

CLEAN WATER ACCOUNTABILITY

A STRATEGIC PLAN TO IMPROVE CALIFORNIA'S WATER BOARDS



California has emerged as a world leader on climate change, but the state's water governance is falling behind, putting our water quality, drinking water, and water supplies at risk. Persistent governance issues—including lack of resources, inadequate enforcement, delayed policies and permits, unusable data, and outdated technologies—prevent the California Water Boards from fulfilling their mission “to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.” Nine Regional Water Boards support this mission as “semi-autonomous” bodies divided by regional watersheds: North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Lahontan, Colorado River Basin, Santa Ana, and San Diego.

Despite the overarching mission of the Water Boards to protect California's water, the most recent data provided in the 2018 Integrated Report found that nearly 95 percent of fresh waterbodies assessed across the state were too polluted for drinking, fishing, or swimming. While pollution continues to flow into and through our waters, polluters are rarely held accountable. Historically, Regional Water Board enforcement has been minimal and focused almost exclusively on administrative and reporting violations, failing to address widespread non-compliance. For example, of 3,316 stormwater violations identified by the State Water Board in 2018 and 2019, only 16 received penalty actions from the Regional Water Boards. Similarly, the Water Boards have neither quantified nor enforced flow levels that protect endangered species in many of California's streams and rivers.

Underserved communities that are already vulnerable to environmental, racial, and economic injustices bear the brunt of these impacts. Rivers, creeks, and bays that are polluted with trash, toxic runoff, and heavy metals prevent underserved communities from using and enjoying local waters or cause serious health impacts to children and families who swim or fish. As California faces the threats of weakened federal policies and federal funding cuts that impact our state's ability to protect its water resources, we must look at the ways our state can dramatically step up its own efforts to ensure that every Californian has access to swimmable, drinkable, and fishable waters.

The following report outlines key recommendations the state can take to improve the overall governance of the California Water Boards – and ultimately achieve the Water Boards’ mission to protect and restore the quality of our waterways and ensure clean, accessible water for every California community. The report’s recommendations were derived based on comments, feedback and suggestions made during a series of comprehensive meetings and interviews with the California Environmental Protection Agency (CalEPA); State Water Board Members; State Water Board’s Executive Staff; the Office of Enforcement; the Office of Information Management and Analysis; the North Coast, Central Coast, Central Valley, Los Angeles, Santa Ana, and San Diego Regional Water Boards; the Clean Water Accountability Blue Ribbon Panel; environmental and environmental justice non-governmental organization partners; and the California Waterkeepers.

The following recommendations largely pertain to improving Board Member appointments, enforcing water quality and water rights violations, ensuring penalty fees collected benefit the watershed harmed by pollution, enhancing the Water Boards’ Annual Performance Report, improving public participation and community capacity building, modernizing technology to improve regulatory efficiency, maximizing limited resources, improving coordination between State and Regional Water Boards, setting forward-looking policy goals, and implementing timely clean water policies. We should note that over the course of this report’s development we have witnessed progress towards implementing some of the enclosed recommendations, and we applaud CalEPA and the State Water Board’s Executive Staff for its leadership on, and willingness to consider, governance reform.

TOP 10 RECOMMENDATIONS

1. The Legislature should require each Regional Water Board Chair to be a full-time salaried position.
2. The Legislature should classify an existing State and Regional Water Board Member seat to represent environmental justice communities.
3. The Governor and Legislature should support requiring communications between an interested person and the Governor's Office regarding Water Board appointments to be an *ex parte* communication requiring disclosure.
4. The Governor should provide additional resources to the Water Boards to ensure all permits and policies contain clear and enforceable requirements by requiring the Office of Enforcement to consult with program staff and Board Members on state- and region-wide permits.
5. The Water Boards should create a Watershed Recovery Subaccount within the Cleanup and Abatement Account to proportionally distribute 50% of enforcement fines back to the Regional Water Boards to fund approved Supplemental Environmental Projects.
6. The Legislature should create one nonvoting, ex-officio Regional Water Board Member that is represented by the State Water Board Member Regional Liaison.
7. The State Water Board should include an additional 5% fee on permit applications and annual fees to create a community capacity fund to assist environmental justice communities in participating in Water Board outreach and regulatory processes.
8. The Governor should provide additional resources to hire two statewide environmental justice and tribal coordinators to proactively conduct outreach to environmental justice and tribal communities.
9. The State Water Board should use and expand available geospatial tools, such as CalEnviro Screen, to identify and prioritize enforcement cases in environmental justice and underserved communities.
10. The Governor, Legislature, and/or the State Water Board should set a statewide objective with interim milestones to achieve by 2050 the national goal of eliminating all state water impairments.

Goal 1

Improve Water Board Member Appointments

RECOMMENDATION 1-1: The Legislature should require each Regional Water Board Chair to be a full-time salaried position.

Serving on the Regional Water Board is a significant undertaking and time commitment, particularly without adequate compensation to support a qualified candidate or member for the time and energy devoted to this position. Currently, Regional Water Board members are compensated with a stipend of \$250 each day that the member is engaged in the performance of official duties, and is capped at a total of nearly \$6,000 per year per Regional Water Board member, with the total compensation between all 63 Regional Water Board seats capped at \$378,250 each year. This does not account for the significant time commitment these Boards require to review documents prior to adoption hearings, receive necessary briefings, and otherwise be prepared to make an informed decision, and does not adequately compensate those who must take away time from full-time work or family life to serve on the Board. The lack of compensation and near-volunteer board status limits participation by individual Regional Water Board members, particularly those that are employed and have families. Arguably, having a fulltime Regional Water Board Chair would also save the state money. A full-time chair would be briefed regularly by staff, which would dramatically reduce the amount of staff time spent providing tedious background and context for projects during hearings.

The Water Boards should pursue and implement certain structural reforms to help overcome the financial burden of membership and ensure that the Water Boards meaningfully consider and represent all communities. Efforts to increase diversity have focused on increasing the per diem, which historically has prevented candidates unable to afford time off from work to serve. The State Water Board, or appropriate governmental entity, should undertake an analysis of the effectiveness of per diem increases, such as the significant increase in 2016, in terms of improving access for working individuals. More importantly, the Legislature should require a salaried Chair position for each region, as is currently the structure of the Air Resources Control Board. Such an arrangement would help ensure that Regional Water Board Chairs have adequate resources to do their job in an informed and engaged manner.

PROPOSED LEGISLATIVE FIX

Section 13205 of the Water Code is amended, to read:

The Chair of each Regional Water Board shall be the only full-time member. The annual salary of the chair members of the boards is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each ~~non-chair~~ member of a regional board shall receive two hundred fifty dollars (\$250) for each day during which that member is engaged in the performance of official duties. The performance of official duties includes, but is not limited to, reviewing agenda materials for no more than one day in preparation for each regional board meeting. ~~The total compensation received by members of all of the regional boards shall not exceed, in any one fiscal year, the sum of three hundred seventy-eight thousand two hundred fifty dollars (\$378,250).~~ A member may decline compensation. In addition to the compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.

RECOMMENDATION 1-2: The Legislature should classify an existing State and Regional Water Board Member seat to represent environmental justice communities.

The Legislature should create environmental justice seats at the State and Regional Water Boards similar to what was done at the California Coastal Commission (Commission). In 2016, the Governor signed AB 2616 (Burke), which amended the Coastal Act and gives the Commission new authority to specifically consider environmental justice when making permit decisions. This legislation also cross-references existing non-discrimination and civil rights law in the government code and requires the Governor to appoint an environmental justice Commissioner to the Commission.

The Legislature should classify one existing State and Regional Water Board Member seat to represent environmental justice communities. Creating environmental justice members would give a voice to the environmental justice community and ensure that underserved communities that have historically bore the brunt of pollution have representation on the Water Boards. AB 2616 encouraged the Commission to integrate environmental justice more formally into all its activities, and it could serve as a useful model for the Water Boards. The recommendation is also consistent with the additional environmental justice representatives to the California Air Resources Control Board.

PROPOSED LEGISLATIVE FIX

Section 175 (a) of the Water Code is amended, to read:

There is in the California Environmental Protection Agency the State Water Resources Control Board consisting of five members appointed by the Governor. One of the members appointed shall be an attorney admitted to practice law in this state who is qualified in the fields of water supply and water rights, one shall be a registered civil engineer under the laws of this state who is qualified in the fields of water supply and water rights, one shall be a registered professional engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, and one shall be qualified in the field of water quality. One of the above-appointed persons, in addition to having the specified qualifications, shall be qualified in the field of water supply and water quality relating to irrigated agriculture. **One of the above-appointed persons, in addition to having the specified qualifications, shall be qualified in the field of environmental justice.** One member shall not be required to have specialized experience.

Section 13201 (c) of the Water Code is amended, to read:

At least one member shall be appointed as a public member who is not required to meet the criteria established pursuant to subdivision (b). **At least one member shall be appointed as an environmental justice member who is not required to meet the criteria established pursuant to subdivision (b).**

RECOMMENDATION 1-3: The Governor and Legislature should support requiring communications between an interested person and the Governor’s Office regarding Water Board appointments to be an *ex parte* communication requiring disclosure.

To improve transparency around State and Regional Water Board Member appointments, the Governor’s Office should support legislation that would require the disclosure of any lobbying by the public for a particular person to be appointed to a Water Board. An *ex parte* communication is traditionally a communication to a board member about a pending board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. In legislative-type proceedings, *ex parte* communications are allowed. In judicial-type proceedings, *ex parte* communications are prohibited. In hybrid proceedings, such as the issuance of certain general permits, *ex parte* communications are generally allowed, but communications from certain interested persons must be disclosed. We recommend the Governor support the hybrid approach for communications regarding the appointment of a Water Board Member.

Rules regarding *ex parte* communications have their roots in constitutional principles of due process and fundamental fairness. *Ex parte* communications rules also serve an important function in providing transparency. *Ex parte* communications may contribute to public cynicism that decisions are based more on special access and influence than on the merits of whether someone is qualified to be an appointed Water Board Member. Therefore, we recommend that the Governor's Office support legislation that would define a communication between an interested person and the Governor's Office to be an *ex parte* communication that must be disclosed.

PROPOSED LEGISLATIVE FIX

Section 175.25 is added to the Water Code, to read:

- (1) All *ex parte* communications regarding appointments to the Water Board shall be prohibited, unless performed in accordance with this section.
- (2) "*Ex parte* communication" for the purposes of this section is defined as an oral or written communication with one or more members of the Administration and an interested person concerning matters of State or Regional Water Board Member appointments.
- (3) "Interested person" for the purposes of this section is defined as:
 - (a) Any person who will be required to enroll or file authorization to discharge pursuant to the action or with a financial interest in a matter at issue before a board, or that person's agents or employees, including persons receiving consideration to represent that person; and/or
 - (b) A representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a board member on a matter before the board.
- (4) For the purposes of this section, and except as limited by existing law
 - (a) All *ex parte* communications shall be reported by the interested person, regardless of whether the communication was initiated by the interested person.
 - (b) A notice of *ex parte* communication shall be filed with the board within three working days of the communication. The notice may address multiple *ex parte* communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include all of the following information:
 - (i) The date, time, and location of the communication, and whether it was oral, written, or both.
 - (ii) The identities of each board member involved, the person initiating the communication, and any persons present during the communication.
 - (iii) A description of the interested person's communication and the content of this communication. A copy of any written, audiovisual, or other material used for or during the communication shall be attached to this description.
- (5) If an interested person fails to provide notice, a board may use the remedies available pursuant to Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code), including the issuance of an enforcement order, or sanctions pursuant to Article 12 (commencing with Section 11455.10) of Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code.

RECOMMENDATION 1-4: The Legislature should strengthen the “pay to play” conflict law to prevent Board Members who received a financial contribution within the previous five years from making a decision and/or using their position to influence a decision.

The due process protections in the Administrative Adjudication Bill of Rights require impartial decisionmakers who are free from bias and prejudice.¹ “The contention that a fair hearing requires a neutral and unbiased decision maker is a fundamental component of a fair adjudication.”²

California’s Government Code already imposes contribution limitation, disclosure, and disqualification requirements for members of appointed boards and commissions who make decisions involving licenses, permits, or other actions – yet these limitations and disclosure requirements are severely limited. Under Section 84308 of the Government Code, an “officer” is defined as an elected or appointed member of a board or commission or an agency head.³ An officer who receives a contribution exceeding \$250 from a party or participant prior to rendering a decision in a proceeding involving a license, permit, or other entitlement for use must disclose that fact on the record of the proceeding only if that contribution was made within 12 months prior to that decision.⁴ Currently the law states an officer to not make, participate in making, or in any way attempt to use his or her official position to influence a decision concerning a permit or other action if the officer has willfully or knowingly received a contribution during this 12 month period from a party or his or her agent; or a participant or his or her agent, if the officer knows or has reason to know that the participant has a “financial interest” in the decision.⁵ But decisionmakers do not forget who contributed to them after only 12 months. Certainly, a donor that contributes to a decisionmaker would expect that person to be biased in their favor only 13 months following the donation. To remove ongoing instances of bias and impartial decision-making across the Water Boards, California should update its conflict of interest laws and apply these existing requirements to any contribution made within five years of the action or decision pending before the board.

¹ See Gov. Code, § 11425.40

² *State Water Resources Control Board Cases (State Water Board Cases)* (2006) 136 Cal.App.4th 674, 840; quoting *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234.

³ Regulation 18438.1(d).

⁴ Section 84308(d).

⁵ *Id.*

PROPOSED LEGISLATIVE FIX

Section 84308(c) of the Government Code is amended, to read:

Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding ~~12 months~~ **5 years** in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding ~~12 months~~ **5 years** from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

RECOMMENDATION 1-5: The State Water Board should use the Water Quality Coordinating Committee to provide ongoing training to existing Regional Water Board members and potential Board Member applicants, including an overview of the regulatory and enforcement obligations of the Water Boards.

The Water Boards serve a number of critical and complex functions to promote water quality, provide needed financial assistance to public water systems and facilities, and ensure drinking water access throughout the state. Across the Regional Water Boards, there is a general observation that the Water Board members need to be informed and educated of their role, with ongoing training provided to support new Regional Water Board members.

The State Water Board can provide increased support and ongoing training to Regional Water Board members by using the Water Quality Coordinating Council (WQCC) as one forum and vehicle for ongoing training. Currently, the WQCC meets annually to cover general items, such as emerging legal developments and ethics training, to Regional Water Board members. The function of the WQCC can be expanded to provide more frequent and ongoing trainings for Regional Water Board members to educate the members on emerging issues, general functions of the Water Boards, and provide leadership training for new Water Board members to help their acclimation to their new role. Attending WQCC can be expensive due to travel costs, however, the frequency and overall participation in the WQCC may increase with the option for virtual meetings.

Additionally, the Office of Enforcement and Office of Chief Counsel should provide a briefing during

the annual WQCC that lays out the regulatory duties and enforcement role of the Water Boards to inform and remind Regional Water Board members of the core functions and statutory obligations of the Water Boards to protect water quality and supply.

RECOMMENDATION 1-6: The Governor and the Water Boards should develop creative new ways to reach potential Regional Water Board Member candidates who are currently unaware of appointment opportunities.

Finding potential Regional Water Board Member candidates is difficult. Beyond the time commitment, the lack of adequate compensation, and the conflict rules that eliminate many well qualified candidates, one of the greatest barriers seems to be the lack of awareness by potential candidates. To many, the Governor's appointment application procedures and process are a mystery. This is despite continuous efforts on the part of the Governor's Administration to reach out to the public to advertise vacancies. For example, the Governor's Appointments Secretary holds ongoing virtual workshops with elected officials to educate the public on the appointments process, including what potential applicants should know before applying, the expectations of the different roles, and best practices in applying.

Despite the Governor's best efforts, the public seems largely unaware of Regional Water Board Member appointment opportunities. The Governor and the Water Boards should brainstorm creative new ways to reach unknown potential Regional Water Board Member candidates that are currently unaware of appointment opportunities. The lack of awareness seems to stem from a broader lack of awareness of the Water Boards generally. Simply better communication of the Water Boards' responsibilities would bring greater awareness to the potential of serving as a Regional Water Board Member. The Governor and the Water Boards can also advertise vacancies more visibly and widely, including in other agency listservs and dedicated media outlets like B.C. Water News or region-specific newspapers, with a focus on reaching underserved communities who are historically underrepresented at the Water Boards. Additional workshops in targeted communities, particularly among academic institutions and underrepresented communities, should be prioritized to attract a pool of qualified and diverse voices for appointed positions.

Goal 2

Enforce Water Quality and Water Rights Violations

RECOMMENDATION 2-1: The State Water Board should set an annual statewide goal – and direct Regional Water Boards to set annual regional and program-specific goals – for percent targets of enforcement actions resulting from water quality violations.

In early 2020, the California Environmental Protection Agency (CalEPA) released a thoughtful, targeted Environmental Enforcement Memorandum to improve enforcement, recognizing “[i]t is critical to establish a clear and consistent enforcement message, philosophy and policies across the CalEPA boards and departments.”⁶ One method to achieve this is to set a statewide goal, and direct Regional Water Boards to set region-specific goals, for the enforcement of water quality violations. Without actual, formal enforcement of water quality standards, there is no deterrent for water quality violations. Punitive fines or appropriate remediation must also be assessed to deter discharges from violating the law. Instead, the Water Boards’ over-reliance on informal enforcement responses (such as verbal or written warnings) has crippled the state’s ability to achieve water quality standards and has left numerous waterways and aquifers subject to ongoing pollution. The State Water Board should direct all Water Boards to set and report an annual goal for enforcement actions taken in response to water quality violations, including a goal that reflects a percentage of violations that returned to compliance or were otherwise assessed a formal enforcement penalty.

RECOMMENDATION 2-2: The Governor should provide additional resources to the Water Boards to ensure all permits and policies contain clear and enforceable requirements by requiring the Office of Enforcement to consult with program staff and Board Members on state- and region-wide permits.

A lack of resources is often cited as the primary barrier to enforcement, but California Waterkeepers have observed that the lack of clear, enforceable permit conditions and self-reporting greatly impedes the enforcement of Water Board regulations and permits. Additionally, safe harbors that shield violators from being held liable for their pollution undermines the ability for the Water Boards or citizens to enforce these laws – and undermines the Clean Water Act. Clear and precise permits are needed for effective enforcement.

For example, stormwater permits should contain numeric pollution limits wherever feasible, as opposed to subjective conditions that make enforcement resource intensive. Numeric standards not only provide permittees with a clear understanding of whether they comply with the law, but are the most effective way to reduce dangerous pollution in our waterways. Numeric standards are like speed limits. Consider if the speed limit was to “drive the best you

⁶ CalEPA Enforcement Memo, at 2.

can.” Would you drive the appropriate speed? Would the police officer clearly know whether you were following the law? The answer is likely “no” in both instances. But a numeric speed limit of “45 mph” allows the driver to know the target speed and the police officer to know when the law is being violated. The same is true for numeric water quality standards – they provide permittees a clear target and allow the state to know when the law has been broken.

The State Water Board should declare water quality enforcement as a top priority for the Water Boards and direct the Regional Water Boards to adopt permits and policies with clear, enforceable standards and permit conditions. Recognizing that “[p]rogram functions such as rulemaking and permitting must be carried out with a view toward the ultimate enforcement of the rules that are adopted and conditions included in permits,” and to carry out the needed “coordination between enforcement staff and program staff in the update of current regulations and the development of new rules,”⁷ the Office of Enforcement should review statewide and regional permits to ensure all permits issued by the Water Boards include enforceable provisions and requirements. To achieve this, the Governor’s Office needs to include additional resources in the Annual Budget for the State Water Board to require the Office of Enforcement to consult with policy and permitting staff, as well as Board Members, in the development of all state- and region-wide permits to ensure each permit is enforceable.

RECOMMENDATION 2-3: The Water Boards must prioritize deterrence in its ‘fair enforcement’ of water quality and water rights laws by promptly assigning punitive fines or appropriate remediation for violations.

Fair and robust enforcement requires, at a minimum, adequate civil liabilities to ensure that no competitive economic advantage is attained by those not complying with California’s stringent water laws. As recognized by the State Water Board in its Water Quality Enforcement Policy, “merely recapturing the economic benefit gained by non-compliance is insufficient to establish an appropriate level of specific and/or general deterrence and a higher penalty should be imposed.”⁸

To meet the overarching goal of “achiev[ing] a robust deterrent-based enforcement and compliance program that the general public and businesses trust,”⁹ the State Water Board must recognize and assign stringent penalties promptly, even when using a ‘progressive enforcement’¹⁰ approach. The State Water Board simply cannot accomplish meaningful enforcement without proper deterrence against violations to the Water Code. The State Water Boards must ultimately ensure penalties are assessed in enforcement actions to not only recapture the economic benefit gained through non-compliance, but to actually deter non-

⁷ *Id.*

⁸ State Water Resources Control Board, Water Quality Enforcement Policy (April 4, 2017) (hereinafter Water Quality Enforcement Policy), available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

⁹ CalEPA Enforcement Memo, at 2.

¹⁰ Water Quality Enforcement Policy at 3, defining progressive enforcement. (“Progressive Enforcement contemplates an escalating series of actions beginning with notification of violations and compliance assistance, followed by enforcement orders compelling compliance, culminating in a complaint for civil liabilities.”)

compliance based on the harm imposed and the individual economic conditions of the violating party. Without the perception that a water quality violation or illegal water diversion or storage will be detected and acted upon, a number of actors will choose to ignore legal requirements. The State Water Board must assess punitive fines or appropriate remediation to deter water users from violating the law.

RECOMMENDATION 2-4: The Water Boards should oversee the implementation of settlement requirements – rather than allow violators to implement the requirements - and ensure violators make impacted communities whole to prevent ongoing environmental injustice.

As California faces numerous challenges – and makes progress – to secure safe and affordable drinking water for all California residents, it is critical that water quality and supply violations compensate for the harm caused to individual communities and households. Unfortunately, this is not the case for a majority of enforcement actions taken by the Water Boards, and in some cases, violators have been allowed to implement solutions themselves.

One egregious example is the settlement agreement between a number of growers in the San Joaquin Valley and the State Water Board, which requires growers to install and maintain a total of eight drinking water kiosks across portions of Tulare, Kings, and southern Fresno counties. The first three kiosks were scheduled to be installed by April 30, 2019; however, due to issues with finding acceptable locations and State Water Board Division of Drinking Water permitting requirements, the first two kiosks were not installed until September 30th and the remaining kiosks scheduled to be installed by January 31, 2020. As of October 1, 2020, no additional kiosks have been installed, no bottled water deliveries have been made, and no revised option to ensure water access has been offered or initiated.

While this settlement agreement was not a standard practice by the Water Boards, it is also not one that should be repeated. The settlement left communities and households lacking access to safe and affordable water, and this situation could have been avoided had the growers been required to pay to remediate the harm caused and to pay for the installation and maintenance – rather than be responsible for implementing the solution themselves and ultimately delaying the remediation that was due. The State Water Board must retain oversight of Water Code violations and require violators to pay for the remediation of the actual harm caused to a community or the environment. Violators should remain liable yet should not be responsible for implementing the solution or project themselves, until the impacted community or environment are made whole.

RECOMMENDATION 2-5: The Water Boards should leverage its Office of Public Participation and industry forums, publications, and other media to communicate its enforcement actions to the regulated community as deterrence for current or future Water Code violations.

To deter water quality and water rights violations and to ultimately protect the beneficial uses of California's waters, the State Water Board must communicate its enforcement actions, monitoring and sampling results, and enforcement outcomes both within the affected communities and to similar industries.¹¹ Communicating these results and enforcement actions not only increases much-needed community transparency of the health and safety of their water resources, but acts as a deterrent for industries susceptible to similar violations. Communicating enforcement actions and the resulting penalties assessed or contributions to a Supplemental Environmental Project to regulated industries, whether through industry publications or other media, is a critical tool to inform and deter others in the industry from failing to comply with permit requirements.

Without the regulated community learning of the enforcement actions taken and without stringent penalties assessed to remediate the harm caused by the violation, deterrence is lost. The State Water Board has new and emerging resources to engage in this outreach and improve communication with both regulated industries and impacted communities, such as the newly-formed and expanded Office of Public Participation, which can communicate the sampling and monitoring, as well as enforcement actions and outcomes, to affected communities to ensure all Californians are informed and aware of the health – or risk posed – by their waterways and drinking water sources. The Water Boards should also leverage existing industry forums and publications to highlight enforcement actions, and ultimately encourage the regulated community to partner with the Water Boards to prevent violations and protect water quality.

RECOMMENDATION 2-6: The State Water Board should direct, and provide informational briefings to, the Regional Water Boards to enforce mandatory minimum penalties.

In 2000, the California Legislature required that certain permit violations under the Water Code be subject to mandatory minimum penalties (MMPs). For violations that are subject to these MMPs, the Regional Water Boards must either assess an Administrative Civil Liability (ACL) for the MMP or assess an ACL of a greater amount. Each year, under section 13385(o) of the California Water Code, the State Water Board must prepare a report that includes a compilation of the number of violations of waste discharge requirements in the previous calendar year, a record of the formal and informal compliance and enforcement actions taken for each violation, and an analysis of the effectiveness of current enforcement policies, including MMPs.

¹¹ See CalEPA Enforcement Memo, at 4. ("BDOs should also develop protocols around communicating inspection and sampling results, along with enforcement outcomes, with affected communities.")

Despite the requirement of MMPs to address chronic or serious water quality violations, Regional Water Boards are failing to enforce or assign these penalties. For example, there were 36,542 wastewater effluent and reporting violations that occurred between 2018 and 2019. Over a third of these violations (12,437) took place in the Los Angeles Region, yet only 287 wastewater violations resulted in a penalty and over 1,800 violations received no enforcement action at all. The State Water Board should direct the Regional Water Boards to enforce the statutorily MMPs for chronic or serious water quality violations. Additionally, the Office of Enforcement should provide informational briefings to Regional Board members and staff on the results of the annual MMPs report, including a summary of violations and actions taken by that region, and inform the Regional Water Boards of the role and purpose of these MMPs to eliminate a backlog of uncollected – or simply unassessed – MMPs that would otherwise benefit the cleanup and abatement of pollution statewide, or fund compliance projects for facilities serving small communities with financial hardship.

RECOMMENDATION 2-7: The Water Boards should divide permit and enforcement staff duties to eliminate ‘regulatory capture’ and bias from enforcement actions.

Strong enforcement respects and honors the hard work by the public, non-governmental organizations, and legislators who enacted environmental laws to protect the health of our environment and communities. Without effective enforcement, these environmental laws lose meaning and become symbolic without any real protections or improvement of environmental quality. Across the Regional Water Boards, staff responsible for writing and overseeing permits are often also responsible for enforcement of these permit requirements. In some regions this has resulted in inaction against violations due to close working relationships between the Regional Water Board staff and the permittees – and ultimately undermines the strength and purpose of California’s water quality laws. The Water Boards must separate the roles of Regional Water Board staff to ensure that there are designated staff responsible solely for enforcement to eliminate unintentional bias from enforcement actions.

Goal 3

Ensure Enforcement Penalties are Returned to the Watershed Harmed by the Violation

RECOMMENATION 3-1: The Water Boards should create a Watershed Recovery Subaccount within the Cleanup and Abatement Account to proportionally distribute 50% of enforcement fines back to the Regional Water Boards to fund approved Supplemental Environmental Projects (SEPs).

The State Water Board should ensure enforcement fines and penalties remain in the region in which the violation occurred. The State Water Board should both allow and encourage enforcement penalties for water quality violations to stay within the region in which the violation occurred in order to both encourage regions to take enforcement action and to ensure those communities burdened with ongoing pollution benefit from the enforcement action.

Previously, a percentage of Regional Water Board enforcement penalties remained in the region to support additional enforcement or the development of policies to help improve water quality. The practice of directing the entirety of penalties into the statewide Cleanup and Abatement Account (CAA) or Waste Discharge Permit Fund diverts money away from the area subject to the pollution and instead deposits these monies to assist other areas throughout the state. Funds distributed into the statewide Cleanup and Abatement Account generally fund projects based on emergency need, which often results in uneven distribution of these funds between the regions. While this practice may be beneficial and appropriate for the state, it is not beneficial to the regions impacted by clean water violations. The State Water Board may better address both emergency high-need projects, such as those during drought or wildfire, and support the regions by maintaining a Watershed Recovery Subaccount by distributing enforcement penalties in proportion to the amount contributed by that region.

Further, SEP-like projects should be explicitly encouraged as “a powerful tool to secure significant environmental and public health benefits beyond those achieved by compliance, and to help address the needs of communities impacted by violations of environmental laws.”¹² Having an Watershed Recovery Subaccount would allow funding to be diverted to projects that would otherwise go unfunded and will often benefit communities disproportionately impacted by ongoing contamination. The State Water Board should require funding from enforcement penalties be applied in the same region, within the same ecosystem, or in the immediate geographic area – and encourage the use of SEPs when negotiating final penalties with violating dischargers to remedy the harm caused by the violation and help support the impacted community. The State Water Board should ensure the Office of Enforcement and the Regional Water Boards encourage environmental projects with a strong nexus to the Clean Water Act

¹² *Id.*

violations of a permittee's facility, and direct financial resources toward specific watershed improvement projects by distributing Watershed Recovery Subaccount funds to support approved SEPs in proportion to the funds provided by each region.

PROPOSED LANGUAGE

State Water Board Cleanup and Abatement Account Guidance

A.2.1 Program Priorities

A.2.1.1 Watershed Recovery Subaccount

The Watershed Recovery Subaccount shall fund projects identified and maintained on the statewide or Regional Board Supplemental Environmental Project (SEP) list, and funding shall be distributed back to Regional Boards based on the proportion of funds collected as part of criminal penalties or civil proceedings brought pursuant to Division 7 of the Water Code.

A.2.1.12 Tier 1 - Primary Urgency

a) Emergency projects that require immediate action to mitigate a significant threat to the environment or a threat to public health and safety where there has been no viable RP identified, or where the viable RP is unwilling or unable to adequately respond to the emergency.

b) Urgent drinking water needs. The funding and implementation of these projects will follow the guidelines provided as Section B: Funding Guidelines for Urgent Drinking Water Needs.

A.2.1.23 Tier 2 – Secondary Urgency

a) Projects that address a less urgent need to clean up a waste or abate the effects of a waste on waters of the State where no viable RP has been identified, or where the viable RP is unwilling or unable to adequately respond.

A.2.2.2 Funding Prioritization

Watershed Recovery Subaccount funds shall be prioritized over Tiers 1 and 2 and consist of 50 percent of the CAA funds collected as part of criminal penalties or civil proceedings brought pursuant to Division 7 of the Water Code.

Tier 1 funding requests are accepted on a continuous basis. Subject to the availability of funding, the State Water Board will give priority to requests where there is the greatest threat to public health and safety, regardless of when the request for funding is received. In determining priorities for funding projects, the State Water Board will also consider the applicant's access to or ability to qualify for alternative funding sources.

Tier 2 funding requests will be accepted through a separate solicitation that may or may not occur each year. Generally, if the uncommitted CAA balance is projected to be large enough to support a Tier 2 project solicitation, for example at least \$1 million, then a new solicitation for Tier 2 projects will be announced and processed.

RECOMMENDATION 3-2: The Regional Water Boards should develop, and update annually, a prioritized SEP list by soliciting proposals directly from the local community, and if the list is not maintained or prioritized annually, the Regional Water Board is prohibited from receiving their portion of projects funded by the Watershed Recovery Subaccount.

Each Regional Water Board should maintain a list of priority, high-value projects – such as restoring degraded waterways, providing drinking well testing, securing long-term drinking water access, and increasing environmental justice capacity and representation – and provide additional criteria in SEP solicitations to guide high-impact project proposals that meet the water quality and drinking water access needs of the impacted region and community. Priority projects should be solicited and informed by the local community, community foundations, environmental justice organizations, or the Office of Public Participation to ensure that projects are identified, and funds distributed, based on the needs of the community.

These lists should be maintained with priority projects identified annually, otherwise the Water Boards risk diluting the SEP lists with outdated and lesser priority projects that do not meet the current needs of the community or region. Unfortunately, the current list of approved SEPs provided on the State Water Board webpage is incomplete and seemingly outdated by failing to list projects from each region and includes outdated project contacts (e.g., Santa Monica Baykeeper in Region 4). The Regional Water Boards should be required to maintain this list to inform the selection of SEPs during settlement negotiations, or otherwise lose access to their proportion of funding from the Watershed Recovery Subaccount for each year that the list is not maintained or prioritized based on community need. We recommend that the project applicant year be provided and whether the project is still applicable and needed in the statewide SEP list, in order to help the Water Boards, identify projects that continuously go unfunded. Further, dischargers should not be allowed to select SEP recipient projects, because discharger-selected projects are not necessarily informed by community or watershed needs, and dischargers may decline funding for needed projects.

PROPOSED LANGUAGE

State Water Board SEP Policy

VII. Project Solicitation and Selection

A. SEP Proposal Solicitation and Guidance

A SEP proposal form and guidance document will be made available to the public on OE's SEP webpage. As SEP proposals are submitted, OE will direct them to the appropriate Regional Water Board or Division for further evaluation. Each Regional Water Board or Division may choose to create its own SEP proposal form and guidance document, through the appropriate public process, to be posted on its respective website.

Regional Water Boards or Divisions may perform additional outreach (e.g., public workshops) at an appropriate frequency to gain community input and actively solicit SEP proposals in DACs,

EJ Communities, or communities with a financial hardship. Regional Water Boards should additionally seek community input through local community organizations, community foundations, environmental justice organizations, or the Office of Public Participation to identify specific projects that may best meet the needs of an impacted community based on a specific violation.

B. SEP Evaluation Criteria and Potential SEP Lists

For the potential SEP list, each Regional Water Board or Division may choose to have the proposed SEPs:

- (1) Pre-approved by the appropriate Water Board at an annual basis and
- (2) Prioritized based on established criteria.
- ~~(3) Placed on the list without pre-approval or prioritization.~~

VIII. Requirements for Settlements that Include a SEP

C. Settling Party and Third Party-Performed SEPs

First party (performed by the settling party) and third party (performed by a third party under contract with the settling party) SEPs can be proposed by the settling party or selected by the Water Boards chosen from the statewide potential SEP list, regional SEP list, or project identified by the impacted community and shall be memorialized as part of a stipulated order. In either case, the stipulated order shall satisfy all the requirements of this Policy prior to implementation of the SEP.

State Water Board Cleanup and Abatement Account Guidance

A.2.2.2 Funding Prioritization

Watershed Recovery Subaccount funds shall be prioritized over Tiers 1 and 2 and consist of 50 percent of the CAA funds collected as part of criminal penalties or civil proceedings brought pursuant to Division 7 of the Water Code. Funds shall be withheld if a Regional Board does not annually update and prioritize approved projects on the statewide or regional Supplemental Environmental Project list based on input from local communities.

Tier 1 funding requests are accepted on a continuous basis. Subject to the availability of funding, the State Water Board will give priority to requests where there is the greatest threat to public health and safety, regardless of when the request for funding is received. In determining priorities for funding projects, the State Water Board will also consider the applicant's access to or ability to qualify for alternative funding sources.

Tier 2 funding requests will be accepted through a separate solicitation that may or may not occur each year. Generally, if the uncommitted CAA balance is projected to be large enough to support a Tier 2 project solicitation, for example at least \$1 million, then a new solicitation for Tier 2 projects will be announced and processed.

RECOMMENDATION 3-3: The State Water Board should review SEP lists, and Regional Water Boards should improve SEP criteria, to ensure SEP projects result in actual water quality improvements to a specific watershed or improve access to safe drinking water.

Regional Water Boards should only approve projects to be placed on their SEP list that improve water quality for a specific watershed, with the one exception that drinking water testing be an approved SEP project in discrete areas known to, or likely to, pose human health risks from unsafe drinking water. We applaud the State Water Board on its revised SEP Policy for providing proper guidance to Regional Water Boards to ensure SEP projects directly improve the water quality of a watershed impacted by a violator. However, if additional CAA funds are going to be returned to regions to support SEP projects, it is critical that SEP projects adequately improve the health of a watershed. To ensure Regional Water Boards are creating proper SEP lists, the State Water Board should perform frequent audits of the Regional Water Boards' SEP lists and provide an opportunity for public comment.

PROPOSED LANGUAGE

State Water Board SEP Policy

V. Categories of SEPs

The Water Boards have identified six specific categories of projects which may qualify as SEPs. Many SEPs may fall into more than one category. This Policy also establishes a seventh category for "Other Projects" that meet all the requirements of this Policy, but do not fit into one of specific categories. Allowing for "Other Projects" provides the Water Boards the flexibility they need to adapt to unforeseen circumstances, so long as the general principles and requirements of the Policy are met. SEPs in any category shall directly benefit **and tangibly improve** groundwater, surface water, or drinking water quality or quantity, and the beneficial uses of waters of the State. The requirement that a SEP directly benefit water may be waived where violations of environmental laws and/or regulations affect media in addition to water and those violations are prosecuted primarily by another CalEPA BDO, or the California Department of Fish and Wildlife, in addition to the Water Boards. SEPs in any category must also have an adequate nexus to the location or the nature of the violation and meet all other requirements of this Policy.

G. Other Projects

Projects that do not fit within one of the six specific categories above, but have environmental and/or public health benefits and are otherwise fully consistent with all other provisions of this Policy, are allowable as SEPs subject to approval by the appropriate Regional Water Board or Division. Examples may include, but are not limited to: water quality **monitoring** or drinking water **testing** ~~-related educational outreach~~; and collection system capital improvements.

VII. Project Solicitation and Selection

B. SEP Evaluation Criteria and Potential SEP Lists

Each Regional Water Board or Division ~~may~~ shall create ~~additional~~ SEP evaluation criteria, post them on its website, and state which criteria may provide a preference for particular projects that address **priority** problems specific to the geographic region or subject matter through the appropriate public process. Each Regional Water Board or Division is responsible for evaluating and responding to SEPs proposed for inclusion on the SEP list within its jurisdiction on an annual basis, at minimum. **Updated SEP lists should be subject to public comment annually.** Water Boards shall inform interested parties that have submitted SEP proposals within 30 days of updating their potential SEP list.

C. SEP Project Audits

Every 3 years the State Water Board shall perform a Regional Board SEP List Audit that is subject to public comment to ensure approved SEP projects adhere to the SEP Policy Guidance to ensure SEPs directly benefit groundwater, surface water, or drinking water quality or quantity, and the beneficial uses of waters of the State.

RECOMMENDATION 3-4: The State Water Board should continue using Tier 1 of the Cleanup and Abatement Account for emergency projects and urgent drinking water needs but perform an annual self-audit to provide transparency and accountability to the Regional Water Boards.

Enforcement penalties are typically pooled into the statewide CAA, where the State Water Board reallocates these resources across different programs and Boards. Ideally, penalty fines should go back to the watershed impacted by the violation, but there is value in allowing funding to go towards emergency projects and drinking water needs statewide. While this has some benefit, the practice has also led to some regions sending more resources to the State Water Board and receiving disproportionately less resources in return. Tracking the use of Tier 1 funding can provide an important metric to ensure “enforcement efforts are yielding tangible and significant pollution-reduction results”¹³ and ultimately address the environmental and economic disparities faced by individual California communities.

In previous Administrations, the CAA was irresponsibly used to fund Water Boards’ pet projects. It is important to emphasize that over recent years this is no longer the practice as safe drinking water and wildfire issues have demanded the majority of CAA funding. But it is still important to account for where enforcement fines are being used, and what regions are getting a

¹³ CalEPA Enforcement Memo, at 2.

disproportionate amount of the funding. It is a disincentive for Regional Water Boards to conduct water quality enforcement if the resulting penalties do not remain in the region. Therefore, if the money is not going to be returned to the region, then the State Water Board needs to be held accountable and report out to the Regional Water Boards so they understand that enforcement fines are being maximized for the good of all Californians. Conducting an audit of State Water Board resource allocation from the statewide CAA should reveal:

- What is the amount of resources generated per region compared to what each region receives in State Water Board reallocations?
- How are the reallocated resources being used?
- Are the regions receiving more than their share of enforcement resources more effective with enforcement?
- Are those additional resources being used by the other regions?
- Is the State Water Board properly allocating funding for cleanups?
- Do large-scale projects get the appropriate funding necessary to complete the cleanups?

RECOMMENDATION 3-5: The Water Boards should require third-party administrators to demonstrate viability and solvency before being eligible to receive Watershed Recovery funding or before settling parties can transfer liability to that third-party administrator.

A significant deterrent preventing violators from paying into a SEP is the ongoing liability imposed on the violator for the duration and lifetime of the SEP. Penalties assessed for water quality violations include the option for a discharger to contribute to a local SEP, which has the potential to remediate local pollution and improve water quality in an immediate region or community. Under the current enforcement penalty framework, however, dischargers who are assessed penalties and contribute to a local SEP remain liable until the SEP is completed. This deters dischargers from opting to pay penalties that would have a direct benefit to the impacted community, and results in dischargers often choosing to pay a civil penalty to the statewide CAA or Waste Discharge Permit Fund, rather than contribute to a local SEP. In the Central Valley Region alone, nearly \$5 million in monetary penalties were assessed and paid to the CAA, while a mere \$192,000 were contributed to SEPs this past fiscal year.¹⁴

Third party administrators, such as community foundations, have the ability and are willing to retain accountability for the completion of these projects to achieve improvements in water quality and public health. Individual Regional Water Boards, like the Central Coast and Central Valley Boards, have successfully used this framework to encourage and complete SEPs within their region. Once a discharger has paid into a SEP initiative managed by a community foundation, that discharger is alleviated of ongoing liability for the completion of the project, with the community foundation instead retaining that liability due to its role and responsibility in ensuring the proper and timely completion of the project. The State Water Board should amend its SEP Policy and remove the ongoing liability faced by dischargers who choose to pay

¹⁴ Central Valley Regional Water Quality Control Board, Executive Officers Report, at 16, *available at* https://www.waterboards.ca.gov/centralvalley/board_info/exec_officer_reports/2006eo.pdf#page=16.

into a third-party SEP, unless the responsible party is a public agency that chooses to perform the SEP themselves.

In order for projects to be approved on a statewide or regional SEP list to either be selected during settlement negotiations or in the distribution of a newly-formed Watershed Recovery subaccount within the CAA, each project must be implemented by an approved third party administrator that can administer and manage the funds for that project. Additional safeguards should be in place to ensure the viability and solvency of the third party-administration of SEP funds. These safeguards may include:

- Demonstration of financial solvency by providing the Water Boards with the organization's balance sheet and financial statements from the past two years, financial projections for the next 18 to 24 months, and most recent financial audit.
- Demonstration of completed projects and fund administration.

PROPOSED LANGUAGE

State Water Board SEP Policy

B. SEP Evaluation Criteria and Potential SEP Lists

Water Boards that work with a third-party administrator for SEP oversight and implementation shall work with OE to establish appropriate evaluation criteria and a timeline for selection and Board pre-approval of the administrator. **A third-party administrator shall be approved by the State or Regional Water Board based on a demonstration of financial solvency and record of completed projects or fund administration.**

E. Liability

The portion of a monetary assessment adopted by a Board order that is satisfied by a SEP shall be treated as a suspended liability. Unless otherwise required by law, any order imposing a SEP shall state that if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended monetary assessment, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone. The recovered suspended monetary assessment shall be paid to the appropriate fund authorized by statute (e.g., CAA, WDPF, or WRF). Full payment of the suspended monetary assessment shall be in addition to any other applicable remedies for noncompliance with the terms of the stipulated order.

...

SEPs implemented by a public agency settling party retain liability until the SEP is fully implemented. Upon completion of the SEP, the settling party (or the third-party administrator) shall notify the appropriate Water Board and provide proof of project completion and use of funds (see Section IX.D).

Settling parties do not retain liability for the completion of the SEP for those administered by an approved third-party, so long as the third party retains liability for the SEP in a stipulated order to the settlement. Upon completion of the SEP, the third-party administrator shall notify the appropriate Water Board and provide proof of project completion and use of funds (see Section IX.D).

Goal 4

Enhance the Water Boards' Annual Performance Metrics

The State Water Board engages in numerous data collection and tracking efforts to meet its mandates for public transparency and to inform its programmatic priorities. In tracking State Water Board actions, the State Water Board should focus on the outcomes of its work, such as how well permit requirements are working to achieve actual improvements in water quality. To specifically improve the understanding of the enforcement actions taken by the Water Boards on a statewide and regional level, we recommend the following metrics be reflected in both the California Integrated Water Quality System (CIWQS) and the Annual Performance Report:

RECOMMENDATION 4-1: The State Water Board should track resolved violations in CIWQS and the Annual Performance Report to allow the public to better understand the outcome of water quality violations.

The CIWQS provides an informative break-down of enforcement actions taken by region and program area. This information, however, is limited to enforcement actions taken by the Water Boards and does not indicate whether individual violations were resolved. For example, CIWQS indicates that 1,913 Notice of Violations (NOVs) were issued between all nine Regional Water Boards in 2018. There is no clear indication in the report summary whether these violations were resolved or otherwise elevated to a formal enforcement action.

RECOMMENDATION 4-2: The State Water Board should track violation outcomes in CIWQS and the Annual Performance Report.

There is a need, by both the public and by Water Board staff, to understand the outcomes of water quality violations and tangible results of enforcement actions. We recommend the

'violation status' and 'final action' be tracked to answer the following questions: Did the violator come into compliance (for example, following an NOV)? What penalties were assessed or deposited into the CAA or a SEP? Is the status of the case closed or ongoing? Was there an escalation of enforcement by the board?

RECOMMENDATION 4-3: The State Water Board should update CIWQS to include a search function by facility name and include direct access to enforcement documents.

The Water Boards were founded with commitments to transparency, public process, and fact-driven decision making to manage California's water resources. The public has a right to know who is polluting – and to what extent – the water on which we all rely. Transparent systems are needed to communicate the status of California's water quality and whether permittees are meeting water quality requirements with both the public and the regulated community. CIWQS should be updated to allow the public and Water Board staff to search by facility name, and ensure all relevant documents, including enforcement documents, are included in search results to improve the overall function and transparency of this database.

RECOMMENDATION 4-4: The State Water Board should track and distinguish between administrative violations and water quality violations.

There is a general need to understand which enforcement actions were taken for administrative violations (e.g., a failure to report) or an actual water quality violation. This could be listed in both CIWQS and provided as key statistics under the Enforcement Actions and Penalties listed on the Annual Performance Report.

RECOMMENDATION 4-5: The State Water Board should provide summaries of the progress and actions taken to attain TMDL waste load allocations to improve transparency of Water Board activities.

The Annual Performance Report should clearly describe and track the progress toward attaining Total Maximum Daily Load (TMDL) goals and the progress that has been made to reach waste load allocations. The Annual Performance Report should include a status update for each TMDL that lists: what waterway is impaired, for what pollutant, what is the waste load allocation for each pollutant, and most importantly, what progress has been made to-date to attain that waste load allocation.

RECOMMENDATION 4-6: The State Water Board should connect the priorities under 'Plan and Assess' with enforcement actions taken by the Water Boards.

In the 2018-2019 Annual Performance Report, the total number and volume of sewage spills (SSOs) are listed – with a shocking 3,316 total spills and over 23,697,934 gallons spilled. To learn what was done about these spills, however, requires the user to use CIWQS and conduct a separate search on the enforcement activity taken for each sewage spill. To prevent the end-user from cross-referencing databases with the Annual Performance Report, we recommend

listing a summary of the enforcement actions – and results of those actions – taken for each reported spill alongside the ‘total’ and ‘volume’ information provided on the ‘Plan and Assess’ page. This should apply to other water quality activities listed in the Annual Performance Report.

RECOMMENDATION 4-7: The State Water Board should improve the Enforcement Action Summaries provided on the Annual Performance Reports.

To provide a clear and transparent picture of the enforcement actions and penalties assessed, it would be useful to delineate the penalties collected and distributed into the CAA and SEPs to track trends in distribution between the two funds. Additionally, it would be helpful to include the total number of water quality violations reported in each region, rather than only listing the enforcement actions taken to understand the context of enforcement actions taken. An example of the updated Enforcement Action Summary is provided below.

California Water Boards’ Annual Performance Report – Fiscal Year 2018-19
(Requested language/metrics provided in red)

**Fiscal Year 2018-19
Statewide Overview of
Enforcement Actions and Penalties**

Total Violations Reported: X

Informal Enforcement Actions: 2,237

Compliance and Penalty Enforcement Actions: 2,098

Penalties Assessed: Approximately \$17.5 million

- **Contributions to the Cleanup & Abatement Account: \$**
- **Contributions to Supplemental Environmental Projects: \$**

RECOMMENDATION 4-8: The State Water Board should reflect Regional Water Board enforcement priorities, including inspection priorities and actions to improve permit enrollment, under the Enforcement Performance Reports.

We value the need to consistently measure enforcement actions taken across the State and Regional Water Boards; however, the current Enforcement Performance Reports fail to account for individual dissimilarities and enforcement priorities of the Regional Water Boards. The individual enforcement priorities of the Regional Water Boards, based on key contributors to water quality impairments in each region, should be reflected in the Enforcement section of the Annual Performance Report, and detail these priority enforcement actions and efforts to increase permit enrollment and/or identify non-filers. Further, inspection activities and priorities undertaken by the Regional Water Boards should be reflected in the Annual

Performance Report to communicate where Regional Water Boards are expending their time and resources.

RECOMMENDATION 4-9: The State Water Board should provide a geospatial, interactive map highlighting where violations and Water Board enforcement actions are – or are not – occurring.

Including an interactive, geospatial map in the Annual Performance Report that showcases where water quality or water rights violations are occurring, who the responsible party is, the severity of these violations, the enforcement action taken, and outcome of enforcement will help both the Water Boards and the public understand where the Water Boards are prioritizing their efforts and where the Water Boards should expend its resources to ensure equitable enforcement that results in action being taken in the communities most in-need.

RECOMMENDATION 4-10: The Water Boards should retain and provide all documents online, while documents are simultaneously updated for compliance with the Americans with Disability Act (ADA).

The Water Boards' websites are designed, developed, and maintained to provide the public and all users with valid and timely information about Water Boards' activities. The Water Boards should continue to make improvements to their websites and available documents to provide accessibility for all website visitors, however, this process should not result in the removal of documents or delaying the availability of documents. Water Board documents should be immediately made available to the public, with the express commitment that ADA compliant documents will be made available and posted within 60 days of the original document posting.

Goal 5

Improve Public Participation and Increase the Capacity for Community Engagement

RECOMMENDATION 5-1: The State Water Board should include an additional 5% fee on permit applications and annual fees to create a community capacity fund to assist environmental justice communities in participating in Water Board outreach and regulatory processes.

The principles of environmental justice call for fairness, regardless of race, color, national origin, or income, in the development of laws and regulations that affect every community's natural surroundings, and the places people live, work, play, and learn. California was one of the first states in the nation to codify environmental justice in statute. Beyond the fair treatment called for in code, leaders in the environmental justice movement work to include those individuals disproportionately impacted by pollution in decision making processes. The aim is to lift the unfair burden of pollution from those most vulnerable to its effects.

Drinking water, water quality, and water rights issues are highly complex and multifaceted, making it increasingly difficult for communities to understand and/or participate in regulatory proceedings that have a direct impact on their public health. Moreover, low income communities are disproportionately impacted by Water Boards' decisions, yet participating in an all-day hearing is an untenable sacrifice. Alternatively, the regulated community have access to professional lobbyists and significant resources to pressure the Water Boards to weaken public health protections – particularly for environmental justice communities. The state generally, but the State Water Board specifically, needs to develop a community capacity building program to provide environmental justice communities with the resources necessary to participate in regulatory processes, or at a minimum, provide community input at local outreach events to environmental justice organizations, Water Board staff conducting local outreach, and to regulated entities required to conduct community outreach to determine optimal mitigation projects. The State Water Board should do this by requiring the regulated community to pay an additional 5% of their permit fees to fund this community capacity building program.

RECOMMENDATION 5-2: The Governor should provide additional resources to hire two statewide environmental justice and tribal coordinators to proactively conduct outreach to environmental justice and tribal communities.

Environmental justice communities face multiple challenges, including economic and racial injustice, that are tied to environmental harm and public health. The COVID-19 pandemic highlighted these injustices, and has made it clear that public health and clean water are inextricably linked, meanwhile, safe, affordable, and accessible water service is fundamental for communities to thrive, but it is often denied to those that are the most vulnerable.

The Water Boards, like many state agencies, have struggled to reach communities and meaningfully engage residents in the decisions impacting their health and livelihood. Fortunately, there is an increasing trend and commitment across specific Regional Water Boards, particularly those serving more inland or rural areas, to proactively reach out to underserved communities by working with environmental justice organizations or using Regional Water Board staff to reach these communities. The Governor should provide additional resources to hire two statewide environmental justice and tribal coordinators to proactively conduct outreach to environmental justice and tribal communities.

RECOMMENDATION 5-3: The Governor should provide resources so that the State Water Board’s Office of Public Participation can train State and Regional Water Board staff to reduce barriers to engaging environmental justice, underserved, and tribal communities.

The State Water Board’s Office of Public Participation was established to strengthen its efforts to involve the public in its decision-making processes and respond to public inquiries about the Water Boards’ programs. While nascent, this Office has the significant potential to identify, address, and facilitate public participation of historically underrepresented, yet importunately burdened, communities in the Water Boards programs, policies, and activities that impact the overall health of California’s communities and residents. At this time, however, there are very limited resources for training Water Board staff to conduct outreach to underserved communities. The Office of Public Participation may be able to help bridge this gap by training State and Regional Water Board staff to ensure all community voices are heard or represented, and help Water Board staff design and implement meaningful stakeholder engagement processes and reduce barriers for engagement, such as outlining resources to help bridge the digital divide that is emerging for those lacking reliable internet or computer access.

RECOMMENDATION 5-4: The State Water Board should promote remote hearings and increase participation with satellite hearing locations, including continuing virtual public comment after COVID-19 restrictions have ended.

The COVID-19 pandemic kick-started a new and unprecedented era for public participation across government agencies, and the Water Boards set a strong example of how to run remote hearings effectively to continue its essential work. Prior to the launch of remote meetings and hearings, however, the State and Regional Water Boards faced significant challenges for public participation, especially in geographically large regions. Remote hearings have changed not only the way that the public views a hearing but can now participate in real time from any location with phone or internet service. This new era has also showcased the challenges and inequities in broadband access and internet reliability throughout the state, especially as households work or engage in schoolwork remotely, placing strain on a household internet network. The Water Boards have the increasing opportunity to ensure there are internet hot spots in impacted communities of a particular permit or decision. The Water Boards should build from this positive momentum to increase access and public participation in all Water

Board hearings and consider opportunities to increase equitable access when in-person meetings resume by holding hearings in satellite locations near the impacted community, particularly in geographically large regions that would otherwise be prohibitive for residents of the impacted community to participate.

RECOMMENDATION 5-5: The State Water Board’s Office of Public Participation and regulated entities should dedicate resources to improve community outreach for regulatory mitigation, like CV Salts requirements to provide interim and long-term alternative water supplies.

There is an overall desire across the Water Boards to use SEPs to advance projects in underserved communities to help achieve compliance with water quality objectives and improve overall drinking water quality – particularly in those communities lacking access to safe, reliable, and affordable drinking water – that would otherwise go unfunded. Identifying these projects and allocating SEP funds, however, can be improved to reach those communities most in need.

One example is partnering with community foundations. The Rose Foundation for Communities and the Environment (Rose Foundation) has administered the Central Valley Disadvantaged Community Water Quality Grants Program since 2013, resulting in over 14 settlements paying into the fund for a total of \$2.3 million to support 27 individual SEPs. The Rose Foundation has maintained a list – approved by the Water Boards – of individual SEPs to steer SEP settlement funds to impacted and underserved communities, resulting in 27 fully completed projects, with two additional projects in various stages of completion. The key advantage of partnering with community foundations is the opportunity to utilize the foundation’s community knowledge to facilitate community outreach and culturally sensitive project administration to provide an environmental benefit in an otherwise underserved and disadvantaged community.

The State Water Board should investigate and initiate improvements to the SEP allocation process, using the Rose Foundation model as one example, to improve the transparency of the projects selected and to improve outreach to community-based organizations that could successfully implement SEPs that are not otherwise familiar with the Water Boards.

RECOMMENDATION 5-6: The Water Boards should develop a Community and NGO Outreach Policy that includes requirements to conduct and summarize public outreach in all policies and major permits’ staff reports.

There is a general need for increased participation from community and non-governmental organizations (NGOs) in Water Board hearings and in the development of permits to represent the public interest, and ensure that the Water Boards meet their mission to preserve, enhance, and restore water quality for both environmental and public health. Without this representation and engagement, these public processes become discharger-dominated, which can have the detrimental impact of weakening permit requirements and decrease opportunities to hold individual dischargers accountable for their pollution. Specific Regional

Water Boards are experiencing either decreased or sporadic involvement from NGOs, and the impact of this lack of participation is felt with one-sided discussions and deliberations. By increasing engagement with environmental, environmental justice, and other locally based organizations, the Water Boards may ensure a more balanced public process and more robust deliberations and discussions on new permits and programs. The Water Boards should develop a Community and NGO Outreach Policy that includes requirements to conduct and summarize public outreach in all policies and major permits' staff reports.

RECOMMENDATION 5-7: The Water Boards' agendas should have a specific schedule that includes time allocations for agenda items, and email alerts to inform the public when agenda items are up or if the item has been delayed.

One of the biggest barriers to public participation is that meeting times are during the workday, meetings often last 8-10 hours, and determining when an agenda item is expected to come up is completely unpredictable. The Water Boards should provide the public with more specific agendas that include times of when an item is anticipated to come up and how long that agenda item is anticipated to take. Moreover, the Water Boards should develop an email system so that the public can register for updates on a particular agenda item. This would allow the public to be alerted when their agenda item is coming up or if their item is delayed. The State Water Board already does this, in part, by alerting the public that certain items will not be heard until a certain time, for example "this item will not be heard before 1pm". Given the likelihood that COVID-19 induced virtual public comment will now be the norm, this type of update system would be invaluable for the public.

RECOMMENDATION 5-8: The Legislature and/or the State Water Board should require an allocation of three percent of the Cleanup and Abatement Account to a citizen monitoring subaccount.

The Legislature and/or the State Water Board should create and divert funds to a subaccount within the CAA at the State Water Board to provide funding for citizen monitoring. The CAA was created by Water Code Sections 13440-13443 to provide public agencies with grants for the cleanup or abatement of pollution when there are no viable responsible parties available to undertake the work. There are, however, currently no formal means to measure the overall performance of the program. Statewide water quality monitoring is a critical tool for measuring the success of statewide cleanup efforts and quantifying the return on investment into the CAA. Because of limited resources at the Regional Water Boards, that monitoring is often accomplished by citizen groups that require consistent funding to support equipment and training needs and time for data collection, entry, and analysis.

Setting aside a small portion of accounts receivable into the CAA (e.g., five percent) and directing that funding towards citizen monitoring efforts would help ensure the delivery of valuable, cost-efficient data into Water Board databases like the California Environmental Data Exchange Network (CEDEN). In turn, this would enhance the state's ambient water quality monitoring programs like the Surface Water Ambient Monitoring Program (SWAMP) and the

Groundwater Ambient Monitoring and Assessment Program (GAMA), and allow the Water Boards to more effectively prioritize and enforce against sources of water pollution. The responsibility of disbursing the allotment would fall to the state's water quality monitoring programs (e.g., SWAMP and GAMA).

Goal 6

Modernize Technology to Improve Regulatory Efficiency

RECOMMENDATION 6-1: The State Water Board should use and expand available geospatial tools, such as CalEnviro Screen, to identify and prioritize enforcement cases in environmental justice and underserved communities.

Advancing environmental equity and protecting California's most vulnerable communities requires serving and prioritizing those communities facing "the highest pollution burdens and environmental risks."¹⁵ California has begun taking needed strides to combat environmental injustices and should advance existing technology and data tools to ensure the most vulnerable are protected from the often compounding and cumulative threats faced by individual communities.

The Water Boards, and other environmental agencies, should leverage existing tools to target communities in need of oversight and assistance, such as CalEnviro Screen,¹⁶ to ensure that inspection and enforcement activities prioritize those communities most impacted by a disproportionate factors affecting water access and health, and ensure that the Water Boards resources are not funneled primarily to affluent areas. The Water Boards should advance these tools to automate case prioritization during data algorithms that can help target enforcement cases efficiently.

Using data to prioritize enforcement reduces the burdensome workload for enforcement by identifying which permittee violations are the most egregious. Ultimately, the use of a data algorithms can help streamline enforcement, reduce the burden on already strained and overtasked Water Board staff – especially at the Regional Water Board level and due to workforce reductions caused by the COVID-19 pandemic – and put an end to ongoing water quality violations in communities disproportionately harmed by chronic pollution.

¹⁵ CalEPA Enforcement Memo, at 5.

¹⁶ California Office of Environmental Health Hazard Assessment, CalEnviro Screen, at <https://oehha.ca.gov/calenviroscreen>.

RECOMMENDATION 6-2: The State Water Board should use modest data-based solutions to identify dischargers failing to enroll under proper water quality permits.

Dischargers that fail to enroll under the proper water quality permits fail to meet water quality requirements, evade enforcement, and prevent the Water Boards from receiving the requisite fees to support its programs and functions – all while continuing to pollute and threaten California’s waters. A key challenge in enrollment and protection of water quality, however, is identifying these non-filers. The State Water Board must pursue innovative, yet modest, solutions that identify unenrolled dischargers, or dischargers that have enrolled under the incorrect permit to ensure these dischargers do not continue to violate the Porter-Cologne Water Quality Control Act. In some instances, identifying non-filers or improper enrollees will require physical investigations, while others may be identified or targeted using desktop methods.

For example, approximately 10,000 industrial dischargers were enrolled in the State Water Board’s Industrial General Permit (IGP) prior to 2020, with tens of thousands more within the state that failed to enroll under the permit or otherwise be identified. This lack of enrollment resulted in the proliferation of polluted discharge into California’s waterways, the inability of individual municipalities to comply with water quality requirements due to unknown sources of pollution, and gave these businesses an unfair economic advantage over those who complied with the IGP requirements. Senate Bill 205 (Hertzberg) was adopted by the California Legislature in 2019 to address the pervasive issue of unenrolled industrial facilities by requiring applicable facilities to demonstrate enrollment with the IGP when applying for or renewing a business license, allowing local municipalities and the Water Boards to readily identify industrial dischargers and ensure these dischargers are enrolled under the statewide permit.

The State Water Board should pursue a modest data-based effort to target its investigations to ground-truth industries and businesses that claim to qualify for the non-exposure certificate (NEC), by identifying which industries and associated Standard Industrial Classification (SIC) codes are more or less likely to be associated with industrial stormwater discharges, and use these codes to filter through NEC claims.

Following the SB 205 example, the State Water Board should seek similar solutions that identify non-filers in other industries, such as cannabis and the Irrigated Lands Regulatory Program. We are aware that not all industries may be identified using the same approach under SB 205 – that is, demonstrating enrollment in the permit when applying or reapplying for a business license – seeing as many of these non-filers are not seeking business licenses or seeking to participate in the legal commercial sector. In these instances, we encourage the State Water Board to support Regional Water Board efforts to identify these non-filers using high-resolution mapping and imaging, available parcel data, and other databases to target the necessary on-the-ground inspections to confirm those who should enroll in a specific permit or program. Without prioritizing the enrollment of non-filers, the Water Boards will continue to lack the funds for these fee-based programs, and water quality will continue to suffer.

RECOMMENDATION 6-3: The Water Boards should collaboratively work with sister agencies on the development of aerial imaging and mapping tools that serve multiple environmental agency functions.

Environmental regulations are managed in agency silos; however, the environment exists, and industries often work, between these regulatory silos. Bridging these silos is necessary to pool resources and increase the overall efficiency of California's agencies. One such example is the nascent California cannabis program, which brings together a number of coordinating agencies including the Water Boards, California Department of Fish and Wildlife, California Department of Food and Agriculture, and Department of Pesticide Regulation, among others, to manage and issue new cultivation licenses throughout the state.

Data integration projects, such as layering aerial imaging with parcel data managed by land use agencies, can help the Water Boards and other environmental agencies leverage available data to track trends in the environment, identify illegal water diversions and storage, and seek unenrolled cultivators to inform the Water Boards outreach and enforcement efforts. Coordinating and investing in large-scale, current data will assist the Water Boards to not only detect illegal water use and diversions, but allow California agencies to track the efficacy of wetland and riparian management and restoration to meet the overarching statewide goal of 'no net loss' under California's Wetlands Conservation Policy, among other agency-specific and statewide objectives. The State Water Board should proactively seek opportunities to partner with other environmental agencies to invest in high-resolution aerial data and mapping tools to support the numerous functions – including but not limited to informing enforcement, restoration, or other critical work – by California's environmental agencies.

RECOMMENDATION 6-4: The State Water Board should invest in well-trained enforcement and compliance personnel and prioritizing hiring inspectors in-house.

To advance the goals of the CalEPA Environmental Enforcement Memorandum to ensure well-trained enforcement and compliance personnel,¹⁷ the State Water Board should invest and prioritize hiring water quality inspectors, including those at lower paygrades, within the Water Boards. For example, the North Coast Regional Water Board has historically only had three stormwater inspectors: one each for construction, industrial, and municipal stormwater permits. Each inspector falls under the category of "Water Resource Control Engineers" with relatively high salaries. The State Water Board has previously reported that significant funds are spent annually on storm water audits, inspections, and compliance evaluations, in large part due the limited resources that are available are being spent on costly contractors to supplement and perform stormwater audits, inspections, and compliance evaluations.

Rather than relying on senior-level engineers or contracted specialists, the State Water Board should invest in inspectors who are lower-level, in-house staff familiar with water quality permits and ensure enforcement actions follow audits that uncover water quality permit

¹⁷ CalEPA Enforcement Memo, at 3.

violations. Statewide, local Waterkeepers continually see audits that uncover egregious permit violations leading to minimal, if any, enforcement. The Water Boards need to prioritize enforcement and take action following an audit that uncovers a permit violation. The State Water Board should prioritize hiring low- to mid-level staff to perform inspections and direct Regional Water Boards to issue enforcement notices and take action against violations uncovered during audits.

Goal 7

Maximize Limited Resources

RECOMMENDATION 7-1: The State Water Board should revisit the distribution of discretionary funds to the regions to ensure funding is informed by water quality needs, rather than distributed purely on a programmatic level.

California has distinct hydrologic regions with varied demographics that pose different threats to quality and face different challenges in water supply. While California's watersheds are often connected, requiring a statewide lens to water management, the nine Regional Water Boards have the distinct responsibility of adopting and managing plans to protect beneficial uses throughout the region. Despite the foundational purpose and authority of the Water Boards to proactively protect water quality, the Regional Water Boards are often required to make the case that there is a water quality issue that is deserving of staff time and resources – rather than having the resources available to address water quality needs and support the core function of the Regional Water Boards. This current structure has created an obtuse push and pull between the State and Regional Water Boards over staffing and resources.

The fee-driven model of the Water Boards has both its benefits and challenges. Fees are generally not distributed evenly across the regions, which does benefit the regions in different ways, given regions can help subsidize each other's nascent or emerging programs. The structure and distribution of discretionary funding, however, should be revisited by the State Water Board to ensure that this funding is informed by the actual budgetary needs of the Regional Water Boards to address water quality issues, rather than distribute this funding purely on a programmatic level.

RECOMMENDATION 7-2: The State Water Board should communicate its highest priorities to the Regional Water Boards to inform the distribution of staff time and resources.

The State Water Board adopts and amends a number of needed statewide policies and permits, however, the Regional Water Boards must often reallocate and reassign staff from core programs or emerging issues to meet the needs of these new policies and programs. With staffing challenges at a historic high due to the COVID-19 pandemic, for a variety of reasons

ranging from furloughs, statewide COVID tracing, and retirements, the State Water Board needs to communicate its highest priorities to the Regional Water Boards.

While the resolutions, permits, and policies adopted by the State Water Board are needed to advance water quality statewide, these orders generally have a number of ‘asks’ without designated funding, causing the Regional Water Boards to pull from existing staff without additional personnel resources. The State Water Board should communicate its highest priorities and work with the Regional Water Boards to identify program areas that are complementary to inform the allocation of staff time and resources to move forward both statewide priorities and address emerging or pre-existing regional issues.

RECOMMENDATION 7-3: The Governor should direct CalHR to adjust the salaries for environmental scientists across the regions to improve recruitment and retention.

People are often the most valuable asset for any organization – and this holds true with the Water Boards. Though like many state agencies, the Water Boards are often understaffed with workloads that are ever-increasing and expanding as new issues and priorities arise. The Water Boards must prioritize resources to recruit and hire core environmental scientists across the regions, and improve salaries for core environmental scientists who are often paid 40 percent less than other staff, like water resources control engineers, with similar responsibility. In order to recruit and retain scientists with PhDs and master’s degrees who are critical to achieving the core permitting, planning, and enforcement functions of the Water Boards, CalHR needs to adjust environmental scientists salaries to aligned with the salaries of engineers.

RECOMMENDATION 7-4: The Water Boards should rotate vacancies through the regions, share staff for remote work, and encourage hiring student interns and student assistants to reduce the burden of ongoing vacancies.

Understanding that staff resources are often limited, the State Water Board should carefully consider where vacancies occur, many of which are longstanding, to ensure that ongoing vacancies do not overburden a single program or region. Capacity could be built, and the burden distributed, by rotating these vacancies through the regions and sharing staff between regions for tasks that can be done remotely. Finally, workforce development, and ultimately the retention of a knowledgeable workforce, begins at the recruitment level, and the Water Boards should encourage the hiring and recruitment of a variety of student intern or student assistant positions that can help train the next generation of staff and help fulfill needed tasks that are left void due to ongoing vacancies.

RECOMMENDATION 7-5: The State Water Board should promote information sharing and strategies between the regions to support a productive and efficient workforce.

There is a need to share lessons-learned and approaches to improve staff accountability and management, given historically lean staffing across both the State and Regional Water Boards, and new staffing challenges due to the COVID-19 pandemic. Staffing varies across the Regional

Water Boards, and there is an opportunity to learn and implement different management approaches used in the regions, as well as to pool staffing resources to advance developing programs and goals. For example, the Central Valley Regional Water Board is sharing novel workforce management approaches, such as a the two-boss matrix management approach, with the State Water Board to hold programs and staff accountable for meeting the goals and objectives of their work plan. In San Diego and Los Angeles, the Regional Water Boards are simultaneously developing biological objectives for their respective regions. The State Water Board should facilitate and promote information sharing across the Water Boards to integrate management approaches and identify where Regional Water Boards have overlapping priorities to encourage Water Board staff to work together on a developing new permits and programs to improve overall performance, accountability, timeliness of new projects and permits, and ultimately overcome staffing challenges.

Goal 8

Improve Coordination Between State and Regional Water Boards

RECOMMENDATION 8-1: The Legislature should create one nonvoting, ex-officio Regional Board Member that is represented by the State Water Board Member Regional Liaison.

Across the Regional Water Boards, there is an appreciation of the State Water Board Member liaisons and a desire for greater engagement between the State Water Board and the nine Regional Water Boards – particularly in Southern California, where it is more challenging for State Water Boards members to conduct site visits and attend hearings. We commend the recent improvement in State Water Board Member liaisons’ interaction with the Regional Boards, but to further that engagement, we recommend the Legislature make the liaisons nonvoting, ex-officio Regional Board Members that listen-to and interact in Board hearings.

PROPOSED LEGISLATIVE FIX

Section 13201 of the Water Code is amended, to read:

(a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of seven **voting** members appointed by the Governor, each of whom shall represent, and act on behalf of, all the people and shall reside or have a principal place of business within the region.

(b) Except as specified in subdivision (c), each member shall be appointed on the basis of his or her demonstrated interest or proven ability in the field of water quality, including water pollution control, water resource management, water use, or water protection. The Governor shall consider appointments from the public and nonpublic sectors. In regard to appointments from the nonpublic sector, the Governor shall consider including members from key economic sectors in a given region, such as agriculture, industry, commercial activities, forestry, and fisheries.

(c) At least one member shall be appointed as a public member who is not required to meet the criteria established pursuant to subdivision (b).

(d) All persons appointed to a regional board shall be subject to Senate confirmation, but shall not be required to appear before any committee of the Senate for purposes of such confirmation unless specifically requested to appear by the Senate Committee on Rules.

(e) In addition to subdivision (a), one State Water Board Member shall serve as an ex officio, nonvoting member of the regional board.

RECOMMENDATION 8-2: The State Water Board Liaisons should proactively conduct site visits, attend Regional Water Board hearings, and hold monthly calls with Regional Water Board leadership to increase understanding among the Water Boards.

The State Water Board Liaison roles, in which each State Water Board member is assigned as a liaison to one or more regions, serve an important role to unify the Water Boards, share updates on a statewide level, and for individual State Water Board members to understand region-specific issues.

The evolution and emergence of remote hearings and video conference calls during the COVID-19 pandemic offers new opportunities to increase engagement between State Water Board members and the Regional Water Boards. Even prior to the pandemic, one liaison has implemented monthly calls between the Executive Officer and Regional Board Chair to discuss upcoming regional and statewide issues, which has been well received by the Regional Water Board as an effective strategy for increased engagement. The State Water Board should encourage similar actions be taken by all liaisons, either by attending Regional Water Board hearings, conducting site visits, and holding monthly video conference calls to connect on both regional and emerging statewide issues.

RECOMMENDATION 8-3: The State Water Board should revise the Annual Performance Reports and evaluation of the Water Boards to reflect individual Regional Water Boards' priorities.

Each of the nine Regional Water Boards face unique challenges within their region, and the efficacy of the Water Boards expenditure of time and resources would be better evaluated by capturing each of the region's priority issues in the Water Boards' Annual Performance Report. For example, some regions are influenced by particular industries more than others, such as oil and gas development or small irrigated lands, that require significant staff time and resources to conduct the necessary investigations of the industries that pose the largest threat to water quality for that region. The State Water Board should ensure that each region's identified priorities, such as efforts to increase permit enrollment and identify non-filers for industries that are unique or prevalent in that region, are reflected in the Annual Performance Report to

prevent an inaccurate depiction of Regional Water Board activities based on statewide metrics.

RECOMMENDATION 8-4: The State Water Board should provide Regional Water Boards with the opportunity to provide input on statewide permits prior to the public release of a draft.

There is an inherent push and pull between the State and Regional Water Boards, given the structure of the State Water Board and the nine Regional Water Boards tasked with issuing and overseeing individual permits. Regional Water Boards have expressed a general desire to review final and complete drafts of statewide permits before the draft becomes available for public comment, in order to privately flag or resolve any inherent issues, and prevent the appearance that the Water Boards are not unified. While there is a delicate balance to strike between preventing undue delays and granting ample opportunity for Regional Water Board input, the Water Boards may benefit by allowing Regional Water Board staff to review a final draft of a permit prior to its release to the public.

RECOMMENDATION 8-5: The State Water Board should focus roundtables on statewide issues and hold quarterly Management Coordinating Committee meetings to discuss emerging and novel challenges across the Water Boards.

Roundtables held between the Water Boards have had varied levels of success, depending on the meeting facilitation and topics to be discussed. While these roundtables offer a useful opportunity for the Regional Water Boards to discuss specific items, share knowledge, challenges, and lessons-learned, roundtables have stalled or faltered with limited discussion or participation when the topics to be discussed when the issue does not have statewide application. To ensure roundtables meet the intended purpose of sharing information and identifying solutions, these forums should center on issues of statewide application, such as monitoring and tracking TMDLs or emerging stormwater challenges or advancements, and have a designated facilitator to convene the roundtables to ensure continuity between the discussions, and ensure more efficient and informative meetings.

Additionally, Management Coordinating Committee Meetings offer an important opportunity for Executive Officers to discuss discrete issues and emerging widespread challenges – such as staffing and workforce management, sea level rise, climate change, or other issues of statewide concern – and identify approaches to address these issues in individual permits and planning processes.

RECOMMENDATION 8-6: The State Water Board should facilitate greater Legislative engagement and understanding of the Regional Water Boards.

Legislative engagement between the State Capitol, the Governor's Office, and the Water Boards is generally limited to the State Water Board and statewide issues. Without communicating region-specific issues, neither the Legislature nor the Governor's Office can prioritize hard-hitting issues impacting specific communities, such as chronic water quality and industry-

specific issues, or access to drinking water. The State Water Board can better facilitate this engagement by educating the California Legislature of Regional Water Board budgets, including a breakdown in the Governor’s budget proposal by regions and a brief synopsis in how this will impact Regional Water Board workload.

Goal 9 | Set Statewide Policy Goals

RECOMMENDATION 9-1: The Governor, Legislature, and/or the State Water Board should set a statewide objective with interim milestones to achieve by 2050 the national goal of eliminating all state water impairments.

In 1972, Congress enacted the first comprehensive national clean water legislation, the Clean Water Act, in response to growing public health concern for serious and widespread water pollution. The Clean Water Act’s primary objective is to restore and maintain the integrity of the nation’s waters. The objective translates into two fundamental national goals: to eliminate the discharge of pollutants into the nation’s waters, and to achieve water quality levels that are fishable and swimmable. Congress made it a national goal that the discharge of pollutants into the navigable waters be eliminated by 1985. Thirty-five years later, we are nowhere close to eliminating the discharge of pollutants into our waterways. California is considered a leader on clean water laws, and yet the majority of our waterways are impaired.

Pursuant to Clean Water Act sections 303(d) and 305(b), each state is required to report to the U.S. EPA on the overall quality of the waters within its boundaries. Under CWA section 303(d), states are required to review, make changes as necessary, and submit to U.S. EPA a list identifying waterbodies not meeting water quality standards and the water quality parameter (i.e., pollutant) not being met (referred to as the “303(d) list”). States are required to include a priority ranking of such waters, taking into account the severity of the pollution and the uses to be made of such waters, including waters targeted for the development of TMDLs.

As of the most recent 2018 303(d) list, nearly 95 percent of all fresh waters assessed in California, and over 1,400 waterbodies are listed as impaired with only 114 TMDLs approved since 2009 in California. Specifically:

- Of 164,741 assessed miles of rivers/streams, 82% were impaired.
- Of 929,318 assessed acres of lakes/reservoirs/ponds, 93% were impaired.
- Of 575,000 assessed acres of bays/harbors/estuaries, 99% were impaired.
- Of 2,180 assessed miles of coastal shoreline, 93% were impaired.
- Of 130,084 assessed acres of wetlands, 99% were impaired.

The State Water Board should set a new clean water goal to eliminate all waterway impairments by 2050. To achieve this goal, the State Water Board should set interim milestones to reduce impairments by 20 percent every 5 years. And the State Water Board should set action triggers for if those interim milestones are not achieved. For example, if by 2025 California has not reduced its impairments by 20 percent, then the California Budget will include additional resources and a specific Budget line-item to address water quality impairments. Or potentially, if an interim milestone is not achieved, the Water Boards commit to enforcing water quality violations for every discharger discharging in an impaired waterway.

RECOMMENDATION 9-2: The Legislature should require Water Boards to deny permits for facilities located in whole or in part of an environmental justice community, if the project poses health and environmental risks to the community, unless all adverse environmental or public health impacts are avoided and prevented – not merely mitigated.

Too often California’s low-income communities and communities of color experience far greater impacts from pollution, toxic contamination, and the effects of climate change than more affluent areas of the state. An overwhelming number of California’s waste disposal sites, heavy manufacturing facilities, and other industrial facilities are located in, or in close proximity to, environmental justice communities. This in turn, degrades the quality of life in these areas and exposes local residents to greater risks of health impacts stemming from pollution and other environmental hazards in the areas they live, work, and go to school.

Environmental justice communities face multiple challenges, including economic and racial injustice, that are tied to environmental harm and public health. The COVID-19 pandemic highlighted these injustices, as people of color have died or otherwise been exposed to COVID-19 at disproportionately high rates. As one example, a recent study found that patients in areas with highly polluted air were more likely to die from the virus than others,¹⁸ meanwhile these communities often lack access to safe, reliable, and affordable drinking water – confirming another link between environmental degradation and public health.

California already requires environmental justice analysis in local land use planning under the California Environmental Quality Act (CEQA) but does not adequately prevent polluting industries from harming residents in these communities. This bill will advance the state’s commitment to remedying environmental injustices faced by its most vulnerable communities by building from a bill recently passed in New Jersey this summer of 2020 (NJ S232), the first of its kind in the nation to address and prevent environmental injustices by requiring industrial permits or facility expansions that pose public health threats in environmental justice communities be denied. The New Jersey bill “writes very clearly the line in the sand: if it’s not permissible in an affluent community, it shouldn’t be permissible elsewhere.”

¹⁸ Harvard University T.H. Chan School of Public Health, A national study on long-term exposure to air pollution and COVID-19 mortality in the United States (Sept. 18, 2020), available at <https://projects.iq.harvard.edu/covid-pm>.

RECOMMENDATION 9-3: The Legislature should address the lack of universal access to a low-income rate assistance water affordability program by authorizing the State Water Board to create and implement a flexible fund that can receive any future state/national funding.

Drinking water is a basic human need. California households, however, find it increasingly difficult to satisfy this need as the retail cost of water has risen substantially over the last decade and is expected to rise significantly over the coming years. Hundreds of thousands of Californians cannot afford to pay their water bill. In 2019 alone, an estimated 350,000 Californians had their water shut off due to the inability to pay.¹⁹ In 2020, the COVID-19 pandemic has only added another layer of stress and struggle; you cannot wash your hands and shelter in place without access to water. The high and rising costs of basic needs for California residents, including housing, food, and other utility services, means that cost increases for any single need, such as water, can force families to make difficult and risky tradeoffs which could harm their health and welfare.

The average California household paid 45% more per month for drinking water service in 2015 than in 2007.²⁰ The burden of rapidly rising drinking water costs falls disproportionately on the 13 million Californians living in low-income households, many of whom have seen their incomes stagnate during the same period.²¹ Only about half of California's population is served by a community water system offering some form of rate assistance program, and most of these existing programs have limited financial resources.²² As a result, less than 20% of the state's low-income population currently receives benefits from a low-income rate assistance program.²³ Due to the impracticality of a comprehensive low-income rate assistance program at the local level, we recommend a statewide program with benefits distributed through water bills, crisis assistance for water ratepayers, and a renter's water credit for residents who pay for their water indirectly through rent.

RECOMMENDATION 9-4: The State Water Board should remove the silos between water quality and water supply by requiring the Water Boards to consider water supply and water rights issues when developing water quality permits and policies.

As California's water management challenges become more severe with climate change and population growth, the time is now to reform outdated silos in water management in order to protect both water quality and supply for the benefit of California's environment and communities. Prioritizing and investing in diversified, less environmentally-intensive water supplies – such as water recycling, stormwater capture and reuse, and conservation measures – is critical to improve statewide water security, climate resilience, and improve water quality and

¹⁹ State Water Resources Control Board and UCLA Luskin Center for Innovation, Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program (February 2020) at 7, available at https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf.

²⁰ *Id.*

²¹ *Id.* at 13.

²² *Id.* at 8.

²³ *Id.*

the overall health of California's waterways. Unfortunately, much of California's water infrastructure is outdated, and traditional thinking on water management has not kept pace with emerging challenges and opportunities.

By removing the traditional silos between water quality and water supply, the Water Boards can advance integrated water management and encourage innovations in water management to diversify California's water portfolio and increase local water supply with cost-effective projects, such as stormwater capture and treatment, and water recycling – and ultimately decrease the strain on California's rivers and streams, and improve the health of these waterways statewide. Further, waterways receiving full protections of the Clean Water Act could be expanded to impairments caused by hydromodification or flow impairments, NPDES permits could consider the reasonable or wasteful use of a discharge, and stormwater could augment groundwater supplied. Considering water management decisions, permits, and policies holistically is long overdue and needed advance the integrated management of California's water supplies.

Goal 10

Implement Clean Water Laws in a Timely Manner

RECOMMENDATION 10-1: The Legislature or the Water Boards should require expired permits to be reissued no later than one year from the expiration date, and if not, the expired permit is terminated, and discharges are prohibited.

Among the core functions of the Water Boards is its role in adopting water quality permits to regulate the discharge of waste into California's waterways and groundwater aquifers. Activities regulated under a National Pollutant Discharge Elimination System (NPDES) permit, such as discharges to surface waters such as rivers, streams, and ocean waters, expire every five years. Additionally, Waivers of Waste Discharge expire every five years. Despite this, permits are consistently adopted well beyond this five-year threshold, sometimes leaving a community or discharger with requirements that are nearly a decade old. For example, the statewide Construction General Permit was last re-issued in 2009 and is now over 6 years past its expiration date. The Water Boards should require expired permits to be reissued no later than one year after expiration. Discharging waste into the public's waterways is a privilege – not a right. If the Water Boards do not revise and readopt an expired permit one year after its expiration, that permit should be terminated, and all parties should be prohibited from discharging until a new permit is adopted.

NPDES permit rules vary across the nation, allowing individual states to set more stringent monitoring, reporting, pollution prevention measures, and renewal requirements. California should similarly set more stringent permit term limits to protect rivers, streams, and ocean waters across the state from outdated and unprotective permit requirements.

PROPOSED LEGISLATIVE FIX

Section 13380 of the Water Code is amended, to read:

(a) Any waste discharge requirements or dredged or fill material permits adopted under this chapter shall be reviewed at least every five years and, if appropriate, revised.

(b) Waste discharge requirements or dredged or fill material permits shall be terminated if the permit is not reissued or renewed 365 days after its expiration date.

RECOMMENDATION 10-2: The Legislature should amend the Water Code to require Waste Discharge Requirements to be reviewed and reissued every five years consistent with other clean water permits.

Discharges to state waters, such as groundwater or wetlands not otherwise regulated under the federal Clean Water Act, are regulated by Waste Discharge Requirements (WDRs) issued by the State and Regional Water Boards. Unlike NPDES permits, which regulate discharges to surface waters and expire every five years to incorporate changes in technology or existing laws and regulations, WDRs are issued for the duration of the discharge and do not have an expiration date. Despite the fact that Regional Water Boards are authorized to review WDRs “periodically” pursuant to Section 13263(e) of the Porter-Cologne Water Quality Control Act, many WDRs are out-of-date, and as a result, do not reflect existing laws, regulations, and revised local Water Quality Control Plans. The State Water Board currently recommends that WDRs be reviewed on a frequency of five years, or longer based on the discharger’s threat to water quality, yet countless WDRs remain unreviewed or unchanged for decades.

The California Legislature should act to repair this backlog of outdated permits and prevent ongoing and unnecessary harm to California’s waters, especially as the federal government threatens to roll back the scope of federally protected waters – leaving these waters with only the protections under California’s Porter-Cologne Water Quality Control Act.

PROPOSED LEGISLATIVE FIX

Section 13623 of the Water Code is amended, to read:

Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. **All requirements shall be reviewed and reissued every five years.**

APPENDIX 1: GOALS, RECOMMENDATIONS, AND PARTNERS

GOAL 1: IMPROVE WATER BOARD MEMBER APPOINTMENTS		
1-1	Require each Regional Water Board Chair to be a full-time salaried position.	Legislature Governor
1-2	Classify an existing State and Regional Water Board Member seat to represent environmental justice communities.	Legislature
1-3	Make communications between an interested person and the Governor's Office regarding State and Regional Water Board appointments an <i>ex parte</i> communication that requires disclosure.	Legislature Governor
1-4	Change the "pay to play" conflict law to prevent Board Members who received a financial contribution from deciding on a proceeding.	Legislature
1-5	Use the Water Quality Coordinating Committee to provide ongoing training to Regional Water Board members.	SWRCB
1-6	Develop creative new ways to reach potential Regional Water Board Member candidates who are currently unaware of appointment opportunities.	Governor SWRCB RWQCB
GOAL 2: ENFORCE WATER QUALITY AND WATER RIGHTS VIOLATIONS		
2-1	Set a statewide goal – and direct Regional Water Boards to set regional goals – for percent targets of enforcement actions resulting from water quality violations.	SWRCB RWQCB
2-2	Provide funding to ensure all permits and policies contain clear and enforceable requirements by requiring the Office of Enforcement to consult with program staff and Board Members on state- and region-wide permits.	Governor SWRCB
2-3	Prioritize actual deterrence in its 'fair enforcement' of water quality and water rights laws by promptly assigning punitive fines or appropriate remediation for violations.	SWRCB RWQCB
2-4	Oversee the implementation of settlement requirements – rather than allow violators to implement the requirements - and ensure violators make impacted communities whole to prevent ongoing environmental injustice.	SWRCB RWQCB
2-5	Leverage the Office of Public Participation and industry forums, publications, and other media to communicate its enforcement actions as deterrence for current or future Water Code violations.	SWRCB RWQCB
2-6	Direct, and provide informational briefings to, the Regional Water Boards to enforce mandatory minimum penalties.	SWRCB
2-7	Divide permit and enforcement staff duties to eliminate 'regulatory capture' and bias from enforcement actions.	RWQCB
GOAL 3: ENSURE ENFORCEMENT PENALTIES ARE RETURNED TO THE WATERSHED HARMED BY THE VIOLATION		
3-1	Create a Watershed Recovery Subaccount within the Cleanup and Abatement Account to proportionally distribute 50% of enforcement fines back to the Regional Water Boards to fund approved SEP projects.	SWRCB
3-2	Develop, and update annually, a prioritized SEP list by soliciting proposals directly from the local community, and if the list is not maintained or prioritized annually, the Regional Water Board is prohibited from receiving their portion of projects funded by the Watershed Recovery Subaccount.	RWQCB

3-3	Review SEP lists, and improve SEP criteria, to ensure SEP projects result in actual water quality improvements to a specific watershed or improve access to safe drinking water.	SWRCB RWQCB
3-4	Continue using Tier 1 of the Cleanup and Abatement Account for emergency projects and urgent drinking water needs but perform an annual self-audit to provide transparency and accountability to the Regional Water Boards.	SWRCB
3-5	Require third-party administrators to demonstrate viability and solvency before being eligible to receive Watershed Recovery funding or before settling parties can transfer liability to that third-party administrator.	SWRCB RWQCB
GOAL 4: ENHANCE THE WATER BOARDS' ANNUAL PERFORMANCE METRICS		
4-1	Track resolved violations in CIWQS and the Annual Performance Report to allow the public to better understand the outcome of water quality violations.	SWRCB
4-2	Track violation outcomes in CIWQS and the Annual Performance Report.	SWRCB
4-3	Update CIWQS to include a search function by facility name and include direct access to enforcement documents.	SWRCB
4-4	Track and distinguish between administrative violations and water quality violations.	SWRCB
4-5	Provide summaries of the progress and actions taken to attain TMDL waste load allocations to improve transparency of Water Board activities.	SWRCB
4-6	Connect the priorities under 'Plan and Assess' with enforcement actions taken by the Water Boards.	SWRCB
4-7	Improve the Enforcement Action Summaries provided on the Annual Performance Reports.	SWRCB
4-8	Reflect Regional Water Board enforcement priorities, including inspection priorities and actions to improve permit enrollment, under the Enforcement Performance Reports.	SWRCB
4-9	Provide a geospatial, interactive map highlighting where Water Board enforcement actions are – or are not – occurring.	SWRCB
4-10	Retain and provide all documents online, while documents are simultaneously updated for compliance with the Americans with Disability Act (ADA).	SWRCB
GOAL 5: IMPROVE PUBLIC PARTICIPATION AND INCREASE THE CAPACITY FOR COMMUNITY ENGAGEMENT		
5-1	Include an additional 5% fee on permit applications and annual fees to create a community capacity fund to assist environmental justice communities in participating in Water Board outreach and regulatory processes.	SWRCB RWQCB
5-2	Provide additional resources to hire two statewide environmental justice and tribal coordinators to proactively conduct outreach to environmental justice and tribal communities.	Governor
5-3	Provide resources so that the State Water Board's Office of Public Participation can train State and Regional Board staff to reduce barriers to engaging environmental justice, underserved and tribal communities.	Governor
5-4	Promote remote hearings and increase participation with satellite hearing locations and virtual public comment after COVID-19 restrictions have ended.	SWRCB RWQCB
5-5	Direct the Office of Public Participation and regulated entities to dedicate resources to improve community outreach for regulatory mitigation, like CV Salts requirements to provide interim and long-term alternative water supplies.	SWRCB RWQCB

5-6	Develop a Community and NGO Outreach Policy that includes requirements to conduct and summarize public outreach in all policies and major permits' staff reports.	SWRCB RWQCB
5-7	Water Boards' agendas should have a specific schedule that includes time allocations for agenda items, and email alerts to inform the public when agenda items are up or if the item has been delayed.	SWRCB RWQCB
5-8	Allocate three percentage of the Cleanup and Abatement Fund to a citizen monitoring subaccount.	Legislature SWRCB
GOAL 6: MODERNIZE TECHNOLOGY TO IMPROVE REGULATORY EFFICIENCY		
6-1	Use and expand available geospatial tools, such as CalEnviro Screen, to identify and prioritize enforcement cases in environmental justice and disadvantaged communities.	SWRCB RWQCB
6-2	Use modest data-based solutions to identify dischargers failing to enroll under proper water quality permits.	SWRCB RWQCB
6-3	Collaboratively work with sister agencies on the development of aerial imaging and mapping tools that serve multiple environmental agency functions.	Governor SWRCB
6-4	Invest in well-trained enforcement and compliance personnel and prioritizing hiring inspectors in-house.	RWQCB
GOAL 7: MAXIMIZE LIMITED RESOURCES		
7-1	Revisit the distribution of discretionary funds to the regions to ensure funding is informed by water quality needs, rather than distributed purely on a programmatic level.	SWRCB
7-2	Communicate the State's highest priorities to the Regional Water Boards to inform the distribution of staff time and resources.	SWRCB
7-3	Direct CalHR to increase the salaries for environmental scientists across the regions to improve recruitment and retention.	Governor
7-4	Rotate vacancies through the regions, share staff for remote work, and encourage hiring student interns and student assistants to reduce the burden of ongoing vacancies.	RWQCB
7-5	Promote information sharing and strategies between the regions to support a productive and efficient workforce.	RWQCB
GOAL 8: IMPROVE COORDINATION BETWEEN STATE AND REGIONAL WATER BOARDS		
8-1	Create one nonvoting, ex-officio Regional Board Member that is represented by the State Water Board Member Regional Liaison.	Legislature
8-2	Proactively conduct site visits, attend Regional Water Board hearings, and hold monthly calls with Regional Water Board leadership to increase understanding the Water Boards.	SWRCB
8-3	Revise the Annual Performance Reports and evaluation of the Water Boards to reflect individual Regional Water Boards' priorities.	SWRCB RWQCB
8-4	Provide Regional Water Boards with the opportunity to provide input on statewide permits prior to the public release of a final draft.	SWRCB
8-5	Center Roundtables on statewide issues and hold quarterly Management Coordinating Committee meetings to discuss emerging and novel challenges across the Water Boards.	SWRCB RWQCB
8-6	Facilitate greater Legislative engagement and understanding of the Regional Water Boards.	Legislature SWRCB RWQCB

GOAL 9: SET STATEWIDE POLICY GOALS		
9-1	Set a statewide objective and interim milestones to achieve the national goal of eliminating all state water impairments by 2050.	Legislature Governor SWRCB
9-2	Require Water Boards to deny permits for facilities in part of an environmental justice community, if the project poses health and environmental risks to the community, unless all adverse environmental or public health impacts are avoided and prevented – not merely mitigated.	Legislature
9-3	Address the lack of universal access to a low-income rate assistance water affordability program by authorizing the State Water Board to create and implement a flexible fund that can receive any future state/national funding.	Legislature
9-4	Remove the silos between water quality and water supply by requiring the Water Boards to consider water supply and water rights issues when developing water quality permits and policies.	SWRCB RWQCB
GOAL 10: IMPLEMENT CLEAN WATER LAWS IN A TIMELY MANNER		
10-1	Require expired permits to be reissued no later than one year from the expiration date, and if not, the expired permit is terminated, and discharges are prohibited.	Legislature SWRCB RWQCB
10-2	Amend the Water Code to require Waste Discharge Requirements to be reviewed and reissued every five years consistent with other clean water permits.	Legislature

APPENDIX 2: RECOMMENDATIONS FOR PARTNERS

LEGISLATURE

(Leg Counsel Language Provided in Full Report)

1. Require each Regional Water Board Chair to be a full-time salaried position.
2. Classify an existing State and Regional Water Board Member seat to represent environmental justice communities.
3. Make communications between an interested person and the Governor’s Office regarding State and Regional Water Board appointments an *ex parte* communication that requires disclosure.
4. Change the “pay to play” conflict law to prevent Board Members who received a financial contribution from deciding on a proceeding.
5. Allocate three percentage of the Cleanup and Abatement Fund to a citizen monitoring subaccount.
6. Create one nonvoting, ex-officio Regional Water Board Member that is represented by the State Water Board Member Regional Liaison.
7. Facilitate greater Legislative engagement and understanding of the Regional Water Boards.
8. Set a statewide objective and interim milestones to achieve the national goal of eliminating all state water impairments by 2050.
9. Require Water Boards to deny permits for facilities in part of an environmental justice community, if the project poses health and environmental risks to the community, unless all adverse environmental or public health impacts are avoided and prevented – not merely mitigated.
10. Address the lack of universal access to a low-income rate assistance water affordability program by authorizing the State Water Board to create and implement a flexible fund that can receive any future state/national funding.

GOVERNOR

1. Require each Regional Water Board Chair to be a full-time salaried position.
2. Make communications between an interested person and the Governor’s Office regarding State and Regional Water Board appointments an *ex parte* communication that requires disclosure.
3. Develop creative new ways to reach potential Regional Water Board Member candidates who are currently unaware of appointment opportunities.
4. Provide funding to ensure all permits and policies contain clear and enforceable requirements by requiring the Office of Enforcement to consult with program staff and Board Members on state- and region-wide permits.
5. Provide additional resources to hire two statewide environmental justice and tribal coordinators to proactively conduct outreach to environmental justice and tribal communities.
6. Provide resources so that the State Water Board’s Office of Public Participation can train State and Regional Board staff to reduce barriers to engaging environmental justice, underserved and tribal communities.

7. Collaboratively work with sister agencies on the development of aerial imaging and mapping tools that serve multiple environmental agency functions.
8. Direct CalHR to increase the salaries for environmental scientists across the regions to improve recruitment and retention.
9. Set a statewide objective and interim milestones to achieve the national goal of eliminating all state water impairments by 2050.

STATE WATER RESOURCES CONTROL BOARD

1. Use the Water Quality Coordinating Committee to provide ongoing training to Regional Water Board members.
2. Develop creative new ways to reach potential Regional Water Board Member candidates who are currently unaware of appointment opportunities.
3. Set a statewide goal – and direct Regional Water Boards to set regional goals – for percent targets of enforcement actions resulting from water quality violations.
4. Provide funding to ensure all permits and policies contain clear and enforceable requirements by requiring the Office of Enforcement to consult with program staff and Board Members on state- and region-wide permits.
5. Prioritize actual deterrence in its ‘fair enforcement’ of water quality and water rights laws by promptly assigning punitive fines or appropriate remediation for violations.
6. Oversee the implementation of settlement requirements – rather than allow violators to implement the requirements - and ensure violators make impacted communities whole to prevent ongoing environmental injustice.
7. Leverage the Office of Public Participation and industry forums, publications, and other media to communicate its enforcement actions as deterrence for current or future Water Code violations.
8. Direct, and provide informational briefings to, the Regional Water Boards to enforce mandatory minimum penalties.
9. Create a Watershed Recovery Subaccount within the Cleanup and Abatement Account to proportionally distribute 50% of enforcement fines back to the Regional Water Boards to fund approved SEP projects.
10. Review SEP lists, and improve SEP criteria, to ensure SEP projects result in actual water quality improvements to a specific watershed or improve access to safe drinking water.
11. Continue using Tier 1 of the Cleanup and Abatement Account for emergency projects and urgent drinking water needs but perform an annual self-audit to provide transparency and accountability to the Regional Water Boards.
12. Require third-party administrators to demonstrate viability and solvency before being eligible to receive Watershed Recovery funding or before settling parties can transfer liability to that third-party administrator.
13. Enhance the Annual Performance Metrics:
 - Track resolved violations in CIWQS and the Annual Performance Report to allow the public to better understand the outcome of water quality violations.

- Track violation outcomes in CIWQS and the Annual Performance Report.
 - Update CIWQS to include a search function by facility name and include direct access to enforcement documents.
 - Track and distinguish between administrative violations and water quality violations.
 - Provide summaries of the progress and actions taken to attain TMDL waste load allocations to improve transparency of Water Board activities.
 - Connect the priorities under 'Plan and Assess' with enforcement actions taken by the Water Boards.
 - Improve the Enforcement Action Summaries provided on the Annual Performance Reports.
 - Reflect Regional Water Board enforcement priorities, including inspection priorities and actions to improve permit enrollment, under the Enforcement Performance Reports.
 - Provide a geospatial, interactive map highlighting where Water Board enforcement actions are – or are not – occurring.
 - Retain and provide all documents online, while documents are simultaneously updated for compliance with the Americans with Disability Act (ADA).
14. Include an additional 5% fee on permit applications and annual fees to create a community capacity fund to assist environmental justice communities in participating in Water Board outreach and regulatory processes.
 15. Promote remote hearings and increase participation with satellite hearing locations and virtual public comment after COVID-19 restrictions have ended.
 16. Direct the Office of Public Participation and regulated entities to dedicate resources to improve community outreach for regulatory mitigation, like CV Salts requirements to provide interim and long-term alternative water supplies.
 17. Develop a Community and NGO Outreach Policy that includes requirements to conduct and summarize public outreach in all policies and major permits' staff reports.
 18. Water Boards' agendas should have a specific schedule that includes time allocations for agenda items, and email alerts to inform the public when agenda items are up or if the item has been delayed.
 19. Allocate three percentage of the Cleanup and Abatement Fund to a citizen monitoring subaccount.
 20. Use and expand available geospatial tools, such as CalEnviro Screen, to identify and prioritize enforcement cases in environmental justice and disadvantaged communities.
 21. Use modest data-based solutions to identify dischargers failing to enroll under proper water quality permits.
 22. Collaboratively work with sister agencies on the development of aerial imaging and mapping tools that serve multiple environmental agency functions.
 23. Revisit the distribution of discretionary funds to the Regions to ensure funding is informed by water quality needs, rather than distributed purely on a programmatic level.

24. Communicate the State's highest priorities to the Regional Water Boards to inform the distribution of staff time and resources.
25. Proactively conduct site visits, attend Regional Water Board hearings, and hold monthly calls with Regional Water Board leadership to increase understanding the Water Boards.
26. Revise the Annual Performance Reports and evaluation of the Water Boards to reflect individual Regional Water Boards' priorities.
27. Provide Regional Water Boards with the opportunity to provide input on statewide permits prior to the public release of a final draft.
28. Center Roundtables on statewide issues and hold quarterly Management Coordinating Committee meetings to discuss emerging and novel challenges across the Water Boards.
29. Facilitate greater Legislative engagement and understanding of the Regional Water Boards.
30. Set a statewide objective and interim milestones to achieve the national goal of eliminating all state water impairments by 2050.
31. Remove the silos between water quality and water supply by requiring the Water Boards to consider water supply and water rights issues when developing water quality permits and policies.
32. Require expired permits to be reissued no later than one year from the expiration date, and if not, the expired permit is terminated, and discharges are prohibited.

REGIONAL WATER QUALITY CONTROL BOARDS

1. Develop creative new ways to reach potential Regional Water Board Member candidates who are currently unaware of appointment opportunities.
2. Set a statewide goal – and direct Regional Water Boards to set regional goals – for percent targets of enforcement actions resulting from water quality violations.
3. Prioritize actual deterrence in its 'fair enforcement' of water quality and water rights laws by promptly assigning punitive fines or appropriate remediation for violations.
4. Oversee the implementation of settlement requirements – rather than allow violators to implement the requirements - and ensure violators make impacted communities whole to prevent ongoing environmental injustice.
5. Leverage the Office of Public Participation and industry forums, publications, and other media to communicate its enforcement actions as deterrence for current or future Water Code violations.
6. Divide permit and enforcement staff duties to eliminate 'regulatory capture' and bias from enforcement actions.
7. Develop, and update annually, a prioritized SEP list by soliciting proposals directly from the local community, and if the list is not maintained or prioritized annually, the Regional Water Board is prohibited from receiving their portion of projects funded by the Watershed Recovery Subaccount.
8. Review SEP lists, and improve SEP criteria, to ensure SEP projects result in actual water quality improvements to a specific watershed or improve access to safe drinking water.

9. Require third-party administrators to demonstrate viability and solvency before being eligible to receive Watershed Recovery funding or before settling parties can transfer liability to that third-party administrator.
10. Include an additional 5% fee on permit applications and annual fees to create a community capacity fund to assist environmental justice communities in participating in Water Board outreach and regulatory processes.
11. Promote remote hearings and increase participation with satellite hearing locations and virtual public comment after COVID-19 restrictions have ended.
12. Direct the Office of Public Participation and regulated entities to dedicate resources to improve community outreach for regulatory mitigation, like CV Salts requirements to provide interim and long-term alternative water supplies.
13. Develop a Community and NGO Outreach Policy that includes requirements to conduct and summarize public outreach in all policies and major permits' staff reports.
14. Water Boards' agendas should have a specific schedule that includes time allocations for agenda items, and email alerts to inform the public when agenda items are up or if the item has been delayed.
15. Use and expand available geospatial tools, such as CalEnviro Screen, to identify and prioritize enforcement cases in environmental justice and disadvantaged communities.
16. Use modest data-based solutions to identify dischargers failing to enroll under proper water quality permits.
17. Invest in well-trained enforcement and compliance personnel and prioritizing hiring inspectors in-house.
18. Rotate vacancies through the regions, share staff for remote work, and encourage hiring student interns and student assistants to reduce the burden of ongoing vacancies.
19. Promote information sharing and strategies between the regions to support a productive and efficient workforce.
20. Revise the Annual Performance Reports and evaluation of the Water Boards to reflect individual Regional Water Boards' priorities.
21. Center Roundtables on statewide issues and hold quarterly Management Coordinating Committee meetings to discuss emerging and novel challenges across the Water Boards.
22. Facilitate greater Legislative engagement and understanding of the Regional Water Boards.
23. Set a statewide objective and interim milestones to achieve the national goal of eliminating all state water impairments by 2050.
24. Remove the silos between water quality and water supply by requiring the Water Boards to consider water supply and water rights issues when developing water quality permits and policies.
25. Require expired permits to be reissued no later than one year from the expiration date, and if not, the expired permit is terminated, and discharges are prohibited.

APPENDIX 3: REGIONAL WATER BOARD LISTENING SESSIONS

Between May 2018 and June 2020, California Coastkeeper Alliance staff and local Waterkeepers met with Regional Water Board Members and staff to discuss Water Board governance challenges and identify potential solutions.

Common themes and ideas emerged from these discussions:

1. **The structure of the Regional Water Boards could be improved to prevent vacancies, maintain quorum, and increase efficacy of individual Board Members.**
 - Reducing the number of Regional Water Board seats could help fill positions with viable candidates, reduce vacancies, and help Regional Boards better maintain a quorum. For example, some Regional Water Boards have not had a full Board for over five years and would not have a quorum if a single Board Member is unable to attend a meeting.
 - The Governor's Office should provide more transparency in the appointments process by providing qualified applicant criteria (*e.g., what is the Governor looking for when making a Regional Board appointment?*)
 - The lack of compensation and volunteer board status severely limits participation. Serving as a Regional Water Board Member is a substantial time and energy commitment.
 - The Water Quality Coordinating Council (WQCC) could provide ongoing training to the Regional Water Board Members and educate community members of the role and function of the Water Boards. Virtual and/or remote WQCC meetings may increase participation and possible frequency of WQCC meetings.

2. **A lack of resources and increasing statewide policies and goals stretch Regional Water Board staff and impede the Boards from fulfilling basic duties to address water quality, as well as address emerging issues.**
 - Regional Water Boards are required to make a case that there is a water quality problem that is deserving of staff and resources, rather than having the resources available to address existing water quality needs.
 - The State Water Board should reconsider how discretionary funding is allocated to allow regions to receive funding for region-specific issues.
 - There is a need for the State Water Board to communicate its highest priorities to the Regional Water Boards (and in interviews done during 2020, this is especially important given the historically high vacancy rate due to COVID-19).
 - Resolutions and policies adopted by the State Water Board generally have a number of 'asks' without designated funding, causing Regional Water Boards to pull from existing staff without additional personnel resources.

- There is a need to share lessons-learned and approaches to improve staff accountability and management, given lean staffing across both the State and Regional Water Boards.
- Fees are not distributed evenly across regions, yet there is a benefit to this approach, given regions can help subsidize each other's programs.
- There is an overall need to prioritize resources to recruit and retain staff, including improving salary equity between positions and relaxing hiring standards for student interns and research assistants.

3. There is a need for increased coordination between the Regional Water Boards, the State Water Board, and the Legislature.

- There is a general lack of input by the regions in State Water Board permits, despite having to implement the permits adopted by the State Water Board. The process may be improved by allowing regions to review a final, full draft of a permit before it becomes public.
- State Water Board Liaisons serve an important role to share updates from Sacramento and to attend Regional Water Board hearings in order to understand local issues.
- Regional Water Boards seek increased engagement with the State Water Board liaisons, either through site visits or monthly meetings. State Water Board liaisons should additionally rotate through the regions.
- Roundtables are a good opportunity to share information and address solutions, though roundtables are generally seen as most successful when they center on issues of statewide application (e.g., TMDLs, stormwater) and have a facilitator to run an efficient meeting.
- Management Coordinating Committee (MCC) meetings offer an important chance for Executive Officers to connect and discuss emerging challenges, and how to address them in permits and planning processes (e.g., sea level rise).
- Locally-tailored policy solutions for climate change-related challenges should be encouraged and supported.
- Generally, there is a need to improve and increase legislative engagement on Regional Water Board issues, such as an improved understanding by the Legislature of Regional Water Board budgets.

4. There is a need to pursue performance-based targets, rather than minimum benchmarks for process-driven activities.

- The Annual Performance Report can be improved by reflecting Regional Water Board activities on priority issues for that region.
- Rather than counting the number of permits issued, the Water Boards should evaluate how well they are working. For example, improvements to water quality should be measured, rather than mandating a specific number of inspections for a specific permit.

5. Regional Water Boards are actively pursuing new ways to increase public participation.

- Despite having a commitment across the Boards to directly reach out to disadvantaged communities, there are limited resources for outreach.
- The Office of Public Participation can play a critical role in supporting community engagement (and help bridge the digital divide in the era of COVID-19 and remote hearings).
- Remote hearings are changing not only the way the public views the hearings, but participates. Remote hearings have increased public participation, but is limited to broadband access.
- When in-person meetings and hearings resume, hearings should be held in satellite locations near the impacted community.
- Increased NGO engagement is needed. There is an overall need to identify ways to increase engagement from environmental, environmental justice and other locally-based groups to ensure all perspectives are considered.

6. The Regional Water Boards face unique enforcement challenges with inadequate staffing.

- Regional Water Boards face unique enforcement and permit enrollment challenges, depending on the industries within that region.
- Regions are generally understaffed for enforcement work.
- Some regions are making a concerted effort to improve enforcement, rather than focusing solely on compliance assistance. The strongest partnerships are those in which the regions help dischargers comply, yet with an enforcement backstop.
- Requiring the Regional Water Boards to adopt or set enforcement priorities for the year may help the Boards target their limited resources.
- Enforcement funding does not stay in the region. Violators do not want to do SEPs, and Cleanup and Abatement penalties do not often return to the region.

7. Supplement Environmental Projects (SEPs) are underutilized, yet preferred by the Regional Boards.

- There is an overall desire to use SEPs in underserved communities to achieve compliance and to improve drinking water quality.
- Dischargers generally pay into the Cleanup and Abatement Account (CAA), rather than SEPs. Liability for ongoing projects will continue to pose challenges for the SEP program.
- There is a need to investigate improvements to the SEP allocation process, and evaluate ways to make the process more transparent, and to improve outreach to community-based organizations that are not familiar with the Water Boards
- The Office of Public Participation may be able to support/provide recommendations for community projects in the future, in tandem with foundation partners.