



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.



SANTA CLARA UNIVERSITY

**Environmental Justice
and the Common Good**

April 14, 2021

Sent via email to: cvsalts@waterboards.ca.gov
California Regional Water Quality Control Board
11020 Sun Center Drive #200,
Rancho Cordova, CA 95670

RE: Comment Letter—Draft Early Action Plans and Preliminary Management Zone Proposals

Central Valley Regional Water Quality Control Board Members,

California Rural Legal Assistance, Inc. (CRLA), jointly with a faculty member and a student research assistant of Santa Clara University's Department of Environmental Studies and Sciences, and the co-coordinator of the Environmental Justice and the Common Good Initiative (EJ&CGI) at Santa Clara University, submit these comments on the draft Early Action Plans (EAPs) and Preliminary Management Zone Proposals (PMZPs) released for public comment on March 15, 2021.

CRLA is a non-profit law firm and assists over 40,000 low-income residents each year with issues ranging from landlord-tenant disputes and access to safe housing to land use inequities and environmental burdens. EJ&CGI provides community-driven research for social and environmental justice in Northern California and Central America.

On February 22, 2021, we submitted comments to the Valley Water Collaborative (VWC)¹ and the Kings Water Alliance (KWA)² on their draft EAPs/PMZPs. VWC and KWA attached responses to our comments to the final drafts submitted to the Central Valley Regional Water Quality Control (CVWB). While some revisions were made in response to our comments, many identified issues remain unchanged or insufficiently addressed. Therefore, we repeat them here, and include further comments generally applicable to all Management Zones (MZs).

We submit these comments to ensure that the EAPs/PMZPs are accurate, effective, and expeditious, and that safe drinking water is easily and readily accessible to all Management Zone residents. EAPs/PMZPs must comply with all Basin Plan Amendments (BPA) requirements and applicable state and federal laws and regulations. Failure to do so will require CVWB and State Water Resources Control Board (SWRCB) intervention, resulting in heightened costs, delayed implementation, and further harm to impacted residents by prolonging nitrate exposure.

¹ The Modesto/Turlock Management Zone participants' non-profit association.

² The Kings Management Zone participants' non-profit association.



I. The CVWB Should Require Full Transparency of Data Sources and Analysis from Management Zones Throughout the Development and Implementation Processes. The Most Recent Available Data Sources Should be Used.

i. Transparency

The BPA permits MZs to utilize “readily available existing data”³ to identify potentially contaminated wells and support its findings and EAPs/PMZPs but does not provide clear public disclosure obligations with respect to those data. Without disclosure of the actual data that was used and how that data was used, it is not possible for the public to review the plans’ conclusions. Simply listing all of the data sets that were available is not sufficient. This is problematic because for every basin, several well monitoring data sets exist on different spatial scales. For example, some are municipal data, some agency data, and some are data for the Central Valley as a whole. In almost all cases, well monitoring is not done at regular time intervals or systematically to cover a given area. Instead, a given well might be sampled one year in June, and another year in November, and then not for several years in between. Yet, depending on which of these data sets is included in an analysis, and how missing data and outliers are treated, and even which years or months are included or excluded can greatly influence the outcome of an interpolation.⁴ (Section IV below will provide greater detail on this phenomena and findings from our independent supporting research demonstrating that more frequent, seasonal well sampling should be required for accurate interpolations). Therefore, in order to fully understand how an analysis was conducted and what the results are, one needs the data and the process underlying the output maps.⁵

In addition, some of the “readily available existing” datasets are held by municipal or county agencies or other entities and not necessarily available online. While MZs might have relatively easy access to those datasets, the general public does not. For example, over the course of drafting

³ Basin Plan Amendments (hereafter BPA) at 49.

⁴ An interpolation is an established and commonly used statistical strategy to estimate the concentrations of a contaminant throughout an area, based on well monitoring data. It is used by MZs and others to create maps of higher and lower nitrate concentrations.

⁵ For example, the Modesto/Turlock MZ PMZP/EAP relies on the following data sources. The following questions regarding these data sources are not addressed:

- GeoTracker GAMA and DWR Water Data Library: *What parameters were used for downloading the data? Was it done by project, county, station group?;*
- US Geological Survey National Water Information System: *Was data retrieved daily, monthly, yearly, Historical Observations? What water quality parameters were considered? What dates was data retrieved?;*
- GeoTracker Regulated Facilities: *What kind of data was used? Cleanup site data or permitted underground storage tank data?*
- Division of Drinking Water: *Were water analyses reported directly from laboratories simply downloaded or were the supporting database files also utilized?;*
- San Joaquin County and Merced County State Small Water Systems and Domestic/Local Small Water Systems: *We requested water quality data on April 6, 2021 from both Counties. To date, we have not received any answer.*



these public comments, we have encountered situations where we have not received data after several weeks of inquiry, and instead were questioned on what the data would be used for. On February 11, 2021, we requested the Modesto/Turlock Management Zone's EAP dataset compiled and prepared by VWC's consultant. VWC's Executive Director responded that he would first need to consult with the VWC Board of Directors. On April 8, 2021, we renewed our request after having received no answer. On April 13, 2021, one day before these public comments were due and after more than eight weeks, VWC Executive Director informed us that the VWC Board of Directors denied our request to share the background dataset and analysis used by VWC's consultants to create the maps and other data.

To ensure transparency, accountability, and the health of the communities basin management seeks to protect, CVWB must require that all readily available public data sources, compiled data bases, and data products relied upon by MZs be published on their websites. In addition, the CVWB must require MZs to disclose data sources, time periods analyzed, how missing data and outliers were treated, and what types of analysis and parameters were used.

Requiring MZs to do so would not add a substantial burden to MZs as data compilation and analysis are already performed under the current requirements. Data transparency is a cornerstone principle in the science community and environmental justice movement and should be required of all MZs. Current standards in scientific publishing require or strongly recommend publishing data sets, scripts, parameters, and data, and map outputs.

ii. Using the Most Updated Data Sources

The BPA requires identification and consideration of disadvantaged communities. As Sections 2.1.6 of the Modesto/Turlock and Kings MZs' PMZPs correctly explains, households in Disadvantaged Communities (DACs) and Disadvantaged Unincorporated Communities (DUCs) are majority low- and extremely low-income, lack access to safe drinking water supplies and the financial resources to test and treat their residential domestic supply well water.⁶ The risk of contamination is most acute for DUCs because unlike cities and townships, DUCs are governed by under-resourced counties without means to address the underlying infrastructure needs. Given this, the Management Zones must properly identify DACs and DUCs and ensure targeted, effective, and consistent outreach is provided to those communities.

The Modesto/Turlock and Kings MZs rely on the 2013 PolicyLink Report to identify DUCs in the Management Zones. This is a good first step. The PolicyLink Report provides a comprehensive, multi-factor analytical process to identify these communities. However, some of the underlying data of the 2013 Report, derived from the 2000 Census, is outdated. An updated version of the

⁶ Modesto/Turlock and Kings PMZPs, Sections 2.1.6.



PolicyLink Report is available and should be utilized by MZs for more accurate results and to avoid an undercount of these affected areas.⁷

II. The CVWB Must Require MZs to Provide Information on Nitrate Loading In A Timely Manner

The Modesto/Turlock PMPZ provides great detail on land use and agricultural activity. However, critically, it does not detail the amount of nitrate loads a given activity translates to. Information on the timing and location of nitrate loading is a critical piece of the information in describing the current state of the system. While the Salt and Nitrate Management Plan (SNMP) and BPA may defer this requirement for the Management Zone Implementation Plan development process,⁸ this is a minimum requirement only. MZs and the CVWB can and should impose higher standards than those delineated in the SNMP and BPA. Understanding the amount of nitrate loads associated with a given activity at the outset would be a key guidepost in the planning and implementation process and ensure that reduced nitrate loading is achieved and measured.

As put forth in Section I above, data and analysis on nitrate loading must be made publicly available in an organized and timely manner (i.e. up to the past year). It must also be provided for past years and in a spatial format so that it can be lined up with other information, such as the location of vulnerable communities or wells.

III. The CVWB Must Require MZs to Remove EAP/PMZP Provisions That Prevent Tenants from Receiving the Benefits of Sampling and Water Filtration Programs

On October 16, 2019, in Resolution No. 2019-0057, the SWRCB provided specific, targeted revisions to the short-term implementation aspects of the BPA due to concerns raised during the public participation process.⁹ The revisions mandated that MZ's implement a residential water sampling program. Pursuant to the SWRCB mandate, the program must:

- i) "identify[] affected residents" within the MZ; that
- ii) "such sampling shall occur only with the consent of the *current resident*"; and
- iii) "the availability of such sampling shall be included in the Management Zone's outreach

⁷ We acknowledge that the VWC and KWA have since indicated in their responses to our comments that they have contacted PolicyLink directly to obtain the most recent PolicyLink Report. In the meantime, we recommend the PolicyLink's Technical Guide for further instruction. See PolicyLink, et al. "California Unincorporated: Mapping Disadvantaged Communities in the San Joaquin Valley, Technical Guide." *PolicyLink*, 2013, www.policylink.org/sites/default/files/CA%20UNINCORPORATED_TECHNICAL.pdf.

⁸ Salt and Nitrate Management Plan at 4-46. Available at <https://www.cvsalinity.org/docs/committee-document/technical-advisory-docs/conceptual-model-development/3677-snpm-section-4-snpm-strategy/file.html>; BPA at 53-55.

⁹ State Water Resources Control Board, Resolution No. 2019-0057 at 3. Available at <https://www.cvsalinity.org/docs/agendas-notes-and-materials/meeting-materials/4236-state-water-resources-control-board-resolution-no-2019-0057/file.html>



efforts to potentially affected residents.”¹⁰

While the SWRCB’s targeted revisions did not provide a definition for the term “current resident,” Health and Safety Code Sect. 116275(t) of the California Safe Drinking Water Act defines “resident” as “a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days of the year.”¹¹

Although the SWRCB’s targeted revisions only require that a **resident** give consent for water sampling to occur, because the language does not explicitly state that consent from the property owner is *not* required, several jurisdictions, including the Modesto/Turlock and Kings Management Zones, have submitted draft EAPs that force renters to obtain written consent from their landlord prior to any water sampling being conducted.¹² The EAPs similarly require landlord consent prior to the installation of any point-of-use (POU) water filtration systems.

Further, by its plain reading, the term “current resident” is broad and may include the property owner, the renter, or any individual with authorization to reside at the property. Accordingly, to ensure consistency with the BPA’s requirements, the EAPs should remove this condition and provide well testing upon consent of the current resident.

CRLA has extensive experience representing low-income residents in landlord-tenant issues, the same residents who are the most likely to be exposed to nitrate-contaminated water. Requiring landlord consent creates unnecessary obstacles for tenants that will prevent them from accessing the benefits of the sampling, POU, and any future programs, as many low-income residents do not feel comfortable raising concerns about safe drinking water to their landlords, who may retaliate against them for identifying potential habitability issues. It is also not uncommon for residents to not know the identity of the property owner, as third-party companies frequently manage rental properties. Language barriers, illiteracy, or disability may also prevent tenants from contacting their landlord. Consequently, such requirements will result in fewer low-income residents having access to drinking water sampling and, consequently, drinking water treatment.

SWRCB clearly intended to permit the *current resident*, regardless of whether that is the property owner or tenant, to consent to receiving NCP services. To interpret otherwise would exacerbate the problems it intends to address by derailing outreach, data gathering, and implementation efforts, thereby undermining the NCP’s goals to ensure safe drinking water supply, achieve balanced nitrate loading, and restore impaired water bodies.

The CVWB should require that MZs amend their EAPs/PMZPs to eliminate any provision requiring landlord or property owner approval for a tenant to participate in the water sampling and POU filtration program. The CVWB should also publish clarifying guidance that the term “current

¹⁰ BPA at 54 (emphasis added).

¹¹ HSC Sect. 116275(t).

¹² Modesto/Turlock EAP at Sect. 6.3.1; Kings Management Zone EAP at Sect. 5.3.1 (“Permission from the property owner is required if resident is not the owner of the property where the well test is requested.”).



resident” has the same meaning as Health and Safety Code Section 116275(t). The BPA does not distinguish between renters and property owners, and MZs should not be permitted to arbitrarily impose such a distinction.

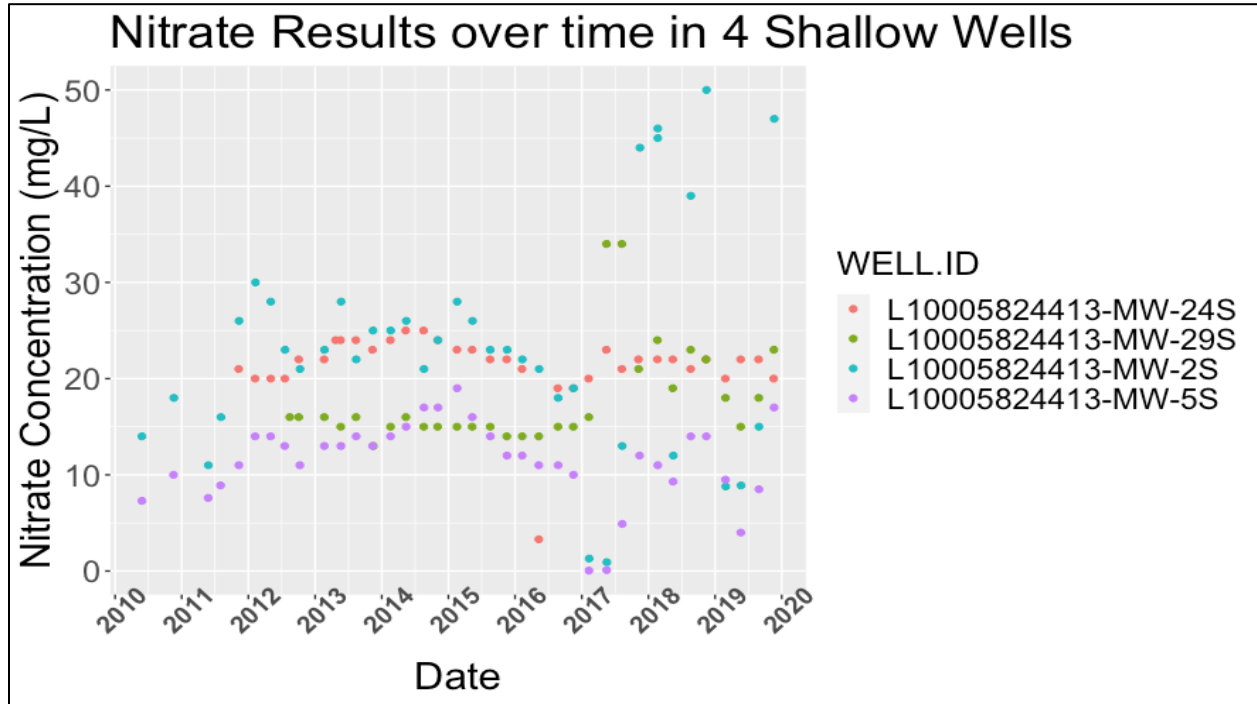
IV. The CVWB Must Require More Frequent Well Testing and Remove Well Sampling Requirements to Ensure Domestic Well Users Are Protected

The BPA is silent as to the frequency with which MZs must conduct well sampling under the SWRCB’s mandated residential well sampling program. Several MZs have submitted draft EAPs/PMZPs requiring only annual well sampling. Annual testing for nitrate contamination is insufficient to evaluate health and safety hazards for residents reliant on domestic wells, as shallow wells are more susceptible to contamination and contamination levels can vary significantly depending on the time of year.¹³

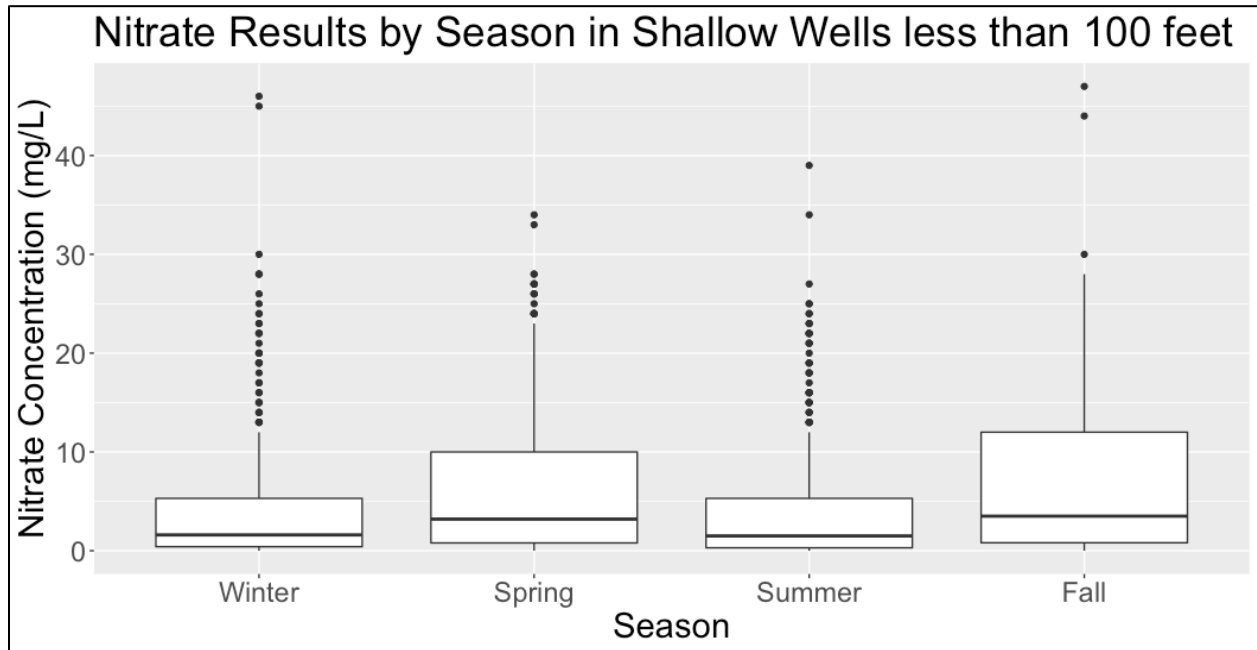
For example, during the summer growing season, more nitrate might be applied to certain crops and can be transported into the subsurface with irrigation water. Depending on the aquifer materials, this nitrate might travel various distances. A once-a-year sample might capture nitrate contamination when it is at a low point, even though it is higher during other times of the year. Many of the domestic wells in the management area are shallow and will benefit from testing more than once per year, especially as repeat testing will be utilized for wells that have high levels of nitrate that border on the MCL. Accordingly, the CVWB should require MZs to conduct well testing for nitrate for the PMZP/EAP seasonally rather than annually. Specifically, the CVWB should require that wells that test at nitrate levels of > 10 mg/L-N be tested at least twice annually. If a well tests under 10 mg/L, the MZ should mail the resident an annual request for re-testing and provide regular updates on the nitrate reduction process in their area.

For example, for the wells in Stanislaus County, we analyzed the nitrate concentrations of shallow wells during each season. We found that great variability is present over time and per season. The figure below illustrates repeated measurements in four shallow wells in the study area between 2010 and 2020. One can see that for well L10005824413-MW-5S, marked with a purple color, some of the time, the nitrate concentrations are at about 7 mg/L (still below the MCL of 10 mg/L), while at other times they are well above 15 mg/L, and clearly hazardous. Accordingly, if a resident’s well happens to be tested at a time with lower concentrations, they may believe their water is safe, when in fact it is hazardous, especially for small children and those of frail health. Frequent monitoring reduces the risk of such inaccuracies.

¹³ “The Importance of Private Well Water Testing.” *The Groundwater Foundation*, 2021. Available at www.groundwater.org/get-informed/basics/testing.html (seasonal testing recommended in shallow environments).



There is also an indication that in the study area, nitrate concentrations tend to be higher in some seasons than in others. For example, we calculated the means and standard deviations of nitrate concentrations from wells in the GAMA database for shallow wells (shallower than 100 feet). The results shown below indicate that nitrate concentrations, on average, tend to be higher in the Spring and Fall than in the Winter and Summer. Very high concentrations (those above the top quartile) may occur in any season.



We found a statistically significant difference between nitrate concentrations for different seasons. For wells less than 100 feet deep ($f(3) = 9.44$, $p < 0.0001$). A Tukey post-hoc test revealed that Spring had on average higher concentrations of nitrate than Winter (1.88 mg/L Nitrate). Fall resulted in higher nitrate concentrations than Winter (2.32 mg/L), Summer resulted in lower concentrations than Spring (1.96 mg/L), and Fall resulted in higher nitrate concentrations than Summer (2.40 mg/L). These statistical test results indicate that differences in seasonal nitrate concentrations are highly likely NOT due to chance.

Recognizing the seasonal variations in nitrate concentrations and a high variability in nitrate concentrations, the CVWB should require more frequent than annually well testing to reduce the risk of inaccurate conclusions.

Further, VWC imposes a requirement that a “[w]ell needs to be operational and used regularly.”¹⁴ Such a restriction is unnecessary and will stall nitrate reduction efforts for the region. MZs should test even rarely used water sources as exposure to nitrates is harmful to public health and may have impacts on other surrounding groundwater sources. More frequent and robust testing also will provide additional data that will be important for mapping trends in the region over time and by season. The CVWB should require that all domestic wells should be available for testing, regardless of whether the well is operational or used regularly. Further, the CVWB should require MZs to allow residents to request co-contaminant testing at no cost.

We acknowledge that the VWC, in response to public comments, has expanded its contaminated wells identification process to include those where nitrate is most likely > 7.5 mg/L-N rather than > 10 mg/L-N¹⁵. The CVWB should require similarly of all MZs.

¹⁴ VWC EAP at 56;

¹⁵ VWC EAP at 41; KWA EAP at ES-4, 26.



V. The CVWB Should Require MZs Provide Water-fill Stations Throughout Rural Areas Within the First 60 Days of EAP Implementation

While the BPAs encourage MZs to “consult with affected residents, affected water systems, representatives of environmental justice organizations and other stakeholders in developing and implementing EAPs and subsequent Management Zone Implementation Plans”,¹⁶ there is no requirement that they do so. Providing jurisdictions with complete discretion in this regard has resulted in MZs prioritizing interim water solutions that vulnerable, high-need residents are unable to access. Although the CVWB requires that “[t]he preparation of Early Action Plans [include] community outreach and engagement to help develop interim drinking water replacement alternatives,”¹⁷ some MZs have elected to prioritize water bottle delivery and POU systems and defer establishing water filling stations during the first year of EAP implementation without meaningful community input.¹⁸

For example, the VWC polled participants on a series of questions, including on a preferred interim solution, during two Zoom community meetings on December 8th and 9th, 2020. On average, each question polled at the first meeting received only two responses,¹⁹ and the second meeting’s poll terminated early due to lack of participation.²⁰ Despite this, VWC did not conduct additional community polling. Furthermore, community members with limited or no internet access or who did not receive notice of the two Zoom meetings were excluded from this critical decision-making process. Clearly, the VWC did not gather meaningful community feedback to develop the EAPs’ interim water replacement solutions, and therefore, water fill stations should be installed to provide an immediate solution until further feedback is obtained.

For MZs that have already prioritized or established water fill stations, they should ensure that they be placed in centralized locations. KWA’s existing filling stations, for example, are too far from communities in the central part of the management zone to be realistically useful for residents of those areas. Additional filling stations should be placed in unincorporated areas southwest of Fresno. Locations such as West Park Elementary, which receives potable water from County Service Area 39 A/B, or a location in Raisin City, would provide rural communities in those areas with accessible options.

MZ should establish a time frame and deadline for establishing additional filling station. KWA’s EAP contains a table demonstrating the process to develop new filling stations but fails to identify

¹⁶ BPA at 52.

¹⁷ “Guidance for Engaging Communities During Development of Early Action Plans - Central Valley Nitrate Control Program” Office of Public Participation, State Water Resources Control Board (2020). Available at https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/whats_new/200626_eap_engagement_guidance.pdf. Accessed 10 April 2021.

¹⁸ See Modesto and Turlock Management Zone EAPs Sections 6.2.1.

¹⁹ <https://www.valleywaterc.org/pdfs/20201208PollingQuestionsResponses.pdf>

²⁰ <https://www.valleywaterc.org/pdfs/20201209PollingQuestionsResponses.pdf>



a deadline by which additional stations will be operational.²¹ It is important to establish a timeframe to ensure that MZs expeditiously begins development of additional filling stations due to their critical role in providing safe interim drinking water.

The BPA requires EAPs include “[s]pecific actions and a schedule of implementation (as short as practicable) to address the *immediate* drinking water needs of those identified within the Management Zone”²² Social distancing requirements significantly hindered community participation during EAP development, leaving communities’ needs relatively unknown at this early EAP implementation phase. The CVWB should require that MZs provide no-cost water filling stations in central locations throughout the rural areas of the MZ within 60 days of EAP implementation. Doing so will establish an immediate safe drinking water option while the MZ continues to work with the local community to determine additional preferred interim replacement options such as bottle delivery or POU installation. This strategy will ensure equitable implementation of water replacement solutions that will protect extremely vulnerable residents.

Furthermore, water filling stations are an important solution for unhoused populations and residents that are unable or unwilling to enter into a contract with a service provider for bottled water delivery. As the EAP is implemented, more community meetings to obtain community-specific input on best solutions will be needed. A successful EAP must provide interim solutions tailored to the needs of affected communities, and the unique needs of affected individuals.

VI. The CVWB Should Enforce the BPA’s call for MZs to Meaningfully Consult with the Community During EAP Implementation.

- i. CVWB Should Require that MZ Boards of Directors and Committees of the Board Include Membership Positions for Affected Community Residents and Environmental Justice Organizations, Vested with Equal Decision-Making Authority

The BPA urges Management Zones to “meaningfully consult with affected residents, affected water systems, representatives of environmental justice organizations and other stakeholders in developing and implementing EAPs and subsequent Management Zone Implementation Plans” (MZIPs).²³ At present, the VWC’s Board of Directors consists of only dischargers and affiliated organizations,²⁴ and the Articles of Incorporation restrict Committees of the Board membership to members of the Board only.²⁵ CVWB should require MZs to expand Board of Directors and

²¹ Kings Management Zone EAP at p. 38.

²² BPA at 52 (emphasis added).

²³ BPA at 52.

²⁴ Modesto/Turlock PMZP at 1-4.

²⁵ Art. VII, Section 1. Committees of the Board, VWC PMZP Attachment A, at 8. (“The Board, by resolution, may create one or more committees of the Board, each consisting of two or more directors and *no persons who are not directors*, to serve at the pleasure of the Board. Appointments to committees of the Board shall be made by the



Committees of the Board membership to include affected low-income Management Zone residents and representatives from stakeholders groups, such as environmental justice organizations.

Further, the VWCs' Articles of Incorporation are inconsistent with information previously presented at VWC public meetings. VWC's presentation materials describe its governance structure with three subbasin committees included. The materials state that the committees' roles include 'providing budgets and localized input on plans to Board of Directors; facilitating local outreach and water delivery activities; and *that the committee will include environmental justice organizations and other stake holders on committee.*'²⁶ However, this contradicts the aforementioned Articles of Incorporation provision restricting Committees of the Board membership to members of the Board only.²⁷ CVWB should require the VWC to amend its Articles of Incorporation consistent with its public messaging campaign throughout the EAP development process.

ii. MZs Should Rely on Community Leaders and Partnerships

MZs should work closely with community-based organizations, municipal advisory councils, houses of worship, unions, civic organizations, local government and other existing community groups to help facilitate outreach and engagement to impacted residents.

Using trusted messengers, such as promotoras, and known community leaders to provide outreach information will be important for gaining trust and interest in the program. This is especially true for immigrant resident communities. Messaging and materials should consistently make very clear that the MZ is not a government agency, that all personal identifiable information will be kept confidential and will not be shared with the government.

iii. CVWB Should Require Outreach Materials Be Understandable, Culturally and Linguistically Appropriate

Informational materials will likely be a resident's first time learning about nitrates and their health impacts. Therefore, it is critical that materials include clear language and detailed visuals that will engage the target audience and communicate the health risks of nitrate exposure to adults and children.

To effectively communicate the MZ's message, materials should be presented in a language understandable to those at all levels of educational achievement. Use plain language and avoid

Board. Any such committee, to the extent provided in the Board resolution, shall have all the authority of the Board . . .").

²⁶ Modesto/Turlock PMZP Attachments at p. 91.

²⁷ Art. VII, Section 1. Committees of the Board. The Board, by resolution, may create one or more committees of the Board, each consisting of two or more directors and no persons who are not directors, to serve at the pleasure of the Board. Appointments to committees of the Board shall be made by the Board. Any such committee, to the extent provided in the Board resolution, shall have all the authority of the Board . . . " pg. 8 of MTMZ attachments.



acronyms and technical jargon. Communicating to communities in the language they are most comfortable speaking and with words within their vocabulary promotes transparency and reduces confusion about VWC's purpose. Additionally, materials must be culturally and linguistically appropriate. Community-based organizations, like CRLA, are available for consultation on how to best communicate information to their respective communities and can provide translation assistance for materials.

Language access at all levels is extremely important in throughout the Central Valley given that the minority communities are more likely to be affected by contaminated water. The MZ's contact information should be clearly apparent and easy to locate on the materials and staff answering public calls should be bilingual or have access to interpreters. A language access plan for staff to know what steps to take to get interpretation is necessary to ensure MZ information is accessible. CRLA can be available for consultation on creating language access plans and connecting MZs with interpretation experts.

Finally, outreach materials should also include information about other potential nitrate sources such as animal pens and waste, compost piles, septic system operation and maintenance, cesspools, leaky sewer pipes, or lawn and garden fertilizer use, and provide recommended necessary steps residents can take to address these around the home.

VII. The CVWB Should Add Compliance and Enforcement Mechanisms to Ensure Management Zone Accountability

At present, the BPAs provide MZs broad discretion in terms of crafting and implementing their NCP plans with limited oversight requirements. As stated above, the BPAs merely encourage, but do not require, MZs to “consult with affected residents, affected water systems, representatives of environmental justice organizations and other stakeholders in developing and implementing EAPs and subsequent Management Zone Implementation Plans” (MZIPs).²⁸ Once completed, the EAPs are only required to be evaluated once every two years by the CVWB.²⁹

The BPAs also make MZ participants responsible for securing and producing the necessary capital for plan implementation, either from MZ participants themselves, and/or from local, state and federal funds.³⁰ Unless checked by regular oversight and subject to clear compliance mechanisms, the combination of discretionary authority, optional public involvement, and financial obligation will lead to minimal service provision and ineffective interventions. This will delay implementation, contribute to heightened costs to the State, and subject residents to prolonged nitrate exposure.

To avoid this, the CVWB should:

²⁸ BPA at 52.

²⁹ BPA at 57; SWRCB Resolution No. 2019-0057 at 4.

³⁰ BPA at 52, 54.



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.



SANTA CLARA UNIVERSITY

**Environmental Justice
and the Common Good**

1. Review EAPs annually;
2. Establish a procedure for residents to submit confidential complaints, in multiple languages;
3. Designate a compliance officer to respond promptly to complaints and undertake corrective action;
4. Designate a compliance committee for each MZ led by affected community residents;
5. Conduct regular training and education for MZ participants on NCP implementation and on the local history and socio-economic context of communities within the MZ;
6. Require MZs conduct internal audits and publish progress reports on a quarterly basis detailing outreach efforts and outcomes, program implementation progress, an accounting of resident complaints received and corrective actions taken;
7. Enforce standards through publicly available disciplinary guidelines.

The CVWB should also require that all program reporting and management activities be tracked and made public. Public stakeholder involvement should be mandatory, not merely encouraged. Data collected throughout implementation should include socio-economic demographics so as to monitor disparities and gaps in service and outreach. To do so would further the goals of the SWRCB's Racial Equity Initiative to ensure the NCP is serving people of all races equitably.³¹

Sincerely,

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³¹ "Racial Equity | California State Water Resources Control Board." *California State Water Resources Control Board*, 12 Feb. 2020. Available at www.waterboards.ca.gov/racial_equity.