August 2, 2021

E. Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Submitted via email to Board Clerk Townsend

Re: Draft Racial Equity Resolution

Dear Chair Esquivel and Board Members:

The signatories of this letter, who work in partnership with vulnerable communities in California, commend the State Water Resources Control Board (State Board) for developing a draft resolution (the Resolution) boldly condemning racism, xenophobia, and racial injustice and for its commitment to embrace racial equity, diversity, inclusion, access, and anti-racism.

We are proud to have been leaders in the drive for California to recognize and implement the Human Right to Water, and the State Board should justifiably be proud of its efforts to date. We note that the Water Board has existing broad authority beyond Water Code 106.3 to protect communities which, if equitably applied, could go far to address the heavy environmental costs borne disproportionately by Black, Indigenous, and people of color (BIPOC) and immigrant communities around the state. Fulfilling this obligation requires a dismantling of institutionalized racism and processes under which communities that are predominantly BIPOC are left out of policy development, decision making, and the benefits of state funding and actions. We see this document as the beginning of the necessary undoing of an exclusionary structure that has roots in white supremacy so that California can lead the nation in ensuring that all people are served by their government, and we welcome the opportunity to expand the Water Board’s commitment to diversity, equity and inclusion.

Internal Efforts Within the State and Regional Boards
While we are not in a position to make specific comments on internal racial justice issues for staff, we stand in support of BIPOC SWRCB staff who have raised racial justice issues and encourage the SWRCB to address them immediately. Additionally, we do agree that California will be best served if both the State Board and its staff reflect the diversity of its communities, especially in leadership positions. This can only be achieved if all staff, regardless of race, gender, or origin, feel valued in their public service, secure in the workplace, and enjoy equitable opportunities to advance their careers. We fully support internal activities such as interacting with the Government Alliance on Race and Equity and CalEPA’s racial equity team, creating a racial equity steering committee and working group, and internal listening sessions (Findings #15-19 and #21, pages 3-4) to inform how to achieve these goals. We especially affirm the need to ensure that BIPOC and immigrant staff’s voiced experiences and recommendations are prioritized when charting a path forward, especially in developing a “more holistic” workforce diversity plan (Findings #17, page 4).

**External Efforts Within the State and Regional Boards**

As advocates for water equity, we offer our comments on how the draft Resolution can better align decision making and policies with principles of racial justice. While the Resolution includes groundbreaking language and commitments, funding and actions must be aligned to achieve racial equity. **The recommendations outlined in our letter reflect the following priorities:**

- Policies are only as protective as the ability and willingness to enforce them.
- Community capacity building requires long-term investments and allocation of funding for essential staff and program development.
- Delayed implementation and inadequate enforcement of water quality regulations and standards perpetuates the very inequities this resolution is intended to address.

Our organizations also support the recommendations provided by California Coastkeeper Alliance and San Francisco Baykeeper, particularly regarding tribal water rights and access to the Human Right to Water for unhoused residents.

**Findings (Under “Whereas”)**

**Finding #6 (Page 2):** The Water Board’s Anti-Degradation Policy (Resolution 68-16) is a powerful but underutilized tool for protecting water quality in low-income communities of color. For example, our efforts to stem nitrate pollution in the Central Valley clearly call for application of the policy, in particular the protection of high-quality waters. Instead, the Regional Board’s interpretation - in which the State Board concurred in numerous petitions - is that the only water quality data point that matters is the water quality objective, or rather the point at which the water body becomes polluted. While we’ve been able to address some of these issues through the CV-Salt Basin Plan Amendments (2018, amended 2021), that agreement took more than a decade to reach, and continues to allow pollution of drinking water sources for decades, albeit with mitigation requirements and a commitment to future restoration.

**Recommended language**

Contaminated water sources disproportionately burden low-income communities and Black, Indigenous, and people of color communities throughout California, further exacerbating persistent inequities, which can be seen in data collected by the Human Right to Water Framework and Data Tool 1.0 (released January 2021). **The failure of the**
State and Regional Water Boards to effectively administer the State’s Anti-Degradation Policy (68-16) has contributed to this worsening crisis.

Proposed New Finding 7+: The transfer of the Drinking Water Program triggered a significant evolution in the Water Board’s consideration of and response to issues of racial justice and equity. We think it appropriate to include a reference to that action with a new finding between current findings 7 and 8.

Recommended new finding
In 2014, administration of the Drinking Water Program was transferred from the Department of Public Health to the State Water Board by the Legislature with the stated goal of ensuring that “the strengths of the DWP [Drinking Water Program] and the recent positive progress are preserved, while additional steps are taken to improve the program, making it more efficient, streamlined, and better able to provide effective service to communities that need access to its programs and funding.”

Finding #23 (Pages 5-6) We appreciate the acknowledgement of the historic and systemic racism that has created the inequitable system we have today that results in more than a million Californians lacking access to safe and affordable drinking water and sanitation. We would like to see a similar acknowledgement of the Board’s role in the loss of beneficial uses for tribes and subsistence fishers.

New finding 23f
“The State Water Board recognizes its role in limiting access to beneficial uses of water by Black, Indigenous and people of color, particularly in assuring access to safe and affordable drinking water, timely regulation of water contaminants known to cause harm, and limiting the ability of communities to practice cultural or subsistence fishing.

Finding #24 (Page 6): We strongly support the language in this finding calling out the systemic racism of many of the Board’s policies and programs. However, the language indicates that the policies, programs and plans that consider or address racial inequity don’t exist. We disagree with that statement; the Board has significant authority to redress many of the injustices named in this resolution now simply by changing the application of existing programs, policies and regulations. In our experience, policy development and implementation perpetuate institutional racism in many ways, including:

- Processes that are complex, bureaucratic and developed to meet the schedules and needs of the regulator and regulated entities rather than the communities they’re intended to protect;
- Regulations that allow long periods for implementation while communities continue to disproportionately bear the cost of pollution or inaction;
- Policies, such as the state anti-degradation policy that are noted more for their absence in regulatory oversight than their presence;
- Analyses that quantify economic costs to regulators and fail to incorporate the economic and social costs to communities of lost access to safe and affordable drinking water, recreation and cultural and subsistence fishing; and
- Authorities, such as the Public Trust doctrine, that could be used to address racial equity issues, such as in-stream flow needs for tribal beneficial uses, that are not used even in emergency situations.
While we applaud this policy and the Board’s commitment to dismantling its infrastructure of institutional racism, the Board currently has significant authority to act in a racially just manner by implementing existing policies in a racially just and equitable fashion.

**Recommended language**

24. On a community scale, race is strongly correlated with more severe pollution burdens. However, none of the Water Boards’ policies, programs, or plans specifically consider or address racial inequities. As a government agency with a role in ensuring access to clean, safe, and affordable water for all Californians, the State Water Board recognizes the need to acknowledge racial inequity and to take *early* action to address racial inequity within the agency and as part of the programs the Water Boards’ carry out for the communities we serve by *incorporating the consideration of racial justice into the development and revision of budgets, programs, policies studies and regulations.*

**Resolved Language**

We appreciate the significant commitment made by the Board once this resolution is approved. We’re of course interested in the specific commitments to process and outcome, but we’d also like a commitment to immediately increase and focus staff and Board consideration on addressing disparate impacts to BIPOC and immigrant communities in plans, policies and programs that are scheduled for review and/or adoption while a longer term plan is under development.

**Resolutions #2 & #3 (pages 6, 7):** We appreciate the Board’s commitment to centering its work and decision-making on BIPOC and immigrant communities, but it would be helpful to provide additional detail about how that would be accomplished. It would also be useful to understand how the Regional Boards will do the same given their proximity to local water related issues impacting BIPOC and immigrant communities.

**Recommended language**

2. Commits to *acting immediately* to making racial equity, diversity, inclusion, and environmental justice central to our work as we implement our mission so that the access the State Water Board creates, and outcomes it influences, are not determined by a person’s race and the benefits are shared equitably by all people.

3. Commits to *acting immediately to centering* its work and decision-making on Black, Indigenous, and people of color who are disproportionately represented in the most vulnerable communities and in unsheltered populations, while ensuring the full benefits of the Water Boards’ programs for all people.

**Resolution #4 (page 7):** Continuing delays in adopting and implementing regulations to protect drinking water means that BIPOC and immigrant communities are exposed to dangerous contaminants far longer than necessary. Though we applaud the robust scientific basis California employs in establishing drinking water standards, it is fundamentally unjust to take over a decade to regulate contaminants. In
addition, the Board continues to minimize the impact of secondary contaminants on public health and their disproportionate impact on BIPOC and immigrant communities.

In summary, as part of re-affirming Human Right to Water in this resolution, we urge the Board to commit to the full, equitable and expeditious development of regulations intended to protect water quality and ensure the Human Right to Water.

**Recommended language**

4. Reaffirms our commitment to upholding California’s human right to water law, upholding the State Water Board’s human right to water resolution, and demonstrating that every human being in California, including Black, Indigenous, and people of color, deserves safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes. *This commitment extends to funding, regulations and access to technical assistance and includes the development and implementation of drinking water quality standards.*

**Resolution #5 (page 7):** Resolution #5 reaffirms the Water Board’s commitment to such issues as contaminated surface water. While we do not question the Board’s good intentions, this is an area that has not only fallen short in terms of complying with the federal Clean Water Act but has overtly skirted even recognition of impacts on BIPOC and immigrant communities.¹

We fully recognize the challenges faced by the Regional Boards. California’s legacy pollution issues, such as mercury from historical mining activity, are complex and will take many decades or more to remediate. However, the clean up goals for impaired waterways - however distantly attainable or seemingly unachievable based on current resources - must reflect the needs of all Californians. Traditionally, however, the needs of BIPOC and immigrant communities, such as subsistence fishing out of economic need and/or cultural tradition, and other cultural connections with water are not considered. For this reason, tribal and environmental justice advocates worked for 13 years to win State Board recognition (2016) of non-tribal subsistence fishing (SUB), tribal subsistence fishing (TSUB), and tribal tradition and culture (CUL).

In our research for this letter, we investigated the state of the adoption and implementation of these beneficial uses by the nine regional water boards and found that the 8 out of 9 Boards are taking steps to adopt at least tribal beneficial uses. While we are gratified by this progress, two problems have emerged. The first is that progress has once again been slow, with Regional Boards often solely focused on adopting the definitions, but not actively working on water body designations. The second is that SUB, which incorporates largely low-income BIPOC and immigrant populations, has been neglected, largely because Regional Boards lack the capacity to identify impacted communities and conduct the necessary outreach to assess their needs. This is a clear example of a policy that addresses the needs of BIPOC and immigrant communities but due to lack of resources is not being implemented in an equitable and expeditious manner.

¹ In what a 2013 report by Clean Water Fund called a broken system, the TMDL (total maximum daily load) process or other programs to address surface waters is expensive, inefficient, and showing lackluster success in addressing legacy water pollution and keeping up with the impacts of emerging contaminants. A. Ventura, M. Gordon, Cleaning Up California’s Polluted Waters: An Action Plan to Improve the TMDL process, CWF, 2013. Hard copy available upon request.
**Recommended language**

5. Reaffirms our commitment to ensuring cleanup of contaminated soil, soil vapor and groundwater; control of wastes discharged to land and surface water; and restoration of impaired surface waters to protect public health and environmental quality in all communities, particularly communities of color disproportionately burdened by environmental pollution.

   a. *As part of this commitment, the State Board encourages the Regional Water Boards to quickly adopt the definitions of SUB, T-SUB, and CUL into their basin plans as a non-regulatory action; and commits to working with the Regional Boards to build the community capacity needed to ensure their involvement in the process to develop local data, designate appropriate waterways and develop actionable plans to protect and restore this beneficial use to identify the resources needed build the capacity of local stakeholders in order to on the robust data collection needed to designate appropriate waterways that historically and/or currently support these beneficial uses*.

   b. Additionally, the Board commits to seek ways to build upon the experience of regional tribal coordinators and embed expertise and outreach capacity for Regional Boards to work with other disadvantaged and BIPOC and immigrant communities by which Board staff can make connections with regional organizations on issues most affecting them.

**Resolution #6 (Page 7):** Resolution #6 commits to expanding implementation of the SWB’s Climate Change Resolution to address the effects of sea-level rise and extreme hydrologic conditions, like Drought. We appreciate the SWB’s efforts in prioritizing Drought as a recurring informational item in Board meetings as well as recognizing the need for proactive drought planning and emergency response coordination. Climate change, extreme drought conditions, water quality, and access to water are all interconnected and must be considered in the sustainable management of groundwater. It is hard to overemphasize how vital equitable and sustainable groundwater management will be in the face of worsening drought conditions, caused by Climate Change. We would like to highlight language in the Climate Change resolution that calls for identifying the responsibilities and functions of the SWB as it relates to the Sustainable Groundwater Management Act (SGMA). Improving the transparency of the Board’s role in local GSP implementation is critical in supporting the human right to water for communities who are disproportionately impacted by drought, especially since drought affects both water quality and water availability. Therefore we urge the Board to prioritize access to safe and affordable drinking water, flooding, and access to subsistence fishing.

**Recommended language**

6. Commits to expanding implementation of the State Water Board’s Climate Change Resolution to address the *disproportionate* effects of sea-level rise and extreme hydrologic conditions, from drought and extreme heat to flooding, on Black, Indigenous, and people of color communities *including access to safe clean and affordable drinking water, flooding and access to subsistence fishing and particularly through SGMA when feasible*.

**Resolution #9 (Page 7):** We appreciate the recounting of the barriers that BIPOC and immigrant communities experience in accessing information, engaging, and providing input on State Water Board programs and policies. Another element of equitable outreach and engagement is disseminating information in a format and
manner that is accessible to all levels of expertise and knowledge. For example, while we commend the Board for the 2020 public listening sessions, we note the difficulty of some parts of the population to participate, including older and low income Californians with limited technical access and lack of familiarity with the Board’s registration process for meetings and public comment. We also believe that this language could be improved by identifying how this improved capacity will be reflected in decision-making.

Additionally, we would like to reshare Leadership Counsel’s guide for equitable public participation in local and state government public meetings.

**Recommended language**

9. Directs staff to develop strategies for effectively reaching and engaging with Black, Indigenous, and people of color communities; involving Tribes, stakeholders, and other interested parties in our decision-making processes; providing accessible, open and transparent opportunities for people to participate in our public meetings, hearings, and workshops; providing plain language explanations and analyses of relevant information, improving our communications by addressing barriers to public participation, including language, digital, and time-of-day access; and meeting people in their communities and spaces to seek out their perspectives. Directs the staff to recommend to the Board a process for incorporating community feedback into decision-making at both the staff and Board level and for Regional Boards as well as the State Water board.

**Resolution #10:** We think the development of a Racial Equity Action Plan is an appropriate and much-needed action. While we’re sure the Board intends to be transparent in soliciting input and feedback in the development of the plan, it could be more clearly stated. We also recommend that the Board direct the Plan to include a funding element. We support the suggestion in the California Coastkeeper et.al. letter to set aside a set percentage of permit revenue to fund such efforts, but will leave it to the Board to determine the best funding solution. Finally, the Plan should specify roles and responsibilities for both the State and Regional Boards.

**Recommended language (additional bullets for #10)**

f. Staff shall solicit input and feedback into the development of the Plan in a transparent and open manner that includes solicitation and incorporation of feedback from impacted BIPOC and immigrant communities

g. The Plan shall identify the level of funding needed for implementation, as well as one or more sources of potential funding, at least one of which can be approved solely through Board action.

h. The Plan shall identify goals, actions and outcomes for both the State Board and the Regional Boards.

**New Resolution (between #s 10 & 11):** While we appreciate the time and effort the Board is committing to the development of a Racial Equity Action Plan, the State Board and staff will make numerous decisions over the next year that need to incorporate considerations of racial equity. We strongly suggest that this resolution include a commitment to do just that.

**Recommended language (new bullet):**
As an interim action, directs staff to identify key opportunities for incorporating racial equity considerations into processes and decisions that take place in the interim period before plan adoption, including but not limited to, consideration of planned actions; identification of programs, plans, regulations, or decisions that disproportionately affect BIPOC and immigrant communities and that have been subject to long delays; and Regional Board decisions subject to review and approval by the State Board.

Resolution #11 (page 8) While we understand that there is a level of autonomy between the State and Regional Boards, the State Board does have the authority to require the Regional Boards to take action. (See, e.g., Water Code § 13320.) Given the number of key decisions made by the Regional Boards that impact vulnerable communities, we strongly feel that the involvement of the Regional Boards in this effort is key to its eventual success.

Recommended language
Encourages the nine Regional Water Boards to adopt this resolution, or a similar resolution that condemns racism, xenophobia, and racial injustice; affirms a commitment to equity, diversity, inclusion and anti-racism; and otherwise prioritizes this important work. The Board shall require this action either in whole or in part using its existing authorities.

Conclusion
We appreciate the opportunity to comment on this resolution, and look forward to working with you to engage BIPOC and immigrant communities in the development of the proposed Racial Equity Action Plan.

Sincerely,

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