

July 12, 2021

Clerk to the Board
Ms. Jeanine Townsend
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95899-7377
Email: commentletters@waterboards.ca.gov

RE: Resolution Condemning Racism, Xenophobia, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism

Dear State Water Board Members:

We are writing on behalf of San Francisco Baykeeper (“Baykeeper”) to comment on the State Water Resources Control Board’s (“Water Board”) Draft Resolution Condemning Racism, Xenophobia, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism (“Racial Equity Resolution”). Baykeeper submits these comments on behalf of our approximately 5,000 members and supporters who live and/or recreate in and around the San Francisco Bay Area. Baykeeper’s mission is to defend San Francisco Bay from the biggest threats and hold polluters and government agencies accountable to create healthier communities and help wildlife thrive. Our team of scientists and lawyers investigate pollution via aerial and on-the-water patrols, strengthen regulations through policy advocacy, and enforce environmental laws on behalf of the public.

Baykeeper commends the Water Board’s preparation of the Racial Equity Resolution and this opportunity for public comment; we appreciate the Water Board’s expression of intent to confront structural and institutional racism and its attempt to advance racial equity and environmental justice.

However, as the Water Board is aware, acknowledging the persistent effects of white supremacy and privilege is only a start to making amends for the past and continuing wrongs imposed on communities of color. Beyond acknowledgment, the Water Board must support its good intentions with tangible action. Adopting the Racial Equity Resolution without a commensurate change in related water policies would be inadequate. It and would constitute a disservice to the very communities the Resolution is purporting to assist.

Along these lines, we believe there are straightforward ways in which the Racial Equity Resolution can and should be immediately implemented. If the Water Board is serious about confronting racism and advancing environmental justice, then Baykeeper respectfully recommends starting with the following actions:



Recommendation 1

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

At this moment, communities of color throughout the San Joaquin Valley, in the Klamath River watershed, and along the California Coast are suffering from the collapse of subsistence fisheries and the loss of essential cultural icons due to chronically inadequate river flows and persistently degraded water quality. The Water Board should take meaningful action to implement Resolution 3 by:

- Restoring the flow of fresh water in the San Joaquin River and other California rivers to reinstate seasonally appropriate flows necessary to resurrect the subsistence, recreational, cultural, and commercial fisheries relied upon by communities of color.
- Rescinding its approval of the Bureau of Reclamation’s 2021 Temperature Management Plan for the Sacramento River, which will result in mortality of 80% or more of this year’s winter-run Chinook Salmon egg cohort. Winter-run Chinook Salmon are listed as endangered by the state and federal government. They are also essential to the culture of the Winnemem Wintu and other northern California tribes. The Water Board should center the cultural integrity of these tribes by withdrawing its approval of the Shasta TMP and taking all necessary emergency actions to protect winter-run Chinook salmon.

Additionally, cities throughout California have failed to provide social services to unsheltered populations and have given tacit approval to live along rivers and creeks. The proliferation of the unsheltered in these areas causes waterways in many urban regions of the state to be impacted by heavy loads of trash and bacteria discharges from communities living near shorelines, including from a proliferation of derelict vessels serving as illegal liveabards, and the extreme modification and erosion of creek embankments. The Water Board should take meaningful action to implement Resolution 3 by:

- Directing the Regional Water Boards to strengthen municipal stormwater regulations to ensure the program's full benefits extend to unsheltered communities. Regional Water Boards should hold cities accountable for effectively addressing water quality concerns while mandating the humane treatment of the unsheltered. To date, the San Francisco Bay Regional Water Board has sidestepped these issues in relevant regulations. Large municipalities like San Jose are allowed to misuse their permit obligations to criminalize homelessness and displace unsheltered communities without providing alternative solutions or even adequate services for sanitary waste collection.

Recommendation 2

Resolution 4 affirms the Water Board’s commitment “to upholding California’s human right to water law, upholding the State Water Board’s human right to water resolution, and demonstrating that every human being in California, including Black, Indigenous, and people of color, deserves safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.”

Right now, underserved communities of color in Stockton and the lower San Joaquin Valley bear the burden of toxic water quality as harmful algal blooms (HABs) once again proliferate in their local waterways. Research conducted by the California Water Boards demonstrates that HABs are more common when and where river flows are inadequate. The Water Board should take meaningful action to implement Resolution 4 by:

- Implementing water quality standards adopted for the San Joaquin River and its tributaries in 2018 and immediately reinitiating the process of updating the water quality standards for the entire Bay-Delta, including Sacramento River inflows to the Delta, in-Delta hydrodynamics, and Delta outflows.

Whereas the Racial Equity Resolution references the Human Right to Water, the Resolution should also address equity with regard to other rights, including fishing, public access, and the protection of surface waters. The Water Board should seek to holistically address grave and persistent inequities in these areas, as well.

Recommendation 3

Resolution 5 affirms the Water Board’s commitment “to ensuring cleanup of contaminated soil, soil vapor and groundwater; control of wastes discharged to land and surface water; and restoration of impaired surface waters to protect public health and environmental quality in all communities, particularly communities of color disproportionately burdened by environmental pollution.”

Currently, at numerous toxic sites in the Bay Area managed by the Department of Toxic Substance Control (DTSC), soil and water management focus on maintaining the status quo, or worse, promoting redevelopment and public housing on lands that remain severely contaminated. The Water Board should take meaningful action to implement Resolution 5 by:

- Directing the Regional Water Boards to resume lead agency status at contaminated shoreline sites throughout the state. DTSC’s preference for leaving contaminated soils in place, with little or no regard for the effects of anticipated sea level rise, primarily burdens communities of color with unacceptable levels of pollution in the present and unacceptable risks of additional pollution in the future. By resuming lead agency status, the Regional Water Boards can better control remediation plans to account for inundation of these toxic sites and ensure that contaminated soils no longer pose a hazardous health threat for the

residents of these communities.

- Requiring the Regional Water Boards to conduct assessments of Sediment Quality Objectives (SQOs) in and around waters located near communities of color to ensure the safety of fish consumption and recreational access. The historically toxic lands in and around the contaminated Bayview-Hunters Point neighborhood may, for example, be an inadvisable location for the local community to access and enjoy San Francisco Bay waters.

In addition, communities of color throughout the Bay Area are impacted by a lack of sufficient control of industrial wastes discharged to land and already impaired surface waters. Hundreds of industrial facilities operate without adequate controls and contribute toxic pollution to local communities. The Water Board should take meaningful action to implement Resolution 5 by:

- Leading the movement on behalf of California agencies to achieve a just transition away from the polluting fossil fuel industry, which primarily impacts communities of color, by directing Regional Water Boards to more stringently regulate industry permits and expansion requests. Communities along the “refinery corridor” in the Bay Area are already overburdened by refinery pollution, making it critical for Regional Water Boards to incentivize refineries to mitigate and prevent oil pollution rather than enable the refineries to pay to pollute. Specifically, the State Water Board should direct the San Francisco Bay Regional Water Board to hold the coal industry accountable for its pollution in the Bay Area, rather than actively undermining successful legal action by citizen groups like Baykeeper, as was the case in Richmond back in 2012.
- Directing Regional Water Boards to adequately investigate unpermitted industrial sites in our most vulnerable communities and verify that those operations claiming no discharge status or Clean Water Act permit inapplicability are in fact operating and classifying themselves under the Standard Industrial Classifications (SIC codes) appropriate to industrial activities taking place at their sites.
- Addressing the thousands of facilities throughout the state that discharge to waterways and impact communities of color via aerial deposition. The San Francisco Bay Regional Water Board has long ignored these discharges to the detriment of water quality around already burdened neighborhoods in San Francisco, Richmond, and West Oakland, citing deference to the Bay Area Air Quality Management District.

Recommendation 4

Resolution 6 commits to “expanding implementation of the State Water Board’s Climate Change Resolution to address the effects of sea-level rise and extreme hydrologic conditions, from drought to flooding, on Black, Indigenous, and people of color communities.”

The future threat of flooding of low-lying communities around the Bay Area is real, and the current piecemeal approach to approving new development proposals and assessing shoreline mitigation options frequently does not reflect the potential impacts on vulnerable communities, often communities of color, in the flood zone. The Water Board should take meaningful action to implement Resolution 6 by:

- Ensuring that permits and approvals for new shoreline development projects do not exacerbate flood risk to vulnerable communities. The aim should be to keep all development out of high and medium flood risk areas and other areas affected by other sources of flooding. All opportunities to locate new flood-incompatible developments (i.e., housing and commercial developments) in areas of little or no flood risk must be evaluated and prioritized.

Thank you for your consideration of these recommendations and for acknowledging the urgent need for action within the Water Board's mission to protect our state's most vulnerable communities. Baykeeper looks forward to working with you to place racial equity at the forefront of the Water Board's decision-making processes. We can be reached to discuss these comments at sejal@baykeeper.org and jon@baykeeper.org.

Most sincerely,



Sejal Choksi-Chugh
Executive Director & Baykeeper



Jonathan Rosenfield, Ph.D.
Senior Scientist