalent health risks.⁸⁷ Cancer-related medical costs due to nitrate exposure alone can be estimated at 250 million to 1.5 billion U.S. dollars per year, which increases to 6.5 billion dollars

⁸⁴ *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1279.

⁸⁵ See Revised Draft Dairy Order at p. 49 [citing examples that the Regional Board should consider as including “costs incurred by individuals, water providers, or the state to clean up or treat water contaminated by the discharges or to provide replacement water, or of health impacts suffered by individuals or the community at large from drinking nitrate contaminated water.”].

⁸⁶ Order at p. 41.

⁸⁷ Rocha, Nitrate Contamination: A Health & Economic Literature Review, California Rural Legal Assistance, available at https://crla.org/sites/default/files/2026-06/2026.05.04_Nitrate_H%26SE_Literature_Review.pdf.

annually when indirect costs from productivity losses are considered.⁸⁸ However, the Order and corresponding Antidegradation Analysis do not consider these impacts at all.

In its response to comments detailing these concerns, the Regional Board explained its lack of health impact analysis as being “exceptionally difficult due to uncertainty,” despite its acknowledgement that “adoption of the Draft Order could potentially add to these burdens by authorizing additional, short term nitrate degradation of certain waters.”⁸⁹ This explanation does not justify the legally insufficient analysis, and the Regional Board must be required to consider and analyze readily available information regarding the economic and social costs associated with nitrate contaminated drinking water, including the burdens on community water systems, a conclusion further underscored by the State Board’s June 15, 2026 Draft Dairy Order.⁹⁰

The Antidegradation analysis is insufficient because it fails to adequately consider economic and social costs to the public, instead relying on the drinking water requirements in the Order to conclude that there will be no such costs. For the reasons discussed above the drinking water components of the Order do not assure that all impacted people received solutions, and in fact the vast majority of the impacted population have not yet received interim or long-term solutions. The Order must be revised to analyze economic and social costs.

3. Environmental Aspects of the Proposed Discharge

The Order fails to properly consider several environmental aspects of the nitrate degradation it authorizes, including: short-term, long-term, and permanent degradation to groundwater; surface water impacts due to its conjunction with groundwater; and the creation of

⁸⁸ *Id.*

⁸⁹ Response to Written Comments at 37-38.

⁹⁰ Finding that the Central Valley Board’s antidegradation analysis must be based on a “more robust analysis by addressing any additional economic and social costs associated with the discharges.” Revised Draft Order WQ 2026-XXXX at 50. Available at: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/2026/revised-draft-dairy-order-06152026.pdf.

hot-spots as a result of horizontal averaging across townships. The Regional Board points to the substitute environmental document (SED) as proof that it properly analyzed the environmental impacts of nitrate contamination and degradation. The SED concludes that until projects that achieve “nitrate loading balance and improved (reduced) nitrate concentrations” are implemented, potentially significant impacts to water quality “via substantial degradation” for “years to decades” will occur. At the time the SED was prepared, the NCP’s goal was to achieve “balanced” nitrate loading. As aforementioned, the goal is now to achieve compliance. The Order and the SED fail to analyze the NCP as a program that will reduce loading to the point that dischargers within the Modesto Management Zone are no longer causing or contributing to exceedances of the water quality objective for nitrate.

4. The Implementation of Feasible Alternative Treatment or Control Methods

The Regional Board is required to analyze feasible alternative treatment or control measures “that might reduce, eliminate, or compensate for negative impacts of the proposed plan.”⁹¹ The Order fails to do so. Although the Antidegradation Analysis defines several alternatives to the Exception, it does not analyze the feasibility of the suggested alternatives despite concluding throughout that “[o]ther options are equally or more protective of water quality and thus provide further protection for ensuring that waste discharge requirements assure that pollution or nuisance will not occur.”⁹² The Order must be revised to consider alternatives, including shorter time schedules, accelerated milestones, and metrics that assure compliance.

iv. *The Order Does Not Require Best Practicable Treatment and Control.*

To comply with the Antidegradation Policy, the activity that results in a discharge must

⁹¹ Central Coast Regional Water Quality Control Board, Informational Document: Salt and Nutrient Management Plan Development February 2014.

⁹² See, e.g. Antidegradation Analysis at 114.

also use the best practicable treatment and control necessary to avoid pollution or nuisance. According to the State Board's Guidance Memorandum, "[t]o evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers."⁹³ The Order does not meet these requirements as it does not compare the proposed requirements in the Order to any alternative methods of treatment or control.

Further, the Order permits pollution and nuisance. Nuisance is defined in Section 13050 subsection (m) of the Water Code to mean anything that is: (1) injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; (2) affects an entire community or considerable number of persons; and (3) occurs during, or as a result of, the treatment or disposal of wastes. Civil Code section 3480 further provides that "[a] public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Nuisance may include, for example, dust, odors, or noise associated with the discharge of wastes, such as during a cleanup or of sewage. Nuisance considerations are not limited to water quality.⁹⁴

The Order permits nuisance to continue by failing to adequately prevent dischargers from causing or contributing to pollution resulting in continued negative health impacts to residents who rely on nitrate-contaminated groundwater. For example, as discussed above, utilization of

⁹³ State Board, Guidance Memo (Feb. 16, 1995) at pp. 5–6.

⁹⁴ See Questions and Answers, Resolution 68-16 at p. 4 (1995) ["To comply with Resolution No. 68-16, the activity that results in the discharge may not cause a nuisance. ... Nuisance considerations under the CWC are not limited to water quality impacts."].

township-scale Groundwater Protection Targets to measure compliance permits certain dischargers to continue to contribute to nuisance throughout the duration of (and after) the Exception, and is thus not best practicable control.

It is well established that nitrate contamination is injurious to health.⁹⁵ The most prevalent adverse health outcomes are cancer risk, thyroid disease, and birth complications, in addition to methemoglobinemia.⁹⁶ Where nitrate levels exceed the MCL such that residents are prevented from drinking or cooking with the water that flows from their faucets, such exceedance is also an obstruction to the free use of property that interferes with the comfortable enjoyment of both life and property. For the reasons noted above, the provision of replacement drinking water does little to mitigate the continual nuisance, particularly because the Order’s timeline for implementation of long-term solutions is excessive (e.g. “within 18 years of adoption of this Order, offer to implement solutions for 100 percent of wells”) and/or not required at all, and because restoration is not prioritized. Rather than using the best practicable treatment or control to avoid pollution or nuisance, the Order enables additional pollution and nuisance-causing pollution by allowing dischargers to continue to pollute groundwater for an additional 35 years.

The Regional Water Board reasons that because degradation will be “mitigated through programs designed to provide drinking water to individuals whose wells have been rendered unusable because of nitrate pollution” that it actually prevents nuisance conditions. First, the Regional Board appears to conflate mitigation of a nuisance with whether nuisance conditions exist. The provision of drinking water does not prevent nuisance; it is a response to existing

⁹⁵ See e.g. Suckale et al., “Evidence of elevated risk for blue-baby syndrome and blue spells in the Central Valley, California,” A Stanford Sustainability Accelerator Project, unpublished (Dec. 15, 2024), available at <https://woods.stanford.edu/sites/woods/files/media/file/cepp-comments-on-draft-dairy-order.pdf>; Tariqi et al., “Water, health, and environmental justice in California: Geospatial analysis of nitrate contamination and thyroid cancer,” *Environmental Engineering Science*, 38(5), 377–388 (2021). Available at: <https://doi.org/10.1089/ees.2020.0315>.

⁹⁶ Hall Rocha, CRLA, Nitrate Contamination: A Health & Economic Literature Review.

nuisance conditions that the Regional Board, in approving the Order, authorized to continue. This conclusion does not comport with the law; while the supply of alternative drinking water may partially abate the adverse health effects of nitrate contamination, residents' inability to use water that flows from their tap is an unabated obstruction to the free use of property. Second, implicit in the Regional Board's statement is the assumption that the Order is preventing nuisance conditions from forming *in the future*, but fails to acknowledge the nuisance conditions that exist now and will persist for at least the next three and a half decades.

b. The Order Improperly Prioritizes Agriculture Above Domestic Use.

Water Code section 106 states that “[i]t is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.”⁹⁷ Contrary to state policy, the Order elevates the importance of irrigation and other non-domestic uses of water above that of the domestic use of water for drinking, cooking, and sanitary purposes by allowing dischargers to continue causing or contributing to pollution and nuisance for 35 years and by failing to include final compliance metrics. Although the Regional Board is tasked with protecting all beneficial uses, the Order's authorization of a decades-long time schedule and failure to prescribe an adequate final compliance metric ensures “operational flexibility” to agricultural operations without ensuring that similar flexibility is provided to municipal and domestic users of water, thereby prioritizing irrigation over domestic purposes, in violation of section 106.⁹⁹

⁹⁷ Effective August 4, 1943; *see also Meridian, Ltd. v. San Francisco* (1939) 13 Cal.2d 424, 450 (“The highest use in accordance with the law is for domestic purposes, and the next highest use is for irrigation.”); *see also* Water Code § 106(a) (“It is hereby declared to be 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.”)

⁹⁸ Although generally applied in the context of water right contests, there is nothing in the statute or case law suggesting that Water Code 106 is inapplicable to water quality.

⁹⁹ *City of Oxnard v. Fox Canyon Groundwater Mgmt. Agency*, 2023 Cal. Super. LEXIS 57243.

Only about a quarter of impacted households in the Management Zone are currently receiving interim drinking water,¹⁰⁰ and the Order lacks robust and enforceable requirements for compliance and managed aquifer restoration. Consequently, the Order permits nitrate contamination to continue to spread and get worse. The Order must be revised to prioritize domestic use over irrigation by including accelerated and enforceable requirements for drinking water solutions, individual compliance, and restoration. The cost to communities struggling with nitrate is substantial, both in terms of the increased cost of accessing safe drinking water and the health costs associated with exposure to unsafe water. The Regional Board must implement its statutory mandate to prioritize water for domestic use.

c. The Order Unlawfully Discriminates

California law prohibits discrimination in State funded programs or activities on the basis of race, national origin, ethnic group identification, and other protected classes.¹⁰¹ Under Section 11135, a “program or activity” means: “any project, action or procedure undertaken directly by recipients of State support or indirectly by recipients through others by contracts, arrangements or agreements, with respect to the public generally or with respect to any private or public entity.”¹⁰² Discrimination may be shown by a “disparate impact,” meaning that an act which is not expressly discriminatory may still be unlawful if it harms a protected class more than other classes of people. Discriminatory intent is not required.¹⁰³ Under disparate impact law, “(1) a

¹⁰⁰ As of June/July 2026, 182 households within the Modesto Management Zone are currently receiving alternative drinking water. See <https://cvsalts.mljenv.com/>. Accessed June 28, 2026. The MZIP estimates 650 wells exceeding the drinking water standard for nitrate. Modesto Management Zone Implementation Plan at 52, Table 2-9. Summary of Domestic Wells and Population with Estimated Upper Zone Nitrate Area Categories. Available at: https://cawaterlibrary.net/wp-content/uploads/2025/04/VWC_Modesto_MZIP_09.05.23.pdf?acrobatPromotionSource=embeddedpdfs_chrome-native_view.

¹⁰¹ Gov. Code § 11135. As an action by the Regional Water Board to regulate waste discharged into groundwater, the approval of the Modesto MZIP is a program or activity under 11135.

¹⁰² Cal. Code Regs. tit. 2, § 11150.

¹⁰³ *Darensburg v. Metro Transp. Comm’n* (N.D. Cal. 2009) 611 F.Supp.2d 994, 1042.

plaintiff establishes a prima facie case if the defendant's facially neutral practice causes a disproportionate adverse impact on a protected class; (2) to rebut, the defendant must justify the challenged practice; and (3) if the defendant meets its rebuttal burden, the plaintiff may still prevail by establishing a less discriminatory alternative.”¹⁰⁴

Here, small, majority-Latino communities within the San Joaquin Valley are disproportionately impacted by nitrate contamination of groundwater from agricultural discharge. Data published in 2018 found that the percent of racial or ethnic distribution of residents served by out-of-compliance community water systems in the San Joaquin Valley was highest for Latino populations, both within disadvantaged communities and in non-disadvantaged communities. For nitrates in particular, a strong disparity in the likelihood of nitrate non-compliance for Latino-serving community water systems as compared to systems generally has been identified.¹⁰⁵ Research performed by Santa Clara University Water and Climate Justice Lab further demonstrates that residents who live within two miles of a dairy facility are twice as likely to be served by wells that exceed the water quality standard for nitrate.¹⁰⁶ The Order results in a disparate impact to Latino residents because it authorizes continued waste discharges potentially resulting in exceedances, pollution and, nuisance, the impact of which will be disparately and negatively borne by Latino communities.

Moreover, the failure to adequately protect groundwater for domestic use violates

¹⁰⁴ *Villafana v. County of San Diego* (2020) 57 Cal.App.5th 1012, 1017, citing *Darensburg v. Metro Transp. Comm’n* (9th Cir. 2011) 636 F.3d 511, 519

¹⁰⁵ “Nitrate violations have a greater likelihood of occurrence at DAC, SDAC, and Latino-serving systems (0.54 percentage points). In our sample, 0.9% of system-year observations have nitrate violations. While the proportion of water systems (CWS) facing nitrate violation is small compared to TCR, arsenic, and DBP violations, its effect on DAC, Latino populations and children under the age of five is significant.” Sarah Acquah, Maura Allaire, *Disparities in Drinking Water Quality: Evidence from California*, Water Policy Vol 25 No 2 (February 3, 2023) p. 82.

¹⁰⁶ Presentation slides presenting research by Santa Clara University Water and Climate Justice Lab and California Rural Legal Assistance Research (2026), attached as Exhibit E.

California's Fair Employment and Housing Act, which guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color or national origin.¹⁰⁷ FEHA's implementing regulations adopted in 2020, including Article 15, Discrimination in Land Use Practices, defines land use discrimination prohibited by FEHA expansively and with additional detail. Section 12161(a) provides: "It shall be unlawful for any person to engage in any public or private land use practice that: . . . has a discriminatory effect on members of a protected class pursuant to Government Code section 12955.8(b) and Article 7, unless there is a legally sufficient justification for the practice." Section 12161's prohibition on intentional and discriminatory land use practices includes a practice that "provides inadequate, inferior, limited, or no governmental infrastructure, facilities, or services, such as water, . . . in connection with the enjoyment of residence . . ." Because the Order authorizes continued degradation of water used by predominantly Latino communities for drinking, cooking, and bathing, it constitutes a discriminatory practice in violation of FEHA.

IV. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS.

A true and correct copy of this petition was submitted electronically on July 2, 2026 to the Regional Board, attention Robert Ditto. In addition, a courtesy copy of this petition was electronically sent to Theresa Dunham, an attorney for certain dischargers subject to the Order.

V. CONCLUSION

For the foregoing reasons, and to adequately protect access to safe and affordable drinking water, the State Board must grant this Petition and direct revisions to the Order.

¹⁰⁷ Gov. Code 12900, et seq.; *see also* Gov. Code § 65008 ("Any discriminatory action taken "pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, land ownership, tenancy, or any other land use in this state..."); Government Code §§ 12955, subd. (l) (unlawful to discriminate through public or private land use practices, decisions or authorizations).

Date: July 2, 2026

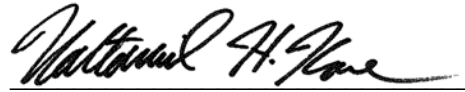
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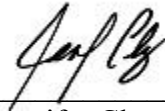
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CLEAN WATER ACTION



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