



12/2/19

Dear Mr. Meyerhoff,

Thank you for the opportunity to comment on the template early action plan (EAP) developed through the Central Valley Basin Plan Amendment (CV-BPA) pilot process. The comments below are based off the draft EAP created for the Alta Management Zone pilot project, but as to the extent the Turlock EAP template is similar, our comments are applicable to both. We recognize a significant amount of work has gone into the development of template management zone implementation plans (MZIP), which include EAPs. While there is valuable information within the EAP template, there are also numerous issues with the template that violates both the letter and intent of the CV-BPA and State Water Board CV-BPA approval resolution (Resolution).

This letter lays out a series of concerns and proposed recommendations that we believe will meaningfully improve community engagement and further the goals of providing safe water to impacted communities. Our recommendations are rooted in over a decade of work engaging with and on behalf of impacted communities in the San Joaquin Valley.

#### Coordination with the State Water Board's Safe and Affordable Drinking Water Program

Throughout the process to develop MZIPs and EAPs, management zones should coordinate with State Water Board staff working to implement the Safe and Affordable Drinking Water Fund program to ensure coordinated, and not duplicative, activities are occurring. Management zone participants would benefit from the expertise in drinking water solutions the Board has, and the Board would benefit from having a clear understanding of what on the ground drinking water projects are being implemented.

#### Timeline and EAP Effective Date

**As an initial point we question the management zones interpretation of "EAP effective date" and the corresponding unreasonably long timeline towards providing safe drinking -- and as such we urge the timeline to be revised to reflect the urgency warranted by communities lacking access to safe water.** As used in the template, it is unclear what will actually be accomplished during the planning phase, as most of the work to both identify and then provide drinking water solutions will be occurring after EAP submission, or as the template calls the "EAP effective date". For example, the *locations* of the public access water facilities (PAWFs) do not have to be identified until 30 days after EAP submission. Based on the timeline provided, safe drinking water will likely not be provided until approximately about 10 months **after** EAP submission. The State Water Board agreed to approve the CV-BPA in order to ensure communities are provided safe drinking water as soon as possible. Instead, based on the proposed timelines, it will likely be over 2

years after SWB approval, in the final quarter of 2021, before the first drinking water solutions through the BPA process will be offered, and then mid-2022 before all the interim drinking water solutions are offered. The CV- BPA states that under EAPs that drinking water solutions, “will be undertaken to ensure *immediate* access to safe drinking water for those who are dependent on groundwater from wells that exceed the Primary MCL for nitrate...” (BPA, 85). We would not call nearly a year after EAP submission to be “immediately” and thus the timeline can only be interpreted as violating the requirements of the CV-BPA.

### 1.3 Community Outreach to Develop EAP Approach

While the EAP provides some concepts for how to conduct outreach to potentially impacted residents *after* EAP submission, the EAP includes no information on how to actually engage communities during the development process. **This is a glaring omission and must be fixed by providing a clear proposal for engagement with communities during the EAP process, as the absence of a community engagement proposal as part of EAP development implies that this stage is not a priority.** In reality this is a critical first step that will help frame how implementation of the CV-BPA will move forward and will have implications far beyond the EAP. Outreach for the development of the EAP must occur first and is required by both the CV-BPA and the State Water Board Resolution (Resolution). The CV-BPA states that the EAP must include, “[a] process to identify affected residents and the outreach utilized to ensure that impacted groundwater users are informed of and given the opportunity to participate in the development of proposed solutions.” The Resolution also states that “[i]n developing and implementing early action plans and Management Zone Implementation Plans, dischargers shall meaningfully consult with affected residents, affected water systems, representatives of environmental justice organizations, and other stakeholders.” The Central Valley Board should include with the MZIP templates a clear statement that effective community outreach and engagement must be part of the EAP development process and that without it the plan should be deemed incomplete.

### 2.4 Potentially Impacted Domestic Wells

The template acknowledges that there is record of domestic wells within public water system boundaries, but then says “[i]t was assumed that any domestic wells within the boundaries of a PWS would not be used for drinking and were removed from this estimation of the number of potentially impacted domestic wells.” (EAP, 25). **This is a false assumption and should be rectified.** While we understand the assumption, in reality many residents within public water system boundaries do rely upon a private domestic well. For example, a board member of the Yettum Community Services District (CSD) lives within the boundaries of the water system, yet is not connected to the system and relies upon a private well. Acknowledging the existence of these wells is important not just for EAP outreach, but later when the final MZIP is in place and service connections are considered for impacted wells. Future management zones cannot be allowed to make the same false assumption as it undercounts the number of potential residents impacted by nitrate contamination.

### 4. Process to Identify Potentially Affected Residents

The template states that the management zone “should at a minimum target” nitrate impacted areas identified through modeling. (EAP, 31). However, there is no “minimum” requirement in identifying potentially impacted residents in the BPA. The BPA states the Preliminary MZIP must include “[d]ocumentation of process utilized to identify affected residents and the outreach utilized to ensure

that they are given the opportunity to participate in development of an Early Action Plan” (BPA, 67). **Therefore, management zones must work to identify all impacted residents, to the best of their ability, and cannot fall back on a “minimum” requirement of targeting only those who live within areas of the management zone where modeling identifies them as potentially impacted.**

We do acknowledge, and appreciate, the template document also discusses conducting a management zone-wide mailing campaign which will not only target a specific area. **But this does not address a significant gap, that there needs to be a plan for reaching tenants, especially where the property relies upon PO Boxes.** Reliance upon landlords passing on the information to their tenants is insufficient and in many cases will unfortunately never occur. Door knocking may be the only means to reach these residents and thus the EAP should include consideration of such a campaign.

Finally, **the template fails to provide a plan for filling the gaps in water quality data.** The State Water Board Resolution approving the CV-BPAs requires in 4(d) that the MZIPs must include a residential sampling plan, yet there is no mention of this in the template document. While some data may come in through well testing conducted as part of the bottled water delivery and Point of Use (POU) installation application process, it may prove insufficient to properly fill in those gaps.

#### 5. Temporary DW Provisions

Despite the lack of community engagement in the creation of the template EAP, it strongly pushes PAWFs as the primary source of safe drinking water. As noted below, there are a number of reasons why PAWFs as the primary means of drinking water supply are problematic. The largest issues, however, are that they do not provide safe drinking water directly to one’s home and place the burden of obtaining safe drinking upon the community impacted by unsafe drinking water rather than those who are responsible for providing safe drinking water. The push for PAWFs as the primary source of safe drinking water without community engagement is thus *advancing a solution that dischargers have deemed the economically preferable option to themselves over the needs of communities*. Instead, bottled water deliveries or POU devices<sup>1</sup> are in most cases the better solutions to meet a household’s needs and result in the smallest disruption in residents’ lives. PAWFs can, in certain limited and targeted instances, potentially play a supplementary role to fulfill the needs of households that willingly choose not to sign up for bottled water or POU, or for households reliant upon bottled water who periodically need additional water supplies. **But to reiterate, PAWFs should not be put forward as a management zone’s primary strategy or means for providing temporary safe water to impacted communities.**

#### *Public Access Water Facilities (PAWFs)*

As stated above, PAWFs are being promoted as the ideal solution for the vast majority of residents, without any sort of community outreach. PAWFs require residents to drive or take public transit to obtain water sufficient to meet their family’s consumptive needs. It requires they pay for that transportation, as accessing the PAWF may be out of their way; it takes time out of what might already be very busy days; and it is physically demanding to carry heavy 5-gallon jugs, to name just

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<sup>1</sup> POU devices, as explained later in this letter under the “Point-of-use” header, can also be problematic if they do not come with adequate testing and education.

a few burdens borne by community residents who are forced to rely upon PAWFs. Further, this is all assuming that the stations are open at times that work for residents' schedules and the stations are not in such high demand that long lines are common. While the goal should be the stations are open 24/7, already pilot project participants are admitting many may not, and that can cause an additional barrier to accessing safe drinking water.

Additionally, the time it takes to implement a PAWF is far longer than organizing bottled water deliveries or installing POU devices. This plays a significant role in the unreasonably long timeline proposed through this pilot project before residents are able to obtain safe drinking water.

Finally, while pilot project participants who are also currently struggling to meet the requirements set on them through the State Water Board settlement process say that the lessons learned from that process will help facilitate the EAP process, the proposed timeline tells a different story. However, we are looking at a timeline that sets drinking water solutions being offered around 10 months post-EAP submission. One way to fast track the process would be to require EAPs to identify locations and to at least be in the process of obtaining the necessary permits and finalizing contracts by the time of EAP submission, with a deadline of finalizing sites and all the necessary permitting and contracting 30 days post-EAP submission, rather than 180 days after EAP submission as is proposed in the template.

#### *Alternative Water Program (AWP)*

**Bottled water and POU should not be considered “alternative” sources of water, but instead must be elevated to the primary source of drinking water for impacted communities.**

Therefore, the EAP's assertion that people can apply for the AWP only if “they are unable to access a PAWF” (EAP, 39) and then be subject to a management zone representative reaching out to “...confirm that obtaining water from a PAWF established within the Management Zone is not a viable option” must be struck from the template. This violates both the BPA and the Resolution as it fails to take into consideration community needs and instead allows the management zone participants to dictate the appropriate solution<sup>2</sup> Ability to access and viability of accessing a PAWF have no role to play in whether a residents chooses to rely upon a PAWF. By setting bottled water and POU as an “alternative” source of water, one that someone must provide an ‘excuse’ for why the PAWF does not work for them, it does not take into account actual community needs. Residents must be allowed to opt into the use of a POU or bottled water delivery if they so choose, and not be required to provide a reason for why they are choosing that option.

The other requirements listed, such as well testing, are acceptable for these solutions, however the template application is far too wordy and unnecessarily involved. It also requests certain information that could be a barrier to completion of the application for some residents, such as the name and contact information of the landlord where a property has been leased. We understand this was a first draft and thus we look forward to working with management zones to ensure actual application forms are more accessible.

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<sup>2</sup> As noted earlier the CV-BPA requires that the EAP includes, “A process to identify affected residents and the outreach utilized to ensure that impacted groundwater users are informed of and ***given the opportunity to participate in the development of proposed solutions.***”

In regards to testing, the EAP says that it will notify an applicant if they qualify for the AWP within 60 days of the initial application. However, this ignores the acute impact of nitrates over the MCL. Nitrates must be tested within 48 hours of collection, and bacteria within 24 hours. Laboratories that conduct well testing will notify the party who requested the well test immediately if it is noted that the water is being used for domestic purposes. Management zones must opt into this and if a well test comes back above the MCL for nitrate, the management zone needs to immediately notify the home of the result. Further, letters notifying residents of their test results, must be clear and not create a false sense of safety in the water. This is especially important for test results that show no nitrate exceedance. **Notice letters must clearly inform the recipient that only nitrates were tested for but that other contaminants may be found in their water so the household is recommended to test their well for other drinking water contaminants.**

#### *Point-of-Use (POU)*

Installing a POU devices, if done correctly and with adequate education to the user, can be a viable interim drinking water solution. However, if done improperly, the installation of a POU can actually cause more harm than good. As such, **we strongly recommend that management zones contract with a technical assistance provider to provide proper installation and maintenance of POU devices, and that these contracts be closely coordinated or funneled through the Board's Safe and Affordable Drinking Water Fund program, and that there also be a strong community outreach and engagement component to facilitate effective community implementation of the POU devices.** There are multiple reasons why this is critical. First, if it is unknown what other contaminants may exist in the source water, the installation of a POU device can create a false sense of security in the safety of the water. If the source water contains only nitrates, and no other contaminants, then a POU will provide safe drinking water unless the nitrate level is very high. However, if there are other contaminants, the POU will not necessarily be providing safe drinking water. This leads to the second issue: the presence of certain contaminants can impact the efficacy of the POU device. Bacteria and TDS can cause a POU device to fail prematurely. The presence of other contaminants may also impact the POU efficacy and is something a management zone would ensure will not happen. Therefore, management zones choosing to offer POU installation as a potential solution, need to test for more than just nitrates for homes applying for a POU device to ensure safe water is being provided. It may be that the initial testing is only for nitrates, but if the results come back as exceeding the nitrate MCL, other common contaminants for the area must also be tested for.

#### 5.2 Community Outreach Program

The identified community meetings must be held early and often. The language within this section furthers the, perhaps unintentional, inference that true community outreach will not begin until after EAP submission. The EAP lays out a number of meetings including "Initial Public Outreach Meetings" (which are not held until 6 months after EAP submission) where the management zone will explain to the public what an early action plan is as well as where the PAWFs will be located and how to apply to the AWP. Communities are critical stakeholders in this process and it appears that they will not be meaningfully included not only in the EAP development process, but also in the EAP implementation phase. Further, there will be a significant gap in time between community engagement in the EAP development process and when the "initial" public outreach meetings will be held. **Community meetings after EAP submission must be held every other month to ensure**

**the community is kept abreast of program updates and any revised timelines to provide safe drinking water.**

As to public notice activities we suggest adding to the list of places where management zone updates and meeting notices are posted to include schools or other public meeting areas. Oftentimes these are important places for disseminating information to a community.

It is also concerning that the EAP template proposes that notice of an operational PAWF may not occur until upwards of 30 days after it is operational. Notice must go out no later than a week after the PAWF is operational.

### 5.3 Monitoring and Data Management

We appreciate the data that will be collected as part of both the PAWF and AWP and agree as to the scope of this data. It will be critical to amending and updating the program. We believe that the data should be analyzed at clear milestones, such as at one month, three months, and six months as an initial matter, rather than "periodically". After the initial check-ins on the data to ensure the programs are moving forward smoothly, analysis can be done on a more periodic basis, but the first few months and year will be essential to allow for rapid course correction if the program is not in fact meeting its stated goals. Further, we ask whether if this data will be publicly accessible through reporting to the Regional Water Board or other means.

Sincerely,



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