BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

TITLE VI COMPLAINT AND PETITION FOR RULEMAKING FOR PROMULGATION CENTRAL COAST REGION WATER QUALITY STANDARDS	**Pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and 40 C.F.R. § 7.120; the Administrative Procedure Act, 5 U.S.C. § 553(e); and the Clean Water Act, 33 U.S.C. § 1313(c)(4)(B)**

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INTRODUCTION

California's Human Right to Water Act declares that every human being has the right to safe, clean, affordable, and accessible water. The federal Safe Drinking Water Act declares that safe drinking water is essential to protect public health. Yet racially inequitable decision-making—both historic and ongoing—at the local, state, and federal level, obstructs access to this most basic of human rights for communities of color throughout California.

For decades, Recipient State Water Resources Control Board ("State Water Board" or "Board") has failed to uphold its statutory duty to protect the beneficial use of the domestic water supply for communities of color, especially for groups of Latinx[1] origin. These failures include implementation of inadequate water quality protection standards that result in unsafe drinking water supplies in predominantly non-white communities, causing disproportionate physical, mental, and financial harm to these protected classes. The State Water Board has disproportionately harmed Latinx communities and other communities of color through its inadequate regulation of California's agricultural industry. The State Water Board has, through a series of actions and deliberate inaction, allowed non-white communities to suffer the brunt of dangerous water contamination resulting from agricultural contaminants such as nitrate-based fertilizers.

Irrigated agriculture operations pollute groundwater by applying excessive nitrogen fertilizer to crops without using adequate management practices to slow or stop the leaching of nitrogen, which converts to nitrate, into groundwater. Agricultural growers ("Growers") in California have, for decades, applied excessive nitrogen to their crops—a practice that continues today without improvement. As a result, water quality throughout California's agricultural regions—including the Central Coast region where Complainants reside—has degraded below drinking water standards and will continue to degrade unless the over-application and discharge of nitrogen fertilizer is stopped.

The Water Boards have confirmed nitrate pollution causes significant social and environmental costs that will likely worsen until and unless contamination is significantly reduced. Excessive nitrates in drinking water represent a serious health risk. Excess nitrate can result in

[1] "Latinx" is used throughout this Petition to refer to individuals of Latin-American heritage of all genders.

acute, life-threatening health effects for infants. Adults experience long-term adverse health effects such as the potential for increased risk of cancer or thyroid disease.[2]

The State Water Board admits that in California, "race predicts a person's access to governmental services and the quality and affordability of the services they receive."[3] The State Water Board confirms that those governmental services include the "availability of safe drinking water" and has acknowledged that "race is the strongest predictor of water access" in the state.[4] Because nitrate contamination is highest in agricultural areas, which have high percentages of Latinx residents including agricultural workers and their families, these protected-class communities are disproportionately impacted by nitrate pollution. Consequently, Latinx communities disproportionately experience both acute and long-term health, social, and economic impacts associated with nitrate contamination in comparison to white communities.

The racial disparities in access to clean water in California can be addressed through federal agency enforcement of disparate impact regulations. Title VI disparate impact regulations mandate that government-funded agencies, such as the State Water Board, administer programs and policies in such a way that does not perpetuate the repercussions of past discrimination. Such discrimination does not need to be intentional to be subject to Title VI enforcement. The U.S. Supreme Court has recognized that disparate impact liability under various civil rights laws permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. As the Supreme Court has held, this is because even benignly motivated policies that appear neutral on their face may perpetuate the nation's long history of invidious race discrimination in employment, education, housing, access to government services, and many other areas.[5]

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[2] Central Coast Regional Water Quality Control Board, *General Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2021-0040, Attachment A*, p. 68, April 15, 2021, https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/docs/ag_order4/2021/ao4_att_a.pdf [hereinafter "Findings"].

[3] California State Water Resources Control Board, *Resolution No. 2021-0050, Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism,* p. 4, Nov. 16, 2021, https://www.waterboards.ca.gov/racial_equity/resolution-and-actions.html [hereinafter "Racial Equity Resolution"].

[4] *Id*.

[5] *See*, e.g., *Griggs v. Duke Power Co*., 401 U.S. 424, 430–31 (1971); *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980); *Gaston Cty. v. United States*, 395 U.S. 285, 297 (1969).

Complainants allege that three actions by the State Water Board—comprised of one discrete action and two ongoing policies—have resulted, and continue to result, in discriminatory impacts to a protected class. First, the State Water Board's policy and practice of failing to implement regulations sufficient to protect the groundwater in the Central Coast region from excess agricultural discharges perpetuates high levels of nitrate contamination that disproportionately harm communities of color in violation of Title VI. Second, the State Water Board's deliberate act of modifying Agricultural Order 4.0 to remove numerical nutrient application and discharge limits designed to protect domestic drinking water supplies will have the direct discriminatory effect of further worsening nitrate contamination in communities of color, in violation of Title VI. Third, the State Water Board's precedential East San Joaquin Order continues a systematic policy and practice of discrimination by preventing the nine Regional Water Quality Control Boards ("Regional Boards") from taking the regulatory actions deemed necessary to protect domestic drinking water supplies. This ongoing policy results in disproportionate water contamination in communities of color.

The State Water Board's actions, inaction, policies, and practices harm Latinx protected class members through an inequitable distribution of negative burdens and imminent harm.

To address these long-standing systemic disparities, Complainants respectfully submit this Civil Rights Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. ("Title VI") and the nondiscrimination regulations of the U.S. Environmental Protection Agency ("EPA"), 40 C.F.R. Part 7. Complainants request that the EPA immediately and thoroughly investigate the State Water Board's noncompliance with Title VI of the Civil Rights Act, as detailed in this Complaint, related to its actions and inactions on its agricultural regulations that have failed to protect the Beneficial Use of Domestic Water Supply for all Californians regardless of race, ethnicity, or national origin.

Complainants respectfully request that the EPA immediately and thoroughly investigate the State Water Board's noncompliance with Title VI of the Civil Rights Act related to its actions, and inaction, that have failed to protect the Beneficial Use of Domestic Water Supply. Complainants respectfully request the EPA require the State Water Board, by a date certain, to set enforceable limits for the application and discharge of nitrogen into groundwater to protect the

public health of all Californians and to remediate harms disproportionately impacting communities of color. Further, Complainants respectfully request that the EPA engage with affected parties, including Complainants, during Title VI investigations and in crafting remedies. Complainants respectfully request that the EPA insist that federal EPA funding of the State Water Board be contingent upon the State Water Board complying with Title VI by regulating nitrate contamination in a manner that will result in remedying disproportionately high levels of nitrate contamination in water supplies for Latinx communities.

PARTIES

A. Complainants

i. (b)(6) Privacy, (b)(7)(C) Enf. Privacy

Complainant (b)(6) Privacy, (b)(7)(C) Enf. Privacy is an unincorporated association comprised of residents of Monterey and Santa Cruz Counties. The (b)(6) Privacy, (b)(7) includes individuals residing in communities affected by levels of nitrate contamination that exceeds State Maximum Contaminant Levels ("MCL") The (b)(6) Privacy, (b)(7)(C) represents "environmental justice" communities; all members are of Latinx and/or indigenous Mexican heritage, primarily speak Spanish or Mixteco (a distinct indigenous Mexican language) and are primarily low-income. (b)(6) Privacy, (b)(7)(C) is represented by California Rural Legal Assistance, Inc.

ii. (b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy is an unincorporated association. that supports the needs of low-income residents in San Lucas, California. San Lucas is a small unincorporated town located at the southern portion of Monterey County. All members of (b)(6) Privacy are of Latino/Latina descent and live in San Lucas. (b)(6) Privacy, (b) is represented by California Rural Legal Assistance, Inc.

iii. Monterey Waterkeeper

Monterey Waterkeeper (legal name Monterey Coastkeeper) is a non-profit corporation that works to protect and restore drinkable, fishable, and swimmable waters for all in the Monterey and northern Central Coast region. Monterey Waterkeeper's members drink the groundwater, as well as kayak, fish, and otherwise recreate in the region's surface water and Monterey Bay, which receives discharges from agricultural runoff and other sources of water pollution. Monterey Waterkeeper files this Complaint *in propia persona*.

iv. The Environmental Justice And The Common Good Initiative

Environmental Justice and the Common Good Initiative at Santa Clara University is a faculty collaborative funded by SCU's President, Provost, College of Arts & Sciences, and Ignatian Center for Jesuit Education, as well as external research grants and individual donors. Since 2016, the Initiative conducts research and provides training, resources, and networking to support community-driven research and educational partnerships for environmental justice among community organizations, Santa Clara University faculty and students, and other academic institutions in Northern California and Jesuit higher education. The Water and Climate programmatic area of the initiative works to improve access to safe water in California's Central Valley and Central America, in the face of contamination and climate-induced drought. The Environmental Justice and the Common Good Initiative files this Complaint *in propia persona.*.

B. Recipient State Water Resources Control Board

The California State Water Resources Control Board ("State Water Board" or "Board") exercises "the adjudicatory and regulatory functions of the state in the field of water resources" in California.[6] The State Water Board and the nine regional water quality control boards are the principal state agencies "with primary responsibility for the coordination and control of water quality."[7] The Recipient State Water Board received $735.7 million from EPA in Fiscal Year 2023, and over $833 million from the EPA in the last 12 months.[8] Within the $735 million dollars the State Water Board received from the EPA, $309 million went towards Safe Drinking Water State Revolving Fund (SRF), $217 million went towards Clean Water SRF, $169 million went towards Water Infrastructure Improvements, $12 million went towards the state's Water Pollution Control program, and $9 million went towards Nonpoint Source Grants.[9] The State Water Board is therefore subject to Title VI requirements.

[6] Cal. Water Code § 174.
[7] Cal. Water Code § 13001.
[8] Recipient Profile: State of California Water Resources Control Board, https://www.usaspending.gov/recipient/6622cef5-5e79-0729-863d-42c9a5fde8dd-C/latest (last visited Mar. 2, 2024).
[9] *Id*.

JURISDICTION AND TIMELINESS

The Environmental Protection Agency ("EPA") has jurisdiction over this Title VI Complaint, which meets all jurisdictional requirements.[10] The Complaint is in writing.[11] The Complaint "allege[s] a discriminatory act(s) that, if true, may violate EPA's nondiscrimination regulation"[12] because it alleges multiple State Water Board failures that have caused disproportionate adverse impacts on communities of color, especially Latinx communities. The State Water Board is subject to EPA jurisdiction as a recipient of federal assistance. [13]

The Complaint is timely, as it is submitted within 180 days of the alleged discriminatory act, or a continuing systematic policy or practice of discrimination.[14] This Complaint challenges the State Water Board's September 20, 2023, modification of the Central Coast Agricultural Order 4.0 ("Ag Order 4.0"),[15] which was published on September 27, 2023.[16] As such, a complaint submitted on March 18, 2024, is timely filed. The ongoing policies also challenged by this Complaint remain in effect with daily impacts, and as such are continuing violations to which this challenge is timely.

[10] U.S. Env't Protection Agency, External Civil Rights Compliance Office, *Case Resolution Manual*, at p. 5 (2021), https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf [*hereinafter* "Case Resolution Manual"].
[11] *Id*.
[12] 40 C.F.R. § 7.120.
[13] Recipient Profile: State of California Water Resources Control Board, https://www.usaspending.gov/recipient/6622cef5-5e79-0729-863d-42c9a5fde8dd-C/latest (last visited Mar. 2, 2024).
[14] Case Resolution Manual, *supra* note 10, at p. 5.
[15] Central Coast Regional Board, *Order No. R3-2021-0040, General Waste Discharge Requirements for Discharges from Irrigated Lands*, April 15, 2021, https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/docs/ag_order4/2021/ao4_order.pdf [hereinafter "Ag Order 4.0"].
[16] California State Water Resources Control Board, *Order WQ 2023-0081, In the Matter of Review of General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2021-0040 Issued by the California Regional Water Quality Control Board, Central Coast Region SWRCB/OCC FILES A-2751(a)-(b)* (hereinafter "State Board Order"), at p. 37; *See also* Transmittal of Order WQ 2023-0081 SWRCB/OCC FILES A-2751(a)-(b). *Available at:* https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/2023/order-wq-2023-0081-transmittal-letter.pdf.

FACTUAL BACKGROUND

I. GROUNDWATER NITRATE CONTAMINATION DISPROPORTIONATELY IMPACTS PROTECTED STATUS COMMUNITIES

1. California Nitrate Contamination

Over 21 million Californians rely on contaminated groundwater as their primary source of drinking water.[17] A 2002 research brief by the Lawrence Livermore National Laboratory concluded that nitrate contamination is "the number-one contaminant threat to California's drinking water supply."[18] Nitrate contamination in groundwater is a byproduct of large-scale industrial agriculture. A 2012 report by the University of California, Davis, found that agriculture is responsible for 96 percent of the current groundwater contamination in four California counties with the largest agricultural production in the nation.[19] Irrigated agriculture operations pollute groundwater by applying excessive nitrogen fertilizer to crops without using adequate management practices to slow or stop leaching nitrogen into groundwater.[20] Excess nitrogen in the soil leaches below the crops' root zone, where it converts to nitrate and migrates into groundwater.[21]

Studies have shown that "nitrates can harm the respiratory and reproductive systems, as well as the kidney, spleen, and thyroid."[22] Evidence also supports a finding that exposure to high concentrations of nitrates can result in "serious illness and death for infants and pregnant women, including significant increased risk of neural tube defects, premature birth, intrauterine

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[17] California State Water Resources Control Board, *Communities that rely on a contaminated groundwater source for drinking water*, Report to the Legislature, p. 12, January 2013, https://www.waterboards.ca.gov/gama/ab2222/docs/ab2222.

[18] Lawrence Livermore National Laboratory Nitrate Working Group, *Nitrate Contamination in California Groundwater: An Integrated Approach to Basin Assessment and Resource Protection*, Lawrence Livermore National Laboratory, p. 9, Dec. 10, 2002, https://www.osti.gov/servlets/purl/1062757 [hereinafter "Nitrate Contamination in California Groundwater"].

[19] Thomas Harter and Jay Lund, et al., *Addressing Nitrate in California's Drinking Water, With a Focus on Tulare Lake Basin and Salinas Valley Groundwater*, p. 17, Center for Watershed Sciences, University of California, Davis, Jan. 2012, https://ucanr.edu/sites/groundwaternitrate/files/138956.pdf [*hereinafter* "Addressing Nitrate"].

[20] University of California, Davis, *The California nitrogen assessment, Challenges and Solutions for People, Agriculture, and the Environment*, Executive Summary, p. 12, 2016, https://asi.ucdavis.edu/sites/g/files/dgvnsk5751/files/inline-files/Executive%20Summary%20Layout_FINAL_reduced.pdf.

[21] John Letey and Peter Vaughan, *Soil type, crop and irrigation technique affect nitrogen leaching to groundwater*, California Agriculture, Oct. 1, 2023, https://calag.ucanr.edu/Archive/?article=ca.E.v067n04p231.

[22] Eli Moore et al., *The Human Costs of Nitrate-contaminated Drinking Water in the San Joaquin Valley*, Pacific Institute, p. 10, Mar. 2011, https://pacinst.org/wp-content/uploads/2013/02/nitrate_contamination3.pdf [*hereinafter* "Human Costs of Nitrate-Contaminated Drinking Water"].

growth restriction, and anencephaly; and increased methemoglobin levels causing pregnancy complications, central nervous system birth defects, and congenital malformations."[23] Further health impacts to both children and adults include "respiratory tract infections in children, thyroid disruption, pancreatitis, sudden infant death syndrome ("SIDS"), and cancers of the digestive system, bladder, and thyroid."[24] Detrimental impacts are not limited to physical injury; nitrate contamination is also associated with the economic and social costs associated with supplementing water supply, medical expenses, and lost wages from illness or medical care. [25] The legal limit or Maximum Contaminant Level ("MCL") for nitrate-nitrogen in drinking water, 10 milligrams per liter (equivalent to 45 mg/L, nitrate as NO3 ion), is based on protection of infants from the lethal condition methemoglobinemia, or "blue baby syndrome" that overexposure to nitrates can cause.[26]

2. The State Water Board Recognizes Racialized Impacts of Nitrate Pollution

The State Water Board recognizes that communities of color and low-income communities are disproportionately likely to suffer adverse health and social consequences resulting from water contamination.[27] The State Water Board admits that in California, "race predicts a person's access to governmental services and the quality and affordability of the services. . ." including access to safe drinking water, [28] and has acknowledged that "race is the strongest predictor of water access" in the state. [29]

The Water Boards acknowledge the role of historic racism in creating systemic inequities in affordability, access, allocation, and protection of water resources, and further recognize that

[23] *Id*. at p.12.
[24] *Id*.
[25] Findings, *supra* note 2, at p. 31.
[26] U.S. Environmental Protection Agency, *Estimated Nitrate Concentrations in Groundwater Used for Drinking*, https://www.epa.gov/nutrientpollution/estimated-nitrate-concentrations-groundwater-used-drinking.
[27] Cal. Environmental Protection Agency, Office of Environmental Health Hazard Assessment, *Achieving the Human Right to Water in California: An Assessment of the State's Community Water Systems*, p. 104, January 2021, https://oehha.ca.gov/media/downloads/water/report/hrtwachievinghrtw2021f.pdf.
[28] Racial Equity Resolution*, supra* note 3, at p. 4.
[29] *Id*.; *See also* Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley* (hereinafter "Drinking Water and Exclusion"), Columbia Law School, p. 234 (2012) (explaining "In part because of decades of structural neglect and noninvestment, [unincorporated, low-income] communities experience overwhelming infrastructure deficits. Among those deficits, lack of access to water and sanitation drives instability and lack of certainty in long-term viability."), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4611&context=faculty_scholarship.

those racialized adverse impacts continue today.[30] The State Water Board has found that "evidence of past and persisting racism and racial inequity [in water regulation] is compelling."[31] According to the State Water Board, "[h]istorically, decision-makers representing government agencies used race to establish structures and systems that continue to deliver disparate outcomes, including wealth, health, educational, and environmental inequities."[32] Additionally, the Board found that "people of color are overrepresented in the neighborhoods that are the most environmentally degraded and are still experiencing severe racial wealth gaps caused by redlining and other land-use practices designed to oppress them."

According to the State Water Board, "[o]n a community scale, race is strongly correlated with more severe water pollution burdens."[33] In small community water systems in California, those serving higher concentrations of Latinx populations are statistically more likely to have tap water with higher levels of nitrate.[34] Often these communities are in unincorporated county areas, which have been historically marginalized politically and economically.[35] Non-English-speaking Californians have limited access to information about water quality, and face nearly insurmountable obstacles to participation in decision-making processes that impact water regulation, as agencies typically fail to translate important documents and notices into languages other than English and lack adequate language access services.[36] Transportation inequity and the fact that regulatory decisions are typically made in public buildings in urban areas means that rural low-income communities face additional logistical hurdles to participation in decision-making that will impact their access to clean, affordable water.

Groundwater pollution in the form of excessive nitrates has an especially disproportionate impact on Latinx populations. This disparity is a result of a long history of exploitation of Black, Indigenous, and people of color through agricultural labor, as well as the migration of Black, Indigenous, and people of color in search of employment in the California agricultural industry.

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[30] Racial Equity Resolution, *supra* note 3, at p. 3.
[31] *Id*. at p. 4.
[32] *Id*. at p. 1.
[33] *Id*. at p. 4.
[34] *See* Carolina Balazs et al., *Social disparities in nitrate-contaminated drinking water in California's San Joaquin Valley*, Environmental health perspectives vol. 119 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3230390/.
[35] *See* Drinking Water and Exclusion, *supra* note 29, at p. 233-237.
[36] *See* Human Costs of Nitrate-Contaminated Drinking Water, *supra* note 22, at pp. 33-34.

White colonizers of California forced indigenous people into agricultural work as a means to "civilize" them.[37] California thereafter began to rely on imported immigrant labor for the success of its agricultural industry. From the 1870s to the mid-1900s waves of migrants immigrated to California in search of agricultural jobs.[38] Waves of Chinese migrants, Dust Bowl migrants, Black migrants fleeing the Jim Crow south, Japanese migrants, and Philippinx migrants immigrated to California to work in its agricultural industry.[39] A xenophobic backlash of increasingly strict immigration laws thereafter sought to exclude immigrant populations from entering the United States.[40]

The 1924 Immigration Act, also known as the Johnson-Reed Act, set quotas on immigrants from Asian countries.[41] As a result, Chinese and Japanese farmworkers were largely replaced by immigrant Philippinx and Mexican labor.[42] Mexican laborers became solidified as the dominant source of agricultural labor by codification when, in the 1940s, the U.S. federal government agreed to a series of bilateral agreements in what became known as the "*Bracero*" Program, or Mexican Farm Labor Agreement.[43]

Since that time, Latinx people have made up a majority of the U.S. agricultural industry's workforce. By 1998, 78 percent of agricultural laborers were Latinx.[44] By 2013, the number

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[37] *See* Clifford E. Trafzer, and Joel R. Hyer, *Exterminate Them: Written Accounts of the Murder, Rape, and Enslavement of Native Americans During the California Gold Rush*, p.26, Michigan State University Press (1999)(describing the first reservation created in California by Edward F. Beale in which soldiers forced indigenous people into farming and ranching).
[38] *See* Drinking Water and Exclusion, *supra* note 29, at p. 231.
[39] *See id*.
[40] *See* Pub. L. 47-126 (Session 1; 22 Stat. 58) (stating "the coming of Chinese laborers to the United States be . . . suspended.) https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/22/STATUTE-22-Pg58c.pdf; *See also Chae Chan Ping v. U.S.* (Chinese Exclusion Case), 130 U.S. 581 (1889) (upholding the 1882 Chinese Exclusion Act); *See also* Mae Ngai, *Impossible Subjects: Aliens and the Making of Modern America*, p. 18, Princeton Paperbacks (2004) (stating the Immigration Act of 1908 "curbed Japanese immigration" while the Immigration Act of 1917 excluded "Asian Indians.").
[41] *See* Howard A. De Witt, *The Watsonville Anti-Filipino Riot of 1930: A Case Study of the Great Depression and Ethnic Conflict in California*, Southern California Quarterly, vol. 61, no. 3, 1979, pp. 291–302, at p. 292.
[42] *See id.*; *See* also Stacy Uy, *Before the wall, before the ban: Asian farmworkers were scapegoats too*, https://medium.com/@staceyann.uy/before-the-wall-before-the-ban-asian-farmworkers-were-scapegoats-too-8f09b18327af;
[43] Library of Congress, *A Latinx Resource Guide: Civil Rights Cases and Events in the United States, 1942: Bracero Program*, https://guides.loc.gov/latinx-civil-rights/bracero-program.
[44] Alicia Bugarin and Elias S. Lopez, *Farmworkers in California*, p.11, California Research Bureau, July 1998, http://lib.ncfh.org/pdfs/4950.pdf.

increased to 92 percent.[45] Current data indicates that up to 96 percent of California's farmworkers are Latinx, and more than 90 percent are immigrants.[46] Additionally, a large Mexican-Indigenous population has been the most recent "new immigrants" whose labor has been exploited in the agricultural industry. [47] Because Latinx communities comprise a large share of the workforce in the industry, nearby agricultural towns have a high percentage of Latinx residents. Consequently, these populations—protected by Title VI from discrimination on the basis of race, ethnicity, and national origin—are more likely to be burdened with nitrate contamination. this phenomenon has been widely documented in the San Joaquin Valley, California's agricultural powerhouse.[48] Complainants will demonstrate that farmworkers residing in the Central Coast counties of Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara are suffering the same fate.

3. Central Coast Nitrate Contamination

Two of the Complainants—Comité and MSL—are unincorporated associations comprised of residents of Latinx and/or indigenous Mexican heritage residing in California's Central Coast Region ("Central Coast"). The Central Coast's primary water quality regulating entity is the Central Coast Regional Water Quality Control Board ("Central Coast Regional Board" or "Regional Board"), which describes itself, and the region, as follows:

> The Central Coast Region covers the entirety of the coastal, valley and upland areas of Santa Cruz, San Benito, Monterey, San Luis Obispo, Santa Barbara Counties, and southern Santa Clara County as well as very small portions of San Mateo, Kern, and Ventura Counties that collectively make up the Central Coast Hydrologic Unit. It includes 378 miles of coastline between San Mateo and Ventura Counties and 3,559 square miles of groundwater basins. [49]

[45] California Research Bureau, *Farmworkers in California: A Brief Introduction* (hereinafter "Farmworkers in California), p. 1, Oct. 2013, https://latinocaucus.legislature.ca.gov/sites/latinocaucus.legislature.ca.gov/files/CRB%20Report%20on%20Farmworkers%20in%20CA%20S-13-017.pdf.
[46] Izaac Ornelas et al., *California Findings from the National Agricultural Workers Survey (NAWS) 2015-2019 A Demographic and Employment Profile of California Farmworkers*, at p. 4, JBS International (2022), https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2015.pdf.
[47] Richard Mines et al., *California's Indigenous Farmworkers* (hereinafter "California's Indigenous Farmworkers"), pp. 51-63, California Endowment, Jan. 2010, https://www.alrb.ca.gov/wp-content/uploads/sites/196/2018/05/IFS_Mines_Final_2010.pdf.
[48] Anne Weir Schechinger, *In California, Latinos More Likely To Be Drinking Nitrate-Polluted Water*, EWG, Oct. 7, 2020, https://www.ewg.org/interactive-maps/2020-california-latinos-more-likely-drinking-nitrate-polluted-water/.
[49] "Our Mission Statement," Central Coast Regional Water Quality Control Board, available at https://www.waterboards.ca.gov/centralcoast/about_us/, August 8, 2023.

The Central Coast is "primarily a rural agricultural region,"[50] with a significant number of Latinx and indigenous communities working as farm laborers.[51] Communities residing in the Central Coast region rely on groundwater for approximately 90 percent of their drinking water needs.[52] Yet like many agricultural, non-white communities in California, the region has high levels of nitrate contamination in domestic and municipal wells.[53] The Regional Board has found that many water segments throughout the Central Coast region are listed as impaired under federal Clean Water Act section 303(d), and that many beneficial uses are impacted by agricultural pollution.[54] The Regional Board identifies that water quality degradation associated with irrigated agricultural activities is well-documented, severe, and widespread.[55] In several areas where nitrate levels have not yet exceeded the MCL, they are increasing. In the Salinas Valley, for example, between 15%-23% of wells show increasing nitrate trends, while only 3%-6% show decreasing nitrate trends.[56] Regional Board staff is aware that immediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.

Nitrate contamination is widespread in ground and surface water throughout the Central Coast Region but has a disproportionate adverse impact on racial and ethnic minority populations and low-income communities. "Environmental justice communities" in the Central Coast Region—low-income communities and communities of color—experience disproportionately high concentrations of nitrates in their water supply compared to wealthier and/or whiter communities in the same region.[57] Nitrate contamination is particularly acute in subbasins that serve populations with a substantial concentration of both Latinx and

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[50] *Id.*
[51] *See* California's Indigenous Farmworkers, *supra* note 47, at pp. 16-17 (stating "Moreover, if we group the areas into larger units, we discover that the Central Coast area from Oxnard to Watsonville39 has almost half (46%) of the [Mexican Indigenous] farmworkers, the Central Valley has about a third, San Diego has 16% and the North Coast just 5%.); *See also* Farmworkers in California, *supra* note 45.
[52] Findings, *supra* note 2, at p. 3.
[53] *Id*. at p. 139 (stating "Of the over 2600 on-farm domestic wells sampled during Agricultural Orders 2.0 and 3.0 (2012 through 2019), 28 percent had mean concentrations that exceeded the nitrate MCL. . . [However] The concentrations in some groundwater basins was significantly higher than the regional average.).
[54] Findings, supra note 2, at pp. 60, 173 (65 waterbodies listed as impaired for nitrate on the 2014-2016 303(d) List. Of these nitrate listings, 60 percent are located in the major agricultural watersheds of the central coast region [].").
[55] *Id.* at pp. 2, 4.
[56] Findings, supra note 2, at pp. 140-141.
[57] *See* Exhibit A, DISPARATE IMPACTS OF EXISTING KNOWN NITRATE CONTAMINATION BASED ON RACE AND NATIONAL ORIGIN [*hereinafter* Exhibit A].

farmworker communities. In several of these subbasins, the *average* nitrate concentration for on-farm domestic wells is two or three times[58] the state Maximum Contaminant Level ("MCL").[59] Conversely, areas with the least nitrate groundwater contamination in the Central Coast Region include the predominantly white communities of Carmel, Monterey, and Paso Robles.[60]

The Corralitos, Gilroy-Hollister Valley, Salinas Valley, and Santa Maria River Valley groundwater subbasins, which make up the agricultural heartland of the Central Coast, experience the worst groundwater nitrate contamination.

In the Corralitos-Pajaro Valley subbasin, 38 percent of wells sampled had mean concentrations that exceeded the MCL and the mean concentration was 13.1 mg/L.[61] In the Gilroy-Hollister Valley's Llagas Area and North San Benito subbasins, 34% and 25% of wells sampled had mean concentrations that exceeded the MCL, respectively. [62]

Further south, the Salinas Valley East Side subbasin, 59% of wells exceeded the MCL and mean concentration was 32.1 mg/L.[63] In the Salinas Valley Forebay subbasin, 64% of the wells exceeded the MCL and the mean concentration was 25.7 mg/L.[64] In the Salinas Valley Upper Valley subbasin, 42% of wells sampled had mean concentrations that exceeded the MCL and the mean concentration was 16.3 Mg[65] These subbasins provide drinking water to the primarily Latino farmworker communities of Greenfield, Soledad, Gonzales, and East Salinas. Similarly, 55% of wells sampled had mean concentrations that exceeded the MCL in the Santa Maria basin and the mean concentration was 21.1 mg.[66]

The Regional Board also determined that the vast majority of nitrate pollution is from irrigated agricultural waste discharges.[67]The Regional Board concluded in Ag Order 4.0 that the "social and environmental costs associated with the impairment of drinking water beneficial uses due to nitrate pollution are significant and will likely increase into the near future until nitrogen

[58] Findings, *supra* note 2, at pp. 139-140.
[59] Cal. Health and Safety Code § 116275 (The MCL is the highest concentration of a contaminant legally permissible in public water systems, and is set based on public health standards.).
[60] Findings, *supra* note 2, at pp. 224-225.
[61] *Id*. at p. 140.
[62] *Id*. at p. 140.
[63] *Id*. at p. 139.
[64] *Id*. at p. 139.
[65] *Id*. at p. 139.
[66] *Id*. at p. 139.
[67] *Id*. At p. 31. *See also id*. At pp. 60, 66 ("Nitrate from fertilizer is the largest regional source of nitrate in groundwater in the Salinas Valley aquifer.").

loading to groundwater is reduced to levels that are protective of the drinking water beneficial use."[68]

PROCEDURAL HISTORY

I. CALIFORNIA LAW RECOGNIZES A HUMAN RIGHT TO CLEAN DRINKING WATER

Throughout California's history, the State has recognized the importance of protecting access to safe and accessible domestic drinking water. In 1913, the Legislature established as a state policy that domestic water use was the highest beneficial use, a policy later codified in 1943 in the State's Water Code.[69] In 1989, California recognized that all citizens have a right to pure and safe drinking water.[70] In 2012, California became the first state in the nation to recognize that every human being has a right to safe, clean, affordable, and accessible water. [71]

The State Water Board has identified the human right to water as a top priority and mission, to be considered in all actions it takes.[72] Similarly, the Central Coast Regional Board ("Regional Board,") representing the region where Complainants reside, adopted a resolution confirming the human right to water as one of its core values.[73] The Regional Board's resolution states that it will "promote policies that advance the human right to water and discourage actions that delay or impede opportunities for communities to secure safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."[74] The Regional Board also states that it prioritizes "regulatory programs and activities that prevent

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[68] *Id*. at p. 66.
[69] Cal. Wat. Code § 106.
[70] Cal. Health & Safety Code § 116270.
[71] Cal. Wat. Code § 106.3.
[72] State Water Resources Control Board, *Mission Statement*, https://www.waterboards.ca.gov/about_us/water_boards_structure/mission.html (The State Water Board's mission is "[t]o 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."); State Water Resources Control Board, Resolution No. 2016-0010 Adopting the Human Right to Water as a Core Value and Directing its Implementation in Water Board Programs and Activities, at p. 5. *Available at:* https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0010.pdf.
[73] Resolution No. R3-2017-0004, Adopting the Human Right to Water as a Core Value and Directing Its Implementation in Central Coast Water Board Programs and Activities, California Regional Water Quality Control Board, Central Coast Region (*hereinafter* Resolution No. R3-2017-0004), January 26, 2017, https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2017/2017-0004_hrtw_fnl.pdf [].
[74] Resolution No. R3-2017-0004, *supra* note 73, at p. 3.

and/or address discharges that could threaten human health."[75]

II. NITRATE GROUNDWATER REGULATION ON THE CENTRAL COAST

The California State Water Resources Control Board ("State Water Board") exercises "the adjudicatory and regulatory functions of the state in the field of water resources" in California.[76] The State Water Board and the nine regional water quality control boards are the principal state agencies "with primary responsibility for the coordination and control of water quality."[77] The regional water quality for the Central Coast region is the Central Coast Regional Water Quality Control Board ("Regional Board.").

Porter-Cologne Act and Basin Plans

Division 7 of the Water Code, section 13000 et seq., also known by its title, "Porter-Cologne Water Quality Control Act" ("Porter-Cologne"), protects all waters of the State of California, including groundwater.[78] Porter-Cologne declares that it is the policy of the State that the "quality of all the waters of the state shall be protected for use and enjoyment by the people of the state" and that "the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation…."[79] Porter-Cologne further states that "[a]ll discharges of waste into waters of the state are privileges, not rights."[80]

Porter-Cologne requires a regional board to develop a water quality control plan ("Basin Plan"), subject to State Water Board approval, that protects the beneficial uses of water in the Central Coast region.[81] The most recent Basin Plan for the Central Coast region was adopted in 2019.[82] The Central Coast Basin Plan designates beneficial uses, establishes water quality objectives, contains programs of implementation needed to achieve water quality objectives, and references the plans and policies adopted by the State Water Board. The Basin Plan must set Water Quality Objectives ("WQOs") that "ensure the reasonable protection of beneficial uses

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[75] *Id.*
[76] Cal. Wat. Code § 174.
[77] Cal. Wat. Code § 13001.
[78] Cal. Wat. Code § 13000.
[79] Cal. Wat. Code § 13000.
[80] Cal. Wat. Code § 13263(g).
[81] Cal. Wat. Code §§ 13240-13245.
[82] Central Coast Regional Board, *Water Quality Control Plan for the Central Coast Basin; June 2019 Edition* (hereinafter Central Coast Region Basin Plan), https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/.

and the prevention of nuisance."[83]

The Regional Board, in its Basin Plan, assigns the municipal and domestic (i.e. drinking water) supply ("MUN") beneficial use to all groundwater in the region.[84] The WQO for nitrate in groundwater under California and federal law is the Maximum Contaminant Level ("MCL") of 10 milligrams per liter (mg/L).[85]

Waste Discharge Requirements and Conditional Waivers

To prevent agricultural discharges from impairing the waters that receive these discharges, the Irrigated Lands Regulatory Program ("ILRP") regulates discharges from irrigated agricultural lands.[86] Porter-Cologne requires the Regional Board to issue permits for any discharge of waste into water, including groundwater.[87] This is done by issuing waste discharge requirements ("WDRs") or conditional waivers of WDRs ("Orders") to agricultural dischargers ("Growers").[88] A regional board may issue a general WDR where discharges from different dischargers are sufficiently similar that they are more appropriately regulated under one permit.[89]

WDRs and Orders contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments to water quality are found.[90] A regional board must prescribe WDRs that implement the region's Basin Plan and consider the WQOs reasonably required and protected beneficial uses, among other considerations.[91] WDRs must also be consistent with state water quality policies.[92] Approximately 40,000 growers participate in the ILRP program,[93] accounting for millions of acres of agricultural land in the State.

[83] Cal. Water Code § 13421.
[84] Findings, *supra* note 2, at p. 63.
[85] *Central Coast Region Basin Plan*, *supra* note 82, at p. 35; *See also* 22 Cal. Code Regs. §§ 64431; 40 CFR 141.23.
[86] State Water Resources Control Board, Agricultural: Irrigated Lands Regulatory Program. *Available at:* https://www.waterboards.ca.gov/water_issues/programs/agriculture/.
[87] Cal. Wat. Code § 13263.
[88] *Id.*
[89] Cal. Wat. Code § 13263, subd. (i).
[90] *Id.*
[91] Cal. Wat. Code § 13263.
[92] Cal. Wat. Code §§ 13240, 13263. State water quality policies have the force of law and may be adopted or amended only pursuant to procedures contained in Water Code sections 13140 through 13149.2.
[93] State Water Resources Control Board, Agricultural: Irrigated Lands Regulatory Program. *Available at:* https://www.waterboards.ca.gov/water_issues/programs/agriculture/.

III. THE STATE WATER BOARD PREVENTS IMPLEMENTATION OF EFFECTIVE NITRATE REGULATION IN THE CENTRAL COAST

The fact that excess nitrogen and pesticide use has impaired groundwater and surface waters in the Central Coast region has been known for decades.[94] Yet the State Water Board and to a certain extent the Central Coast Regional Board, which have the authority to regulate nitrate discharges, have failed to do so in a manner that controls pollution and protects drinking water and wildlife habitat. Regulation of irrigated agriculture in the Central Coast region [95]

As described below, these efforts failed to improve nitrate contamination in Central Coast Latinx communities. Water quality throughout the Central Coast has degraded below state drinking water standards, and will continue to degrade unless this excessive discharge is stopped.[96] In the interim, residents in these communities must replace the contaminated tap water—by purchasing water or installing point-of-use filters—at their own expense, while still being exposed to nitrates while bathing, washing, cooking, and other daily activities.

After decades of failed regulation attempts, the Regional Board finally implemented, through Ag Order 4.0, numeric limits to nitrate application and discharge. This would have had the effect of reducing nitrate discharge from top polluters in the Central Coast. The State Water Board thereafter eliminated these essential requirements, preventing the Regional Board from effectively addressing the long-standing racially discriminatory effects of ineffective nitrate regulation.

Complainants challenge the State Water Board's removal of these critical protections and the State Water Board's reliance on an inapplicable order issued in the Central Valley to justify doing so. The racially and ethnically disparate impacts resulting from these actions are further described throughout this Complaint. A full history of the Regional Board's ineffective attempts to regulate nitrate contamination, which demonstrates the gravity of the State Water Board's invalidation of Ag Order 4.0 protections, is provided below.

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[94] Findings, *supra* note 2, at pp. 88-89, 138, 172, 173, 175, 178-194.
[95] *Id*. at pp. 1-2.
[96] *Id*. at p. 160 ("At the current average nitrogen loading rate (approximately 340 pounds of nitrogen per acre per year), groundwater nitrate concentrations will increase through time and the nitrate MCL will never be achieved.")

2004 Central Coast Agricultural Waiver

Between 2004-2009, the Regional Board provided Growers on the Central Coast the option of voluntarily enrolling in a program to be regulated by the Regional Board's "Discharge Requirements for Discharges from Irrigated Lands ("2004 Waiver") in lieu of obtaining individual waste discharge requirements ("WDRs") set to meet the Water Quality Objectives ("WQO") of the Central Coast Basin Plan to protect water quality.[97]

In 2011, after seven years of implementation, the Regional Board concluded that the 2004 Waiver did not address nitrate pollution and the Regional Board and the public had no way to directly measure whether Growers reduced nitrate pollution discharges.[98] This was because the program "[lacked] clarity and focus," did not provide for adequate "compliance and verification monitoring," and allowed "agricultural discharges [to] continue to severely impact water quality in most receiving waters."[99] The 2004 Waiver expired by its own terms in 2009.

2012 Central Coast Agricultural Waiver ("Ag Order 2.0")

In 2008, the Regional Board began a four-year administrative renewal process for the waiver program, indicating that "new requirements" were "necessary to directly address and resolve the major water quality issues associated with irrigated agriculture."[100] An early draft of the proposed new waiver identified that enumerated water quality standards consistent with the Basin Plan, explicit timelines for compliance, and individual discharge monitoring requirements were key components necessary for the waiver to comply with the governing requirements in Water Code section 13269.[101]

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[97] Central Coast Water Quality Control Board, *Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, (hereinafter "Ag Order 1.0"), July 9, 2004, https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2004/2004_0117_wdr_conditional_ag_waiver.pdf.

[98] Central Coast Regional Board, *Recommendations for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Pursuant to the California Water Code*, (March 2011)https://www.waterboards.ca.gov/centralcoast/boardinfo/agendas/2011/march/Item_14/14_staffreport.pdf.

[99] Central Coast Regional Board, *Preliminary Draft Staff Recommendations for an Updated Agricultural Order* (hereinafter "Draft Staff Report"), Feb. 1, 2010.

[100] Central Coast Regional Water Quality Control Board, Letter to Agricultural Advisory Panel, 1 (Dec. 12, 2008) https://www.waterboards.ca.gov/rwqcb3/board_info/agendas/2009/dec/item_14/att_1.pdf. *See also* Central Coast Regional Water Quality Control Board, *Irrigated Lands Regulatory Update*, March 2009, https://www.waterboards.ca.gov/water_issues/programs/agriculture/docs/monthlyreports/2009/mthrpt_0309_en.pdf.

[101] Draft Staff Report, *supra* note 99.

In March 2012, the Regional Board adopted a new "Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands" (Order No. R3-2012-0011) ("Ag Order 2.0").[102] Ag Order 2.0 contained specific monitoring requirements for three tiers of dischargers and a requirement that dischargers make progress towards nitrogen balance ratios. Environmental advocacy groups and agricultural interests petitioned the State Water Board for review of Ag 2.0.[103]

In September 2013, the State Water Board issued an Order that significantly weakened Ag Order 2.0 (Order No. R3-2012-0101) ("Modified Order"). The State Water Board removed a mandate that Growers provide the results of methods used to verify effectiveness and compliance, instead allowing Growers to simply describe the method and develop a schedule to evaluate each method.[104] The State Water Board further weakened water quality protections by eliminating a requirement that the highest-risk dischargers report nitrogen balance ratios.[105] The Modified Order also included requirements intended to limit excess nitrogen discharge[106] but contained no specific or enforceable limits on the amount of nitrogen application or discharge that was permissible.[107]

The State Water Board indicated it would not take enforcement actions against Growers who made a "conscientious effort" to implement management practices to address excessive nitrate discharge and application, even if those practices proved ineffective.[108]

Environmental advocacy groups petitioned for a writ of mandate challenging the

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[102] Central Coast Regional Board, *Order No. R3-2012-0011*, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (hereinafter "Ag Order 2.0"), https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/petitions/a2209apetition.pdf.

[103] State Water Resources Control Board, *Central Coast Agricultural Order SWRCB/OCC Files A-2209(a)-(e),* https://www.waterboards.ca.gov/public_notices/petitions/water_quality/a2209centralcoast_ag.shtml.

[104] State Water Resources Control Board, *Order WQ 2013-0101, In the Matter of Review of Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0101 for Discharges from Irrigated Lands and Monitoring and Reporting Program Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03, and Resolution No. R3-2012-0012 Issued by the California Regional Water Quality Control Board, Central Coast Region, SWRCB/OCC FILES A-2209(a)-(e)* (hereinafter "Order No. R3-2013-0101"), at pp. 7-8, https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0101.pdf. [].

[105] *Id*. at pp. 54-55, 69.

[106] *Id*. Growers had to sign a Notice of Intent (NOI) to comply with the Modified Order's conditions. They were also required to develop a "Farm Water Quality Plan" ("Farm Plan") that detailed the farm's fertilizer and pesticide use, gave a description and time schedule of management practices to control discharge of nitrogen and pesticides, and described those practices' effectiveness and the method used to evaluate their effectiveness. The Modified Order also required that Growers obtain education and assistance necessary to ensure compliance.

[107] *See generally id*.

[108] *Id*. at p. 25.

Modified Order.[109] In 2015, the trial court found that the Modified Order violated Porter-Cologne and the Nonpoint Source Policy.[110] The State Board appealed.[111] In 2018, the Court of Appeal issued its decision in *Coastkeeper I*[112] upholding the trial court's decision. Specifically, the Court found that the State Board's "conscientious effort" standard failed to comply with a requirement of the Nonpoint Source Policy ("NPS Policy") that, when a Regional Water Quality Control Board "determines it is necessary to allow time to achieve water quality requirements," the water quality control program "shall include a specific time schedule and corresponding quantifiable milestones designed to measure progress toward reaching the specific requirements."[113]

2017 Central Coast Agricultural Waiver ("Ag 3.0")

Ag Order 2.0 expired in 2017. The Regional Board thereafter adopted a third "Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands" (Order No. R3-2017-0002) ("Ag. Order 3.0").[114] Ag Order 3.0 was substantially similar to Ag Order 2.0, which was found unlawful in *Coastkeeper I.* In Ag Order 3.0, Tier 2 and 3 dischargers—those who presented the highest risk to groundwater—were required to submit Annual Compliance Forms that detailed their compliance with the Order and the effectiveness of their management practices. Tier 2 and 3 dischargers were also required to submit "Total Nitrogen Applied" reports that included ranch information, nitrogen concentrations in irrigation water, nitrogen applied in pounds per acre via irrigation water, nitrogen present in the soil, nitrogen applied via compost, crops grown, nitrogen applied in pounds per acre via fertilizer for each crop grown, crop acreage for each crop, and the basis for the nitrogen applied.[115] Some Growers were required to implement management practices and undertake reporting as to surface water discharges.

Ag Order 3.0 also required a small subset of Tier 3 Dischargers to develop a Water

[109] *Monterey Coastkeeper v. Cal. State Water Res. Control Bd.*, 2016 Cal. Super. LEXIS 15575.
[110] *Monterey Coastkeeper v. Cal. State Water Res. Control Bd.*, 2016 Cal. Super. LEXIS 15575; *See also Monterey Coastkeeper v. Cal. State Water Res. Control Bd. Ocean Mist Farms*, 2015 Cal. Super. LEXIS 22961.
[111] *Monterey Coastkeeper v. State Water Resources Control Bd.* (2018) 28 Cal.App.5th 342, 347 [hereinafter *Coastkeeper II*].
[112] *Id.*
[113] *Id*. at 370; *See also* Cal. Wat. Code §13242(b), §13263(c); State Water Resources Control Board*, Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (2004), https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf ["hereinafter NPS Policy"].
[114] Central Coast Regional Board, *Order No. R3-2017-0002, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (hereinafter "Ag Order 3.0"), https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2017/march/item6/item6_att1.pdf.
[115] *Id*. at p. 27.

Quality Buffer Plan ("WQBP") that described how they would comply with a 30-foot buffer requirement or submit an alternative proposal for a lesser setback assessing functional equivalency.[116]

The same environmental advocacy groups that filed *Coastkeeper I*, joined by two additional petitioners, challenged the adoption of Ag. Order 3.0. The trial court determined that, like its predecessor Ag Order 2.0, Ag Order 3.0 did not comply with the Nonpoint Source Policy's requirements for specific timetables and measurable objectives, as interpreted in *Coastkeeper I*.[117] In a stipulated judgment entered in October 2019, the court ordered the Regional Board to adopt a new agricultural order to replace Ag Order 3.0, consistent with the ruling of *Coastkeeper I* by January 31, 2021.[118] The court later extended this deadline to April 16, 2021.[119]

2018 East San Joaquin Order ("ESJ Order")

In 2018, in an entirely separate regulatory process in the San Joaquin Valley, the State Water Board adopted Order WQ 2018-0002, "In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group Issued by the California Regional Water Quality Control Board, Central Valley Region SWRCB/OCC FILES A-2239(a)-(c)" ("ESJ Order").

The ESJ Order reviewed a WDR adopted by the Central Valley Regional Board in 2012 regulating agricultural discharges in the Eastern San Joaquin region of the Central Valley.[120] In the ESJ Order, the State Water Board overrode the Central Valley Regional Board's requirements of numeric standards for nitrate application or discharge but did endorse an approach whereby grower coalitions would develop nonbinding "targets" for 36-square-mile areas.[121]

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[116] *Id*. at p. 28.
[117] Case No. 34-2017-80002655, *Stipulated Judgment Granting Writ of Mandate on the First Cause of Action Pursuant to Code of Civil Procedure § 1094.5*, 4 (Sept. 27, 2019).
[118] Case No. 34-2017-80002655, *Stipulated Judgment Granting Writ of Mandate on the First Cause of Action Pursuant to Code of Civil Procedure § 1094.5*, 4 (Sept. 27, 2019).
[119] Case No. 34-2017-80002655, Motion to Extend Time—Tentative Ruling, 2 (Nov. 6, 2020).
[120] State Water Resources Control Board*, Order No. WQ 2018-0040, In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group Issued by the California Regional Water Quality Control Board, Central Valley Region*, https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf [hereinafter "ESJ Order"].
[121] *Id*. at p. 66.

Development of the 2021 Central Coast Agricultural Order ("Ag Order 4.0")

The Regional Board began the process of adopting Ag Order 4.0 in 2017, shortly after the adoption of Ag Order 3.0. After more than 20 years of directing Growers to improve their practices, requiring planning, tracking, and reporting of nitrogen use, and requiring growers to obtain education about the water quality impacts of their farms and how to change, the Regional Board determined that these approaches were not working. The Regional Board reported that, despite participation in previous wavier programs, the majority of participating Growers of the six most common crops were discharging an order of magnitude more nitrogen to groundwater than the amounts recommended in the scientific literature.[122]

The Regional Board also found that "at the current average nitrogen loading rate […], groundwater nitrate concentrations will continue to increase through time and the nitrate MCL will never be achieved."[123] Staff found that this fact would result in portions of aquifers presently used for drinking water supplies becoming unsafe to consume without treatment and would prevent the protection of beneficial water uses including domestic drinking water needs. [124] Staff also concluded that nitrate avoidance and treatment costs for drinking water would continue to increase.[125]

The Regional Board found that, due to the high application and discharge rates, and the severity of nitrate contamination in the Central Coast, it was appropriate to establish, for the first time, enforceable nitrogen discharge limits that require growers to reduce their nitrate discharge over time.[126] As a result of this conclusion, and after being directed by the Court of Appeal to adopt an order that included a specific time schedule with measurable objectives that have a high likelihood of achieving water quality standards, the Regional Board in 2021 adopted General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2021-0040 ("Ag Order 4.0").

Ag Order 4.0 set numeric standards and a timetable for nitrogen application and nitrogen discharge to the groundwater below farms. The limits would, for the first time, prohibit the

[122] Findings, *supra* note 2, at p. 148.
[123] *Id*. at p. 160.
[124] *Id*. at pp. 155-56.
[125] *Id*. at pp. 71-72.
[126] *Id*. at pp. 1-2, 88-89, 146.

highest applications of nitrogen. Under Ag Order 4.0, the Regional Board would now be empowered to bring enforcement actions against the 10-15% of Growers who continued to apply extreme amounts of nitrogen to their fields.[127] Over time, the Order would impose steadily more stringent limits on the difference between nitrogen application and nitrogen uptake, reducing the amount of nitrogen left in the soil that could leach to groundwater.[128]

Ag 4.0 also established unenforceable targets for growers with slower time schedules, and, among other policies, allowed Growers to create area-based, collective groundwater protection targets.[129] The Order established that Growers that did not meet discharge targets in the third-party program would to be kicked out of the program into the individual compliance program, where they would be subject to the enforceable limits.[130]

Throughout the Regional Board's consideration of Ag Order 4.0, staff and board members were, with respect to nitrate discharges, consistently mindful of both the need to adopt a much stricter permit structure due to the lack of progress shown via previous approaches, as well as the Court of Appeal's direction in *Coastkeeper I* to adopt a permit that contained a specific time schedule for compliance with water quality objectives along with quantifiable milestones.[131]

State Water Board's Order Modifying Ag Order 4.0

After Ag Order 4.0 was adopted, agricultural interests petitioned the Order to the State Water Board for review of the numerical nitrate discharge and application limits. The State Board took no action for two years, then eliminated the Regional Board's numeric standards for nitrogen application and discharge.[132]

In Order WQ 2023-0081, "In the Matter of Review of General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2021-0040 Issued by the California Regional Water Quality Control Board, Central Coast Region SWRCB/OCC FILES A-2751(a)-(b)" ("State Board Order"), the State Water Board refused to acknowledge or review

[127] *See* Ag Order 4.0, *supra* note 15, at p. 51, Tbl. C.1-2; *See also* Findings, *supra* note 2, at 145-147.
[128] *Id*. at p. 52, Tbl. C.1-3.
[129] *Id*. at p. 54, Tbl. C.2-1 (containing application targets under the third-party program); Tbl. C.2-2 (containing compliance dates for discharge targets under the third-party program); *id*. at pp. 15, 31; *See also* Findings, *supra* note 2, at p. 44.
[130] *Id*. at p. 16, para. 37.
[131] Findings, *supra* note 2, at pp. 1-2, 49.
[132] *See generally* State Board Order, *supra* note 16.

the extensive evidence submitted by the Regional Board that previous approaches had not worked and that compliance with Ag Order 4.0's numeric standards was feasible and likely to reduce pollution. The State Water Board also denied a request by Complainants to submit additional relevant, timely evidence in support of the numerical limits.[133]

Complainants and other community groups provided extensive evidence to the State Water Board concerning the impact of severe nitrate pollution on their communities. The groups detailed how the adverse impacts from nitrate pollution disproportionately impacted non-white communities. Complainants and others argued that the State Water Board had a legal obligation to make findings concerning disparate impacts, as well as a duty to address these impacts under Title VI of the Civil Rights Act.[134]

The State Water Board adopted its final order on September 20, 2023, and certified the order on September 27, 2023.[135] The State Board Order does not contain enumerated findings of fact or conclusions of law. In the State Board Order, the State Water Board eliminated the numeric nitrogen application and discharge limits.[136] The State Board Order prohibits the Regional Board from using the numeric standards as the basis for enforcement actions or for removal from an included third-party program.[137] The State Board Order further prohibits the Regional Board from using the numeric standards as the basis for "implementing additional or improved management practices, or increased monitoring or reporting."[138]

The Order only permits the Regional Board to use the application numeric standard for the limited purpose of requiring additional education for those Growers who exceed the limit.[139] Likewise, the State Water Board has disallowed the Regional Board from using the nitrogen discharge numeric standards "for any… purpose" other than requiring Growers who exceed them

[133] State Board Order, *supra* note 16,at p. 3, fn 10.
[134] California Rural Legal Assistance, Inc., submitted on behalf of Comité de Salinas, *9/19/23 BOARD MEETING: COMMENTS ON A-2751(A-B) PROPOSED ORDER*, at pp. 7-8.
[135] State Board Order, *supra* note 16, ; *See also* State Water Resources Control Board, Transmittal of Order WQ 2023-0081 SWRCB/OCC FILES A-2751(a)-(b), https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/2023/order-wq-2023-0081-transmittal-letter.pdf.
[136] State Board Order, *supra* note 16, at pp. 15-19.
[137] *Id*. at pp. 16, 19.
[138] *Id*.
[139] *Id*. at p. 16.

to undergo additional education and having their irrigation and nutrient management plan ("INMP") certified by a "qualified professional."[140] The State Water Board also forbade the Regional Board from using any interim milestones as enforceable regulatory limits.[141] As a result, the State Board Order stripped Ag Order 4.0 of its enforceable numeric standards and their associated timelines for implementation.

The State Water Board justified its action to remove any standards for nitrate application or discharge in Ag Order 4.0 by citing the 2018 Central Valley ESJ Order regulating agricultural discharges in the Eastern San Joaquin region of the Central Valley, wherein the State Water Board declined to require numeric standards for nitrate application or discharge.[142] The State Water Board rejected the Ag Order 4.0 numeric standards largely based on their alleged failure to comply with the ESJ Order. The State Water Board, in applying the ESJ order to Ag Order 4.0, alleged the ESJ Order was "precedential" and therefore binding.[143] However, the ESJ Order itself made clear that only portions of the order were precedential and did not label the portion related to numerical targets as precedential. [144]

Based entirely on this flimsy appeal to precedent, the State Water Board announced that no Regional Board in the State was permitted to adopt an enforceable numeric standard until the State Board first spent a year reviewing data, then convened an expert panel, then issued recommendations on the issue.[145]

The State Water Board announced an intention to convene an expert panel to provide recommendations to the State Water Board related to numeric standards but did not set a timetable for the completion of the "expert panel's" work; nor did the State Water Board announce a timeframe for any precedential guidance to regional boards based on the "expert panel's recommendations.[146] Because of the existing disparate impacts of nitrate contamination in Central Coast groundwater wells, further delays in implementing application and discharge limits are likely to impact these Latinx communities in much more significant ways; new wells that have been drilled to provide water may become contaminated; bottled water will be

[140] *Id*. at p. 19.
[141] *Id*. at p. 18.
[142] *Id*. at pp. 9-11, 16, 18.
[143] *Id*..
[144] ESJ Order, *supra* note 120, at pp. 73-74.
[145] State Board Order, *supra* note 16, at p. 18-20.
[146] *Id*. at pp. 19-20.

necessary for a longer period; and health risks will be exacerbated by continued exposure in the interim as the Expert Panel is convened and renders its conclusion regarding how nitrate makes its way through the already burdened ecosystems.

IV. AFFECTED COMMUNITIES CHALLENGE THE STATE WATER BOARD'S INVALIDATION OF NUMERICAL LIMITS AS UNLAWFUL

Affected groups, including two of the Complainants, have filed a petition for writ of mandate challenging the State Water Board's Order modifying Ag Order 4.0. The Petition alleges, among other things, that the State Water Board's elimination of Ag Order 4.0's numerical limits on the application and discharge of nitrates was unlawful. Complainants contend that reliance on the ESJ Order was improper, and that the ESJ Order's findings on numerical nitrate limits are not precedential or appropriate for application in the Central Coast.

In particular, the ESJ Order stated:

> Many of the findings and directions of this order are appropriate not only for the Eastern San Joaquin Agricultural General WDRs, but also for the subsequent generations of regional water quality control board (regional water board) irrigated lands regulatory programs statewide…In the sections that follow, we indicate which of our conclusions have precedential effect and will guide irrigated lands regulatory programs statewide.[147]

As stated above, the ESJ Order did not, by its own terms, give precedential direction to the Central Coast Regional Board prohibiting it from adopting regulatory numeric standards for nitrogen application and discharge.[148]

The ESJ Order was also based upon a significantly different and less-developed administrative record. The local regional board had a far less developed regulatory program and had collected much less data on Growers' use of nitrogen, their management practices, and the impacts on water quality than the Central Coast Regional Board had over years of experience with the waiver program.

[147] ESJ Order, *supra* note 120, at p. 9.
[148] ESJ Order, supra note 120, at pp. 73-74.

Unlike the Central Valley Regional Board, the Central Coast Regional Board had gathered years of data and found that measures such as reporting, education, and other soft measures have not been effective in reducing nitrogen discharges. Irrigated agricultural discharges have been regulated by the Central Coast Regional Board for over 15 years, since the adoption of the first agricultural order in 2004.[149] The Central Coast waiver program generated significant data documenting ongoing widespread and severe water quality degradation associated with irrigated agricultural activities.[150] The previous orders also generated nitrogen application data documenting excessive applications of fertilizer nitrogen relative to published crop needs for a significant subset of Central Coast Growers.[151]

In addition to their assertion that the State Water Board's removal of numerical nitrogen discharge and application limits in Ag Order 4.0 was legally inadequate under California water law, Complainants contend that both the discretionary act to remove those necessary protections, as well as the continued reliance on the ESJ Order, are violations of Complainant's rights under Title VI. As explained in Complainant's legal argument, *infra*, the State Water Board's actions, inactions, policies and practices will disproportionately increase nitrate contamination for Latinx and other non-white communities, resulting in these communities experiencing higher rates of acute and long-term health, social, and economic damage that will not be inflicted on white communities.

The State Water Board has chosen to sacrifice the physical health, emotional wellbeing, and economic stability of non-white communities in favor of agricultural interests, in violation of Title VI and California's Human Right to Water and its related statutory protections. The EPA must fully investigate the State Water Board's ongoing discriminatory acts and policies and take steps to ensure the State Water Board remediates them.

LEGAL ARGUMENT

[149] Findings, *supra* note 2, at p. 1.
[150] *Id*. at p. 2.
[151] *Id*.

Parties file this complaint pursuant to the Environmental Protection Agency's Title VI implementing regulations against the recipient of federal funding, the California State Water Board, for 1) the Board's historical and ongoing failure to act to prevent disproportionate adverse impacts resulting from nitrate contamination in non-white communities; 2) the State Water Board's September 2023 act of removing clear and enforceable nitrate application and discharge limits from Ag Order 4.0, which will result in further disproportionate adverse impacts in non-white communities suffering from nitrate contamination; and3) the Board's policy and practice of inappropriately prohibiting regional boards from implementing numeric limits on nitrates based on faulty reliance on the ESJ Order, resulting in ongoing and worsening nitrate contamination in non-white communities.

I. TITLE VI PROHIBITS THE STATE WATER BOARD FROM DISCRIMINATORY ACTS AND POLICIES

1. Title VI protections and administrative process

Title VI of the Civil Rights Act of 1964 ("Title VI") states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[152] The EPA and other federal agencies must investigate and resolve complaints alleging Title VI violations against entities they fund.[153] The EPA's External Civil Rights Compliance Office ("ECRCO") fulfills this responsibility by investigating and resolving complaints alleging civil rights violations by EPA-funded entities.[154] Any person who believes that they, or a specific class of persons, have been discriminated against in violation of Title VI and EPA's implementing regulations may file a complaint.[155] ECRCO must then conduct a preliminary investigation within 20 days of receipt to determine whether to accept the complaint.[156]

ECRCO attempts to resolve complaints informally whenever possible.[157] If a Title VI violation is established and the recipient fails to come into voluntary compliance, the EPA may "terminate,

[152] 42 U.S.C. § 2000d.
[153] 42 U.S.C. § 2000d-1; *See also* Exec. Order No. 12898, 32 C.F.R. § 651.17 (Feb. 11, 1994).
[154] Case Resolution Manual, supra note 10.
[155] 40 C.F.R. § 7.120.
[156] 40 C.F.R. § 7.120(d).
[157] 40 C.F.R. § 7.120(d)(2).

or refuse to award or to continue" financial assistance to the recipient.[158] The EPA may also "use any other means authorized by law" to obtain compliance, including referring the matter to the U.S. Department of Justice.[159]

2. EPA's Title VI process prohibits both disparate treatment and disparate impact discrimination

Title VI of the Civil Rights Act itself prohibits policies and practices that are intentionally discriminatory, while the Environmental Protection Agency's ("EPA") implementing regulations additionally prohibit facially neutral policies and practices that produce disparate impacts.[160] The disparate impact regulations ensure "that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."[161]

The Supreme Court has emphasized the importance of protections against disparate *impacts* in addition to intentional acts of discrimination. As the Court explained in *Griggs*,[162] "practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory practices."[163] This is because even "benignly motivated policies that appear neutral on their face" may be traceable to the nation's long history of invidious race discrimination in employment, education, housing, and many other areas.[164]

Research demonstrates that implicit bias against people of color remains a widespread problem. Such bias can result in discrimination that federal agencies can prevent and address through enforcement of their disparate impact regulations. The Supreme Court has recognized that disparate impact liability under various civil rights laws "permits plaintiffs to counteract

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[158] 40 C.F.R. § 7.130(a).
[159] *Id.*
[160] 42 U.S.C. § 2000d; 40 C.F.R. § 7.35(b).
[161] H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).
[162] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)(*Griggs* interpreted Title VII, which was enacted at the same time as Title VI, but the analysis applies to Title VI as well).
[163] *Id*. at 430; *See also Texas Dep't of Hour. & Cmty. Affairs v. Inclusive Communities*, 135 S. Ct. 2507, 2521 (2015) (noting that "[r]ecognition of disparate impact claims is consistent with the [Fair Housing Act's] central purpose" as it "was enacted to eradicate discriminatory practices within a sector of our Nation's economy") (citations omitted).
[164] *See Griggs*, 401 U.S. at 430–31; *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980); *Gaston Cty. v. United States*, 395 U.S. 285, 297 (1969).

unconscious prejudices and disguised animus that escape easy classification as disparate treatment." In a disparate impact case, the investigation focuses on the consequences of the recipient's practices, rather than the recipient's intent. The regulations task the EPA to take a close look at neutral policies that disparately exclude minorities from benefits or services or inflict a disproportionate share of harm on them.

3. Elements of an EPA Title VI Claim

A prima facie case of disparate impact discrimination is established by: (1) identifying the specific policy or practice at issue; (2) establishing adversity/harm (3) establishing significant disparity in the harm experienced; and (4) establishing causation between the policy or practice and the harm.[165] However, at the complaint stage, a complainant need only establish jurisdiction, in part by alleging discriminatory acts that, if true, would establish a Title VI violation.[166] The "EPA will investigate the allegations…even absent specific supporting evidence from a complainant."[167]

The EPA may also consider other factors before accepting a complaint, such as whether allegations are grounded in fact, ripe for review, or can be resolved through alternative means, such as a recipient's internal grievance procedures. These factors support acceptance of this Complaint, which alleges detailed facts describing an ongoing pattern and practice that has resulted in discriminatory impacts. Complainants have also already sought, and been denied, recourse through the State Water Board, thereby exhausting administrative remedies with the Recipient.

a. Identification of a Specific Policy or Practice at Issue

[165] U.S. Dep't of Justice, Civil Rights Division, Title VI Legal Manual (Updated) (2021), at Section VII, p. 9, https://www.justice.gov/d9/books/attachments/2021/02/03/titlevi_legal_manual_rev._ed.pdf [*hereinafter* "DOJ Legal Manual]; *See also N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.").

[166] U.S. EPA External Civil Rights Compliance Office, Compliance Toolkit, p. 3, Jan. 18, 2017, https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf.

[167] *Id*.

A complainant seeking to establish a disparate impact claim under Title VI must first identify a specific action, policy, or practice that is alleged to have caused the disparate harm.[168] The DOJ emphasizes that "although plaintiffs' claims succeed or fail based on whether they have established adversity/harm, significant disparity and causation, identifying the policy at issue informs the evaluation of the evidence put forth at these three stages."[169] Investigating agencies must "accurately and completely define the policy or practice at issue," which in some cases requires the agency "broaden its inquiry beyond the specific complaint allegations in order to conduct the analysis."[170] A challenged action does not have to be an *affirmative* act, and "sometimes the relevant policy or practice could be the failure to do something, or even the failure to have a policy. In order words, inaction can exert a disproportionate adverse effect."[171]

b. Establish the adversity or harm impacting the protected community or individual

The second element of a disparate impact claim involves establishing that the impact caused by the policy is harmful, sometimes referred to as "adversity of the impact."[172] The investigating agency "must determine whether the alleged consequences are sufficiently adverse or harmful."[173] This determination will result if a "fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm."[174] Courts "impliedly recognize" a wide variety of harm, including "physical, economic, social, cultural, and psychological."[175]

An expansive approach should be taken when evaluating whether an alleged harm is legally sufficient, with DOJ advising to agencies that "establishing adversity in most cases presents a low bar."[176] DOJ advises that investigative agencies should employ a broad definition of harm, and "gather any and all evidence of adversity/harm or risk of adversity/harm including anecdotal evidence from complaining witnesses."[177]

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[168] DOJ Manual, *supra* note 165, at Section VII, p. 9.
[169] *Id.*
[170] *Id.*
[171] *Id.* at Section VII, p. 12.
[172] *Id.*
[173] *Id.* citing *Bryan v. Koch*, 627 F.2d 612, 617 (2nd Cir. 1980).
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.* at Section VII, p. 13.

Courts frequently recognize Title VI adversity/harm "where recipients policies or practices result in fewer services or benefits, or inferior services or benefits."[178] But a loss of specific services or benefits is not necessary to demonstrate harm to a protected class. A recipient's policies and practices can harm protected class member through distribution of *burdens,* or something seen as undesirable.[179]

Threatened or imminent harm may also satisfy the adversity requirement.[180] The EPA "has determined that based on a technical analysis, a showing of potential health effects, depending on their nature and severity (e.g., cancer risk), provides an adequate basis for a finding of adversity under EPA's disparate impact regulation."[181]

c. Establish significant disparity in the adversity or harm

The next step in analyzing a disparate impact case is determining whether the harm caused by a recipient's act, failure to act, policy, or practice disparately affects members of a protected class. As the DOJ explains, "an investigating agency's disparity analysis must answer the question that is the essence of a violation of agency disparate impact regulations: Is a disproportionate share of the adversity/harm borne based on race, color, or national origin? If so, a disparity is established."[182] To establish a disparity, the investigating agency must use an "appropriate measure."[183] "A typical disparity measure involves a comparison between the proportion of persons in the protected class who are adversely affected by the challenged practice and the proportion of persons not in the protected class who are adversely affected."[184] A disparity is established if "the challenged practice adversely affects a significantly higher proportion of protected class members than non-protected class members."[185]

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[178] *Id.*
[179] *Id.* at Section VII, p. 14.
[180] *Id.* and *See, e.g., NAACP v. Med. Ctr., Inc.*, 657 F.2d 1322, 1332–38 (3d Cir. 1981) (en banc) (examining a disparate impact claim under Title VI concerning the future impact of a planned medical center relocation); *Damian*, 608 F. Supp. at 127 (examining a disparate impact claim brought under Title VI concerning the future impact of a planned highway expansion).
[181] EPA Investigative Report, For Title VI Admin. Complaint File No. 16R-99-R9, at 26–28 (Aug. 25, 2011); EPA Draft Revised Guidance for Investigating Title VI Administrative
Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650, 39,679–81 (June 27, 2000).
[182] DOJ Manual, supra note 165, at Section VII, p. 16.
[183] *Id.* citing *N.Y.C. Envtl. Justice All.*, 214 F.3d at 70
[184] *Id.* citing *Tsombanidis v. W. Haven Fire Dep't,* 352 F.3d 565, 576–77 (2d Cir. 2003).
[185] *Id*.

An agency engaging in a disparate impact analysis should first identify if a protected class exists for the Title VI complaint. Identifying whether a protected class exists is typically evidence from the allegations in the complaint. Then the agency must determine if statistical evidence will be necessary to evaluate the claim.[186] Most disparate impact claims involve some sort of evidence that relies on statistical analysis to demonstrate that a "disproportionate share of the adversity/harm [is] born based on race, color, or national origin"[187] But reliance on statistical data is not necessary to find evidence of a Title VI claim, as other types of evidence may also be effective in demonstrating disproportionate harm. DOJ advises investigating agencies that they "should not immediately dismiss a claim if statistics are not provided or available. Instead, agencies should ask if the requisite unfair share of harm can also be shown by evidence of impact on specific individuals or if the discriminatory effect of a recipient's policy or practice is inherently obvious or predictable."[188]

d. Establish causation between the act, policy, or practice and the disparate adversity or harm

Causation is the final element that must be shown to prove a disparate impact claim. Plaintiffs or complainants have a duty to demonstrate that there is a causal link between the policy, practice, or act complained of and the disparate harm that has been identified.[189] Such a showing is often done by relying on statistics, and the investigating agency "may identify statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of [a particular group]."[190] "The statistical disparities must be sufficiently significant that they raise an inference of causation."[191]

When evaluating the causation element, the investigating agency must not focus on fault. "The proper analysis is not about whether there are actual differences among applicants or beneficiaries or different races or why those differences exist."[192] Instead, the "sole question at this phase of the case should be whether the recipient's policy in facts affects people of different races disproportionately."[193] DOJ advises agencies that '[c]ausation is established where the evidence

[186] *Id*. at Section VII, p. 18.
[187] *Id.*
[188] *Id.*
[189] *Id*. at Section VII, p. 26; *See also Flores v.* Arizona, 48 F. Supp. 2d 937, 952 (D. Ariz. 1999).
[190] *Id*. at Section VII, p. 27 citing *Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1424 (9th Cir. 1990).
[191] *Id.*
[192] *Id*.
[193] *Id.*

establishes that the recipient's policy or practice operates in this manner; there is no need for understanding why the policy results in the disparity at this step of the inquiry.[194]

II. THE STATE WATER BOARD VIOLATES TITLE VI BY FAILING TO IMPLEMENT FERTILIZER REGULATIONS THAT PROTECT COMMUNITIES OF COLOR (CLAIM NO. 1)

1. The State Water Board's Failure to Protect Communities of Color from Disproportionate Nitrate Contamination is a Practice and Policy Subject to Title VI

Complainants must identify "[the] specific action, policies and practices of the [State Water Board] that have caused or practice that allegedly caused the disparate harm."[195] Complainants challenge the State Water Board's ongoing failure to adopt regulations or implement policies, practices, and procedures that will prevent, or mitigate the adverse harm experienced by Latinx communities in the Central Coast because of severe nitrate groundwater contamination. The State Water Board's ongoing refusal to engage in its duty to regulate pollution discharges to groundwater in such a way that does not disproportionately harm Latinx communities is a practice and policy subject to Title VI.

The State Water Board shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.[196]The EPA must determine whether the State Water Board's "criteria or method of administering its programs or activities adversely and disparately affect members of a protected class."[197] In this first Title VI claim, Complainants challenge not just a single action by the State Water Board, though such a challenge is made later in this Complaint, but the decades-long practice by the State Water Board of continually using protection of agricultural interests—at the known expense of the wellbeing of Latinx communities—as its 'criteria or method of administering its programs and activities.

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[194] *Id.*
[195] *Inclusive Communities*, 135 S. Ct. at 2523 ("a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity").
[196] DOJ Manual *supra* note 165, at Section VII, p. 13; *See*, *e.g.*, 28 C.F.R. § 42.104(b)(2).
[197] *Id*. at Section VII, p. 9.

The State Water Board has known for decades that nitrate contamination causes health, economic, and social harm and that this harm disproportionately impacts communities of color that are dependent on groundwater wells. The State Water Board has the authority and ability to develop regulations that would address the disproportionately high nitrate pollution levels in Latinx communities on the Central Coast. Yet the State Water Board has not administered its regulatory policies and practices in such a manner that would address the excessive nitrate contamination that has thus far gone unchecked—and by doing so, reducing the severe adverse impacts on Latinx communities. Instead, the State Water Board has failed to act, and failed to adopt regulation that would effectively reduce nitrate contamination in Latinx communities to levels below State drinking water contamination standards for nitrate.

The State Water Board has also *affirmatively* chosen to eliminate protections created by the Central Coast Regional Board that sought to address severe nitrate contamination. In its review and revision of Ag. Order 2.0, the State Water Board made the affirmative choice to significantly weaken nitrate protections, such that Growers on the Central Coast were not subject to enforceable pollution limits. Similarly, in its review and revision of Ag. Order 4.0, the State Water Board affirmatively removed protective provisions that would have, for the first time, created numerical limits for nitrate application and discharge.

The State Water Board has demonstrated that in its ongoing refusal to adequately regulate nitrate producers, the Board prioritizes agricultural interests in its provision of its services over the lives of Latinx communities. In a countless series of actions, failures to act, delays, and removal of protections, the State Water Board has demonstrated a policy and practice that is subject to Title VI.

2. Exposure to Nitrate Pollution Results in Physical, Mental, and Economic Harm for Latinx Communities

The State Water Board's ongoing failure and refusal to act by adopting regulation that provides meaningful protection from excess nitrate groundwater contamination, and the Board's insistence in prioritizing agricultural interests over human health interest, causes measurable, documented, physical and economic harm.

The physical harm that nitrates cause to human health is well documented and summarized in the "Factual Background" section above. High levels of nitrate contamination can have severe consequences for infants, including lethal "methemoglobinemia, or "blue baby syndrome." It can cause birth defects, premature birth, and other pregnancy complications. In adults, chronic exposure is linked to respiratory tract problems, thyroid disease, and multiple kinds of cancer. The reality of these complex and extensive impacts on public health are acknowledged by the State Water Board. According to the State Water Board, "[h]igh levels of nitrates found in drinking water supply wells impact public health."[198] It is the significant, life threatening impacts from high levels of nitrate contamination that form the basis of the Maximum Contaminant Level of 10 milligrams per liter.

Living with contaminated water also has a mental health impact on affected communities, as impacted families experience a tremendous burden of stress that is difficult to quantify. Examples include parents stressed over their children's health and daily struggles, having to choose between clean water and other necessities, and worry about the ability to cover the ever-increasing costs of water, as individual households and as a community.[199] Latinx residents in the Central Coast are demoralized to see the health of their children and the community sacrificed for the profitability of the agricultural operations in which many of the residents work every day. And because water is a constant in their lives, Complainants' members are constantly reminded of the risks their families face.

In addition to the physical and mental harm that results from excess nitrate contamination, communities harmed by the State Water Board's practices and policies experience economic harm resulting from their need to purchase supplemental clean water for drinking and cooking, and the fact that they are forced to pay higher water rates for treatment of water contamination in small rural water systems. If drinking water supplies are severely contaminated with nitrate, it may be necessary for the household or water supplier to obtain alternate supplies to correct or avoid the potential adverse health effects of nitrate exposure.[200] This may include any number of options, such as drilling a new well, buying bottled water, or moving the household altogether.

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[198] State Board Order, *supra* note 16, at p. 2.
[199] Declaration of (b)(6) Privacy ISO Title VI Complaint Against California State Water Resource Control Board at pp. 2-3, para. 11.
[200] Findings, *supra* note 2, at pp. 31-32.

Table A.B-21. Approximate Alternative Water Supply Option Costs (Households and Small Community Public Water Suppliers in the Tulare Lake Basin and Salinas Valley)

Option	Estimated Annual Cost Range ($/year)	
	Self-Supplied Household	Small Community Public Water Supplier (1,000 Households)
Improve Existing Water Source		
Blending	N/A	$85,000 - $150,000
Drill Deeper Well	$860 - $3,300	$80,000 - $100,000
Drill a New Well	$2,100 - $3,100	$40,000 - $290,000
Community Supply Treatment	N/A	$135,000 - $1,090,000
Household Supply Treatment	$250 - $360	$223,000
Alternative Supplies		
Piped Connection to an Existing System	$52,400 - $185,500	$59,700 - $192,800
Trucked Water	$950	$350,000
Bottled Water	$1,339	$1,340,000
Relocate Households	$15,090	$15,100,000
Ancillary Activities		
Well Water Quality Testing	$15 - $50	N/A
Dual System	$575 - $1,580	$260,000 - $900,000

(Honeycutt et al., 2012)

The table above shows a summary of approximate alternative water supply option costs from a study conducted by University of California, Davis.[201] Regardless of which option is pursued, obtaining alternate water supplies as a result of nitrate contamination of primary supplies is expensive, particularly for households or small water suppliers that are in low-income or disadvantaged areas, which tend to be the areas hit hardest by nitrate contamination of drinking water.[202]

Overall, the study estimated the highly susceptible population in the Tulare Lake Basin and Salinas Valley to be 254,000 people, of which 220,000 are connected to 85 community public or state small water systems and approximately 34,000 people are served by 10,000 self-supplied

[201] Kristin Honeycutt et al., *Addressing Nitrate in California's Drinking Water, With a Focus on Tulare Lake Basin and Salinas Valley Groundwater, Alternative Water Supply Options for Nitrate Contamination*, p. 67, Center for Watershed Sciences, University of California, Davis, July 2012, https://ucanr.edu/sites/groundwaternitrate/files/139108.pdf [hereinafter "Alternative Water Supply Options"].
[202] Findings, *supra* note 2, at p. 32.

households or local small water systems.[203] The study further estimated the economic cost for providing nitrate-compliant water to the total highly susceptible population in the study area (excluding one very large system) to be $20 million per year for the short-term, and $36 million for the long-term.[204] These costs are passed on to water users through higher water rates.

The increased economic burden that nitrate contamination causes exacerbates the generational poverty and inequitable access to financial stability such as homeownership and credit that disproportionately impacts communities of color.

3. Latinx Communities Are Disproportionately Harmed by the State Water Board's Failure to Meaningfully Regulate Nitrate Contamination

The State Water Board's failure to meaningfully regulate nitrate contamination through numerical limits on fertilizer usage and other stricter policies causes disproportionate harm to communities of color, especially the Latinx communities represented by Complainants. In addition to establishing harm, as discussed above, Complainants must establish that harm affects a protected class in a different manner than other communities. Complainants represent and bring this action on behalf of Latinx communities on the Central Coast, who are subject to protection as a class under Title VI.

In the Central Coast Region, Census tracts with predominantly Latinx populations are 4.36 times more likely to have groundwater with nitrate contamination above the State MCL, and nitrate contamination in these areas is significantly higher than in non-Latinx communities (an average of 4.1 mg/l higher, when MCL is 10 mg/l).[205] Census tracts with populations >/= 68.4% Latino/a (68.4% determined as 1 standard deviation above the mean Latino/a population for central coast region) are 4.36 times more likely to have groundwater nitrate levels above the MCL (10 mg/l) as compared to census tracts with a lower percentage of Latinx population. High Latinx census tracts (> 68.4% of population) have groundwater nitrate levels 4.1 mg/l (corresponding to 234%) higher than census tracts with lower Latinx populations. (7.52 mg/l versus 3.41 mg/l in tracts with lower % of Latinx population, so nitrate concentrations are 4.1 mg/l higher in census tracts with high percentage of Latinx).

[203] Alternative Water Supply Options, *supra* note 201.
[204] *Id*.
[205] Exhibit A, at p. 2.

The analysis also indicates that disparate impacts based on national origin are occurring. Census tracts with high percentages of people who identify as speaking English as a second Language ("linguistic isolation"), a factor that ma indicate people born outside of the United States, are also very likely to have higher rates of nitrate contamination than census tracts with low percentages of ESL speakers, with average contamination levels being 3.6 mg/l higher than low linguistic isolation tracts. Census tracts with high rates of linguistic isolation (>50% with English as 2nd Language) have groundwater nitrate levels 3.6 mg/l higher than census tracts with low rates of linguistic isolation (<25% with English as 2nd Language). In census tracts with medium rates of linguistic isolation (25-50% with English as 2nd Language) groundwater nitrate levels are 2.1 mg/l higher than in census tracts with low rates of linguistic isolation. When rates of contamination are assessed by race alone, census tracts with high non-white populations have even higher mg/l of nitrates, up to 4.4 mg/l higher than tracts with primarily white populations.

Communities of Color (>50% non-white population in the CalEnviroscreen) have groundwater nitrate levels 4.4 mg/l higher than census tracts with <25% non-white populations. In census tracts with 25-50% non-white population groundwater nitrate levels are 3.3 mg/l higher than census tracts with <25% non-white populations.

While poverty can be correlated with the above characteristics, when this factor is isolated, poverty alone is a less significant factor in determining nitrate contamination. High poverty areas are 2.27 times more likely to have nitrate contamination above state levels, and levels of contamination are significantly greater than in areas with low rates of poverty. Census tracts with greater than 50% of the population living below the poverty level (as defined by CalEnviroscreen) are 2.27 times more likely to have groundwater nitrate levels above the MCL (10mg/l) as compared to census tracts where the % of people living in poverty is < 50%. The 95% Confidence Interval is 1.3 to 3.975). Census tracts with high rates of poverty (>50% living below the poverty level) have groundwater nitrate levels 3 mg/l higher than census tracts with low rates of poverty(<25% living below the poverty level). In census tracts with medium rates of

poverty (25-50% Living below the poverty level) groundwater nitrate levels are 1.8 mg/l higher than in census tracts with low rates of poverty.[206]

Existing data, including but not limited to data provided as exhibits to this Complaint, demonstrate that Latinx populations on the Central Coast are significantly more likely to bear the burden of high levels of nitrate contamination resulting from the State Water Board's failure to adequately regulate nitrates. Exhibit A, attached and herein incorporated by reference, is a statistical analysis prepared by CRLA and Santa Clara University hydrologists and data scientists. It provides numerical support for the disparate impact experienced by Latinx populations suffering from nitrate pollution.

The table below demonstrates that areas in the Central Coast with the highest levels of nitrate pollution also have the highest percentage of Latinx residents. In Greenfield, where 93% of the population is Latinx, 63% of the on-farm domestic wells exceed state standards for nitrates. In the Eastside Subbasin, which has Latinx population concentrations of 79.8% (Salinas) to 90.6% (Gonzalez), 58.5% of the on-farm domestic wells exceed state standards for nitrate. In contrast, in Carmel Valley, where only 1.6% of the population is Latinx and 88.8% is white-alone, no identified on-farm domestic wells exceed state nitrate MCLs. The same trend is evident in Monterey, where only 19% of the population are Latinx, and no wells have been identified with nitrate levels exceeding state MCLs.

[206] *See* Exhibit A.

Relative Impacts Based on Racial / Ethnic Composition of Central Coast On-Farm Domestic Wells Exceeding State MCL for Nitrate Contamination			
Subbasin / Location	**% of on-farm domestic wells exceeding State MCLs[207]**	**% of Latinx population[208]**	**% of white alone population[209]**
Forebay Subbasin	63.5%	Greenfield – 93%	Greenfield – 22.6%
Eastside Subbasin	58.5%	Salinas – 79.8% Gonzalez – 90.6 %	Salinas – 27.7% Gonzalez – 16.3%
Pajaro Valley	37.5%	Pajaro – 92%	Pajaro – 11%
San Luis Obispo Valley	35.7%	San Luis Obispo – 24.1%	San Luis Obispo – 88.3%
Paso Robles Area	4.7%	Paso Robles – 35.6%	Paso Robles – 75.6%
Monterey	0%	Monterey – 19%	Monterey – 71.9%
Carmel Valley	0%	Carmel – 1.6%	Carmel – 88.8%

In addition to the above statistical comparisons, the State Water Board has acknowledged that a person's race predicts their access to safe, affordable drinking water. Pollution contaminates thousands of wells serving more than a hundred thousand people throughout the region.

Health impacts from the nitrate contamination are also more likely to be felt in Latinx communities because contamination levels already exceed state standards for many wells. Health impacts are more likely where levels are already high. Furthermore, migrant farmworkers are likely to be less informed of potential contamination and available remedies, and thus are more likely to be harmed by these increases in nitrate contamination. Finally, people who have already been living with contaminated water supplies for many years are more likely to have health impacts from unabated nitrate discharge and subsequent nitrate infiltration into wells.

Further data demonstrating the racialized impact of nitrate contamination on the Central

[207] Findings, *supra* note 2, at pp. 224-225.
[208] U.S. Census Bureau, ACS 5 Year Estimates (We sourced all demographic data using U.S. Census Bureau 2020 Decennial Census data or the most recent ACS 5 Year Estimate data.).
[209] *Id*.

Coast is included with this Complaint and will be further evidenced through an investigation by the EPA into the Title VI violations alleged in this Complaint.

4. The State Water Board's Failure to Adequately Regulate Nitrate Pollution Is the Cause of Disproportionate Harm to Latinx Communities

The disproportionate health, economic, and social burdens that Latinx communities on the Central Coast must suffer from severe nitrate contamination is the result of the State Water Board's policies, practices, and actions as challenged by this Complaint.

The history of the State Water Board's failure to regulate nitrate contamination effectively over the past two decades is best understood in light of a much longer history of racial inequities in the relationship between the agricultural industry and people of color, and Latinx people in particular. The State Water Board's programs and the laws that authorize them were established over a structural framework that perpetuates inequities based on race.[210] California has a long history of marginalizing immigrants and people of color. This marginalization includes the Naturalization Act of 1870 that denied rights to nonwhite immigrants, which included excluding non-white communities from owning water rights that prevented owning farms.[211] The United States Department of Agriculture's 2022 Census of Agriculture in California demonstrates this historic racism continues to maintain a system of power and privilege for white farmers. The 2022 Census finds that 89.5% of California's farmers are white, with only 15.3% being Latinx. Further, California white farmers own 94% of agricultural land in the state. According to the State Water Board, "these inequities persist,"[212]and until 2021, the Water Boards had not "explicitly acknowledged the role racism has played in creating inequities in affordability and access to clean and safe water and in the allocation and protection of water resources."[213]As the State Water Board acknowledges:

> In California, race predicts a person's access to governmental services and the quality and affordability of the services they receive. This includes the availability

[210] Racial Equity Resolution, *supra* note 3, at p. 2.
[211] *Id*. at p. 3.
[212] *Id*. at p. 6
[213] Racial Equity Resolution, *supra* note 3, at p. 2.

of safe drinking water and the collection, treatment, and reuse of wastewater. In fact, *race is the strongest predictor of water and sanitation access*.[214]

This historical discrimination has created a context in which the race, ethnicity, and national origin of farmworkers are often Latinx; thus, this population often lives in close proximity to agricultural lands. Consequently, harmful agricultural practices that result in excessive nitrogen fertilizer application and resulting discharge into water supplies inevitably impact Latinx people more than other racial or ethnic groups, and people with other national origins.

While this history should have resulted in the State Water Board paying particularly close attention to regulating the agricultural industry to protect these vulnerable populations, instead the State Board has failed to provide sufficient regulation and has acted to dismantle the efforts of Regional Boards to address widespread nitrate contamination in this region. The State Board has failed to regulate in the manner described above, including taking action to prohibit the Central Coast Regional Board from imposing clear and enforceable nitrate limits, even knowing that disparate impacts of nitrate contamination were the norm.

These actions and failures to act have led to the consistent increases in nitrate contamination in Latinx communities' water supplies, despite State and Federal regulation intended to reduce contamination, to the detriment of community health and wellbeing.

III. THE STATE WATER BOARD VIOLATED TITLE VI BY ELIMINATING NUMERICAL NITRATE APPLICATION LIMITS FROM AG. ORDER 4.0 (CLAIM NO. 2)

By eliminating nitrate application and discharge limits contained in the Regional Water Board's Ag Order 4.0, the State Water Board acted in a manner likely to increase nitrate contamination in the region's water wells within agricultural communities composed of predominantly Latinx populations. Thus, this order violates Title VI.

[214] *Id*. at p. 4.

1. **The State Water Board's Removal of Numeric Nitrate Limits is a Specific Act Subject to Title VI**

In addition to challenging the State Water Board's decades-long pattern and practice of failing to regulate severe nitrate contamination to the benefit of agricultural interests and in conflict with Title VI, Complainants challenge the State Water Board's modification of Ag.Order 4.0

Specifically, Complainants challenge the State Water Board's act of requiring the Regional Board to remove nitrate application and discharge limits pending findings of an expert panel. This specific act, which occurred in September 2023, is an action, practice, or policy subject to the requirements of Title VI.

2. **The Removal of Numeric Nitrate Limits Will Result in Physical, Mental, and Economic Harm for Residents Dependent on Contaminated Ground Water**

The effect of the State Water Board's action invalidating numeric limits on nitrate application will be a continuation of the decades-long policies that have resulted in nitrate contamination increasing and significant and alarming rates in Latinx communities in the Central Coast. As described in the Factual Background section, even wells that do not currently have nitrate levels above the State MCL are trending in an upwards direction and it is evident that contamination will get worse without strict regulation.

The significant adverse impacts resulting from excessive nitrate exposure are detailed *supra.* These adverse impacts form the basis for the second element of Complainant's Title VI claim based on the State Water Board's decision to remove numerical nitrate limits from Ag Order 4.0. Latinx communities exposed to ongoing and worsening nitrate contamination as a result of the State Water Board's removal of the numeric limits will experience both acute and chronic health impacts---potentially lethal to infants—as well as mental health stressors, and social and economic burdens. If more wells exceed state standards, then new wells must be drilled, bottled water needs increase, and the costs of these mitigations will be borne by water districts who will pass costs onto residents.

3. **Latinx Communities Will Be Disproportionately Harmed by the Elimination of Numeric Nitrate Limits**

The numeric nitrate limits that would have been enforced as part of the Central Coast Regional Water Board under Ag Order 4.0 were necessary, particularly for communities such as San Lucas and Greenfield that already have nitrate contamination in water supplies. Without the numeric

nitrate limits, nitrate contamination will continue to increase, as will physical, mental and economic harm. As evidenced by the data outlined in this Complaint and included as an exhibit hereto, Latinx Communities will be harmed more by the removal of the numeric nitrate limits than non-white communities on the Central Coast. The reason that so many Latinx communities are harmed by nitrate contamination relates to their proximity to farms where excessive nitrate is used and enters the water table. The result of the removal of numeric nitrate limits will be a return to excessive discharges of nitrates in agricultural areas where Latinx families reside. It will therefore be the wells serving the Latinx communities that are disproportionately forced to bear the additional exceedances, just as they do now. In contrast, for communities where 0% of wells exceed state standards, such as communities with the highest white populations in the region, short term increases in nitrate contamination are less likely to cause health and economic impacts.

4. **The State Water Board's Act of Invalidating Numeric Fertilizer Limits is the Cause of Disproportionate Harm to Latinx Communities**

The State Board's Order will cause increases in nitrate contamination in Latinx communities on the Central Coast. Had the State Water Board not invalidated them, the numeric nitrate limits would have begun to reduce additional nitrogen fertilizers and nitrate discharge. Over time, this would have lowered the concentration of nitrates in the groundwater supply relied on by Latinx communities on the Central Coast. In fact, the Regional Water Board Ag Order 4.0 contained fertilizer limits because courts had found prior orders which lacked specific limits were inadequate to the requirements of the NPS plan.[215]

Other factual findings in the Ag Order made clear that removing the Central Coast Regional Board's authority to enforce fertilizer application and discharge limits would "predict . . . potentially significant exposures and risks resulting from stressors created by [fertilizer overapplication]." The Findings in Ag Order 4.0 made clear that the Regional Board, in using fertilizer application and discharge limits, was addressing areas with the most nitrogen application and discharge. The Central Coast Regional Board collected significant data from growers with respect to their fertilizer application and discharge rate.[216] The data showed that during the 5-year period between 2014 and 2019, the rates of fertilizer application and discharge did not change significantly. According to the Findings, limits on synthetic fertilizer application and discharge

[215] *See generally Coastkeeper II*, *supra* note 111.
[216] Findings, *supra* note 2, at pp. 143-149 (explaining the Central Coast Regional Board's rationale behind using fertilizer application and discharge limits.).

would "make progress toward reducing nitrogen waste discharges arising from the over-application of synthetic fertilizer nitrogen, and to reduce the risk of nitrogen discharge." Accordingly, Ag Order 4.0 set limits and targets on the Growers applying and discharging the most synthetic nitrogen fertilizer.[217]

The Central Coast Board focused its fertilizer application and discharge limits on the areas with the highest levels of nitrate contamination. For example, Ag Order 4.0 explains that the "requirement and implementation schedules for groundwater protection are based on groundwater phase areas." These groundwater phase areas are largely determined by the magnitude of water quality impairment. Groundwater phase area 1 has the highest water quality impairment while groundwater phase area 3 has lower levels of water quality impairment compared to 1 and 2. Whereas Ag Order 4.0 allows ranches in groundwater phase areas 2 and 3 more time to come into compliance with the fertilizer application and discharge requirements,[218] it requires ranches in groundwater phase area 1 to come into compliance 2-4 years earlier. Groundwater phase area 1 included communities with high concentrations of Latinx residents.

The Regional Board's reasoning in using fertilizer application and discharge limits further demonstrates the causal link between the State Water Board's Order and the disproportionate impact on Latinx communities. In Ag Order findings, the Regional Board explained that fertilizer application and discharge limits was a part of the Regional Board "implementing [its] human right to water resolution." As explained earlier, the Regional and State Boards' human right to water resolutions aimed to address water quality impairment in unserved, underserved, and disadvantaged communities. Essentially, fertilizer application and discharges limits were essential to addressing nitrate contamination issues in the same communities that have, for decades, been impacted by nitrate contamination. Thus, removal of these limits would undoubtedly "predict . . . potentially significant exposures and risks resulting from stressors created by [fertilizer overapplication]."

The State Water Board's action is also responsible for the disparate nature of the likely future impacts, as it preserves the pre-Ag 4.0 status quo in terms of where nitrate contamination was

[217] *See id*. at 146-147 (demonstrating that fertilizer application limits are aimed at 90th and 85th percentiles values. *See also id*. at 148; Ag Order 4.0, supra note 15, at p. 52 (demonstrating that 73-83% of growers currently meet the discharge limits for 2023 and 2025.)

[218] See Central Coast Regional Board, *Order No. R3-2021-0040, General Waste Discharge Requirements for Discharges from Irrigated Lands, Attachment B,* p. 34, [hereinafter "Attachment B"].

likely to be highest and its correlation with where the highest percentages of Latinx people live would be perpetuated. The State Water Board could have responded to Complainants' requests to assess racial equity and environmental justice impacts of their action by modifying the Order to include additional mitigations for communities with the highest levels of nitrate contamination. But the State Water Board made no effort to address these known disparities.

Furthermore, the State Water Board's Order objected to Complainant groups' specific request to assess and make findings on the impacts of the Order on racial equity, environmental justice, and tribal considerations.[219] The Board also ignored a great deal of testimony expressing concern regarding disparate impacts to Latinx communities--much of which was provided in Spanish, and translated by representatives of concerned non-profit regulations who provided interpretation services.

The regulatory mechanisms in place following the removal of those application and discharge limits is complex, but the effect is relatively simple. For the 90th percentile of excessive nitrate users, as for those using levels of nitrate more commensurate with what can be absorbed by crops, extremely high levels of nitrogen fertilizer application may continue, and discharges may exceed targets without consequence. This will disproportionately impact Latinx communities dependent on groundwater in these areas.

IV. THE STATE WATER BOARD CONTINUES TO VIOLATE TITLE VI BY RELYING ON THE ESJ ORDER AS A PROHIBITION ON NUMERICAL NITRATE LIMITS (CLAIM NO. 3)

1. The State Water Board's Reliance on the ESJ Order to Prevent Numeric Nitrate Limits is a Policy Subject to Title VI

Complainants' third Title VI claim is a challenge to the State Water Board's policy, practice, and procedure of relying on and implementing the ESJ Order as precedential and requiring elimination of numeric and enforceable nitrate limits. While the State Water Board adopted the ESJ Order more than 180 days in the past, Complainants do not challenge the act of adopting the ESJ Order. Rather, Complainants contend that State Water Board's ongoing application of the ESJ

[219] State Board Order, *supra* note 16, at p. 4-5, footnote 12.

Order and interpretation and implementation of the policies outlined therein constitute an ongoing practice and policy that has daily effects on Latinx communities. As such, Complainants challenge this practice and policy as unlawful under Title VI.

2. The State Water Board's Reliance on the ESJ Order to Prevent Numeric Nitrate Limits Will Result in Physical, Mental, and Economic Harm

The effect of treating the ESJ provision on numeric nitrate limits as precedential statewide is identical to the effect of the State Board removing such numerical limits in Ag Order 4.0. It will result in a continuation of policies that cause physical, emotional, and economic harm on Latinx communities by further polluting them with nitrate contamination. The consequences of these harms are identical to those listed under Complainant's claims no. 1 and no. 2: significant acute and chronic health problems and additional economic burdens on Latinx communities on the Central Coast.

The fact that the ESJ Order also specifically states that allowing for variations in nitrate limits bases on existing nitrate exceedances is "bad policy" makes this order likely to have impacts on health, because those with existing exposure to high levels of nitrate contamination are more likely to suffer impacts from additional excessive nitrate loads; thus, to prevent regulators from limiting this exposure makes harm more likely.

3. The Adverse Impacts from Precedential Application of ESJ Order Nitrate Limits Will Disproportionately Harm Latinx Communities

As explained extensively throughout this Complaint, Latinx communities and people will be disproportionately harmed by the continued excessive use of nitrogen fertilizers in the absence of limits. See above for additional analysis[220].

The State Water Board's policy of interpreting and applying the ESJ Order to act as precedent for eliminating firm limits on nitrate application and discharge will result in a significant delay in any likely reduction in application of nitrate-based fertilizers. As these fertilizers are known to be the single greatest factor in contributing to nitrate contamination in California,[221] a policy or practice---here through inappropriate interpretation and application of the ESJ Order—that prevents immediate action to curb excessive nitrate use is likely to result in compounding existing

[220] *See supra* Section 1, p. 12-19.
[221] *See* Nitrate Contamination in California Groundwater, *supra* note 18.

impacts of nitrate contamination, in exactly the Latinx communities that have already borne more than their fair share of the nitrate burden.

4. The State Water Board's Inappropriate Interpretation and Application of the ESJ Order Will Cause Disproportionate Adverse Impacts on Latinx Populations

As with the other actions that the State Water Board has taken that reduce or eliminate protections against increased nitrate groundwater contamination, the State Water Board's insistence that the ESJ Order's prohibition on numerical nitrate limits is precedential for the entire state will cause the disproportionate adverse impacts described above and throughout this Complaint. By implementing a policy that prevents Regional Boards from implementing necessary numeric limits on nitrate discharge and application—when evidence has demonstrated that programs that fail to include enforceable limits are ineffective at reducing nitrate contamination—has the effect of denying critical assistance to Latinx populations suffering from polluted water. This causal relationship between the adverse harm experienced by these communities and the State Water Board's insistence on prohibiting regional boards from implementing numeric nitrate limits is sufficient to demonstrate a cause of action under Title VI against the State Water Board.

CONCLUSION

The State Water Board is the entity charged with regulating groundwater and drinking water supplies in California. Due to the history of discrimination that Latinx immigrants and Latinx citizens have faced, Latinx communities are likely to be located near the agricultural industry, and resulting nitrate contamination impacts Latinx communities more than it does white communities.

Nitrate contamination in Latinx communities is on average 4.1 times that found in primarily white communities, on average nitrate levels are 41% higher in Latinx community wells than in the wells of communities comprised of predominantly white communities. For this reason, the failure to establish explicit nitrate regulation regimes that include firm and enforceable limits has caused increases in nitrate contamination over time in these specific communities. Thus, increasing nitrate contamination in Latinx wells over time have been caused by the State Water

Board' practice and policies that deferred such regulation to a later date, or that eliminated regulation by Regional Water Boards, outlined in detail in the Factual Background and Procedural History above.

RELIEF REQUESTED

For the foregoing reasons, Complainants respectfully request that the EPA:

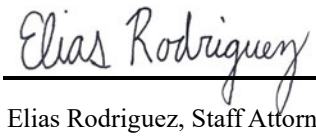
(1) Immediately and thoroughly investigate the State Water Board's noncompliance with Title VI of the Civil Rights Act related to its actions and inactions on its agricultural regulations that have failed to protect the Beneficial Use of Domestic Water Supply.
(2) Require the State Water Board, as soon as possible and by a date certain, to set enforceable limits for the application and discharge of nitrogen into groundwater to protect the public health of the Central Coast region; and to consider adopting similar precedential nitrate limits to protect all Californians throughout the state experiencing the disproportionate burdens of agricultural impacts to domestic drinking water. Complainants request that the EPA require Recipient to impose these limits in advance of the convening or making of findings of any expert panels being convened pursuant to the Orders defined above; and to require that the policy outcomes of any such panels take into account the need to avoid disparate impacts of nitrate contamination on people of color in the State of California and Central Coast Region;
(3) Encourage the State Water Board to create a plan that will result in reducing nitrate contamination in Latinx communities in the Central Coast of California such that impacts are no longer severe within these communities within the next decade.
(4) Assess the extent to which language access policies of the State Water Board are a factor in increasing risk of harm to Latinx and immigrant communities in the Central Coast region, due to the presence of communities that speak primarily Spanish and/or indigenous Mexican languages.
(5) Engage with affected parties, including Complainants during Title VI investigations and in crafting remedies.

(6) Require full compliance with Title VI in policies that regulate and influence policies related to nitrate contamination as a condition of Federal EPA funding of the State Water Board.

Respectfully submitted, this 18th day of March, 2024, By:

Erin Noel, Legal Director

Community Equity Initiative,
California Rural Legal Assistance
3 Williams Rd.
Salinas, CA 93905



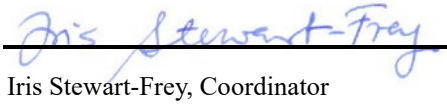
Elias Rodriguez, Staff Attorney

Community Equity Initiative
California Rural Legal Assistance
3 Williams Rd.
Salinas, CA 93905

Attorneys for:
(b)(6) Privacy, (b)(7)(C) Enf. Privacy and
(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Chelsea Tu, Executive Director

Monterey Waterkeeper
PO Box 855
Seaside, CA 93955-0855



Iris Stewart-Frey, Coordinator

The Environmental Justice and the Common Good Initiative
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053

EXHIBIT A

DISPARATE IMPACTS OF EXISTING KNOWN NITRATE CONTAMINATION BASED ON RACE AND NATIONAL ORIGIN

Statistical Analysis of Disparate Impacts of Nitrate Contamination Based on Race and National Origin/Linguistic Isolation in the Central Coast Region of California

Summary

The following data represents an effort to assess the concurrence of high-nitrate in water wells and the presence of Latinx, non-white, linguistically isolated communities, and to also allow for comparison to predominantly white communities.

Using data from the state waterboard GAMA database[1] on well water nitrate levels, and CalEnviroscreen 4.0 data from the state Office of Emergency and Health Hazard Assessment (OEHAA)[2] this data was used to run statistical tests on disproportionate impacts of Nitrate Groundwater Contamination on Environmental Justice Communities of the Central Coast Region.

The following data analyses were prepared by Iris Stewart-Frey, Ph.D. and John "Jake" Dialesandro, Ph.D. Both are faculty at Santa Clara University and have published extensively in the fields of hydrology, geophysics, and environmental policy, using approaches that include spatial analysis of data and policy impacts. Iris Stewart-Frey is a full professor of Hydrology in the Environmental Studies and Sciences Department at Santa Clara University and is also the Coordinator of the Environmental Justice and the Common Good Initiative. Jake Dialesandro, Lecturer at Santa Clara University and is currently serving as CRLA's Community Equity Initiative Science Fellow.

Scientific Methodology:

The following steps were performed in rendering these analyses:

1. Compared Latinx percent population (classified as Hispanic in census) for each tract with an average nitrate concentration.

a. % Latinx in each census tract was taken from:

- (Cal Enviro) for the counties of: Santa Barbara, San Luis Obispo, Monterrey, San Benito, Santa Cruz, Ventura Counties (Central Coast Counties)

b. Nitrate Concentrations for each census tract

- Empirical Bayesian Kriging on wells <= 200 ft, water years 2010 - 2023, Gamma Database, averaged annual nitrate average values over those 14 years
- Zonal statistics on interpolated surface to come up with an average surface of nitrate for a given census tract.
- Used Chi Square Test of Independence to measure if census tracts with high LatinX populations were more likely to have unsafe nitrate levels in their groundwater

[1] GAMA - OnLine Tools | California State Water Resources Control Board accessed: 03/06/2024
[2] Data: Calenviroscreen4.0 accessed 03/07/2024

I. Summary of Results:

A. Census tracts with predominantly Latinx populations are <u>4.36 times more likely</u> to have groundwater with contamination above the State MCL, and nitrate contamination in these areas is significantly higher than in non-Latinx communities (an average of 4.1 mg/l higher, when MCL is 10 mg/l).

- Census tracts with populations >= 68.4% Latino/a (68.4% determined as 1 standard deviation above the mean Latino/a population for central coast region) are **4.36 times** more likely to have groundwater nitrate levels above the MCL (10 mg/l) as compared to census tracts with a lower percentage of Latinx population. The 95% Confidence Interval is 2.4750 to 7.7135)
  Test = Chi Square Test of Independence, X^2= 27.188, Number of Observations = 456, p value <0.0001)
  OddsRatio 4.36 [2.47-7.71; 95% CI]
- High Latinx census tracts (> 68.4% of population) have groundwater nitrate levels **4.1 mg/l (corresponding to 234%)** higher than census tracts with lower Latinx populations. **(7.52 mg/l versus 3.41 mg/l in tracts with lower % of Latinx population, so nitrate concentrations are 4.1 mg/l higher in census tracts with high percentage of Latinx)**[2.47- 6.27: 95% CI]
  Test = Welch's T-test, T= 4.577, Number of Observations =456, p values <0.0001

B. **Census tracts with high percentages of people who identify as speaking English as a second Language are also very likely to have higher rates of nitrate contamination than census tracts with low percentages of ESL speakers, with average contamination levels being 3.6 mg/l higher than low linguistic isolation tracts.**
Census tracts with high rates of linguistic isolation (>50% with English as 2nd Language) have groundwater nitrate levels **3.6 mg/l higher** than census tracts with low rates of linguistic isolation (<25% with English as 2nd Language). In census tracts with medium rates of linguistic isolation (25-50% with English as 2nd Language) groundwater nitrate levels are **2.1 mg/l higher** than in census tracts with low rates of linguistic isolation.
Test = Analysis of Variance (ANOVA) and Tukey Honest Significant Difference Test, F Value = 16.34, Number of Observations = 456, P <0.00001

C. When rates of contamination are assessed by race alone, census tracts with high non-white populations have even higher mg/l of nitrates, up to 4.4 mg/l higher than tracts with primarily white populations.

- Communities of Color (>50% non-white population in the CalEnviroscreen) have groundwater nitrate levels **4.4 mg/l higher** than census tracts with <25% non-white populations. In census tracts with 25-50% non-white population groundwater nitrate levels are **3.3 mg/l higher** than census tracts with <25% non-white populations.
  Test = Analysis of Variance (ANOVA) and Tukey Honest Significant Difference Test, F Value = 23.39, Number of Observations = 456, P <0.00000001

D. **While poverty is correlated with the above characteristics, when this factor is isolated, poverty alone is a less significant factor in determining nitrate contamination. High poverty areas are 2.27 times more likely to have nitrate contamination above state levels, and levels of contamination are significantly greater than in areas with low rates of poverty.**

- Census tracts with greater than 50% of the population living below the poverty level (as defined by CalEnviroscreen) are **2.27** times more likely to have groundwater nitrate levels above the MCL (10mg/l) as compared to census tracts where the % of people living in poverty is < 50%. The 95% Confidence Interval is 1.3 to 3.975)
  Test = Chi Square Test of Independence, X^2= 7.87, Number of Observations = 456, p value <0.0001)
  OddsRatio 4.36 [1.304 -3.975; 95% CI]
- Census tracts with high rates of poverty (>50% living below the poverty level) have groundwater nitrate levels **3 mg/l higher** than census tracts with low rates of poversy(<25% living below the poverty level). In census tracts with medium rates of poverty (25-50% Living below the poverty level) groundwater nitrate levels are **1.8 mg/l higher** than in census tracts with low rates of poverty.
  Test = Analysis of Variance (ANOVA) and Tukey Honest Significant Difference Test, F Value = 8.73, Number of Observations = 456, P <0.001

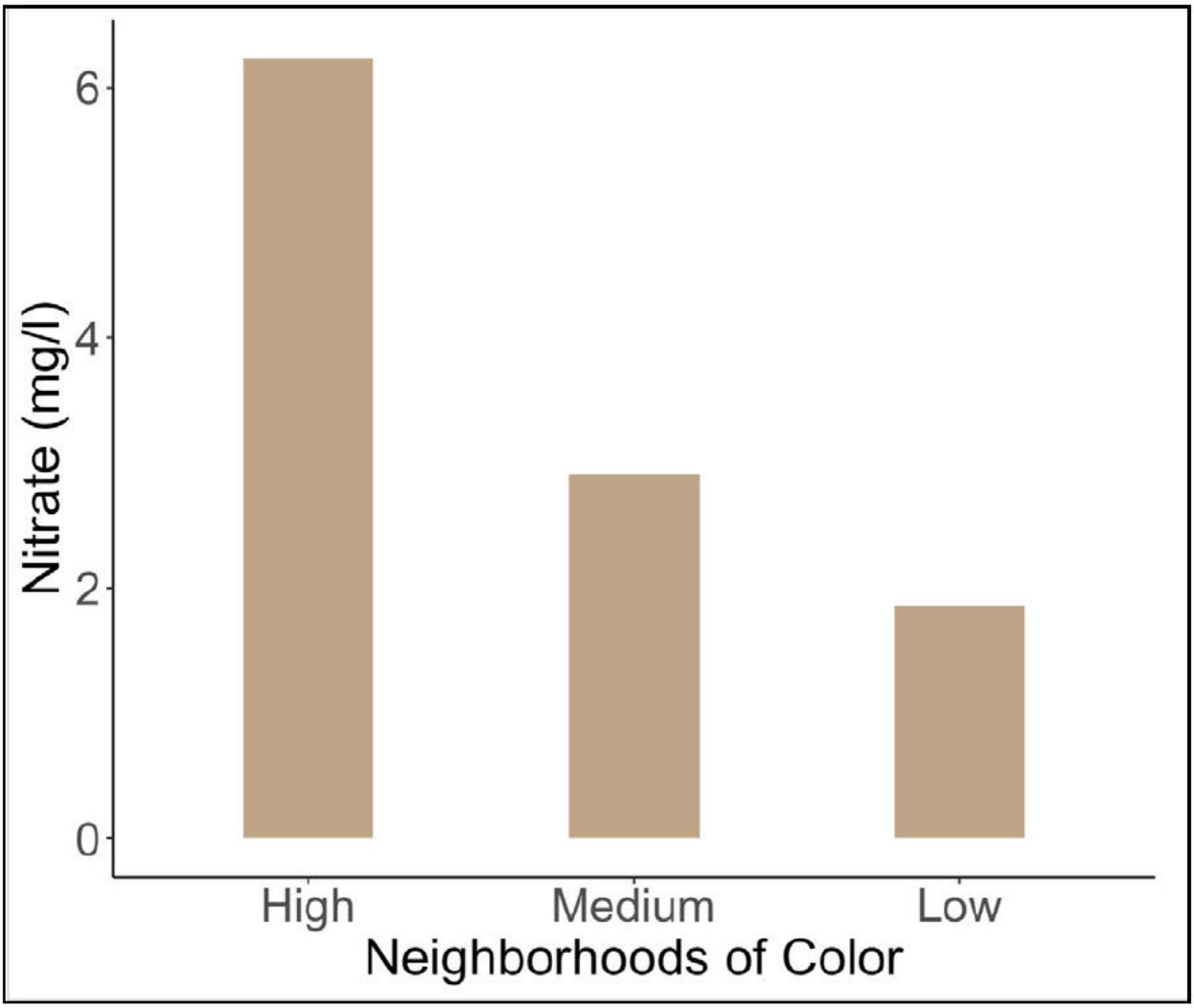


Figure Caption: Mean Nitrate Values in High (>50%), Medium (25-50%), and Low (<25%) areas of Populations of Color

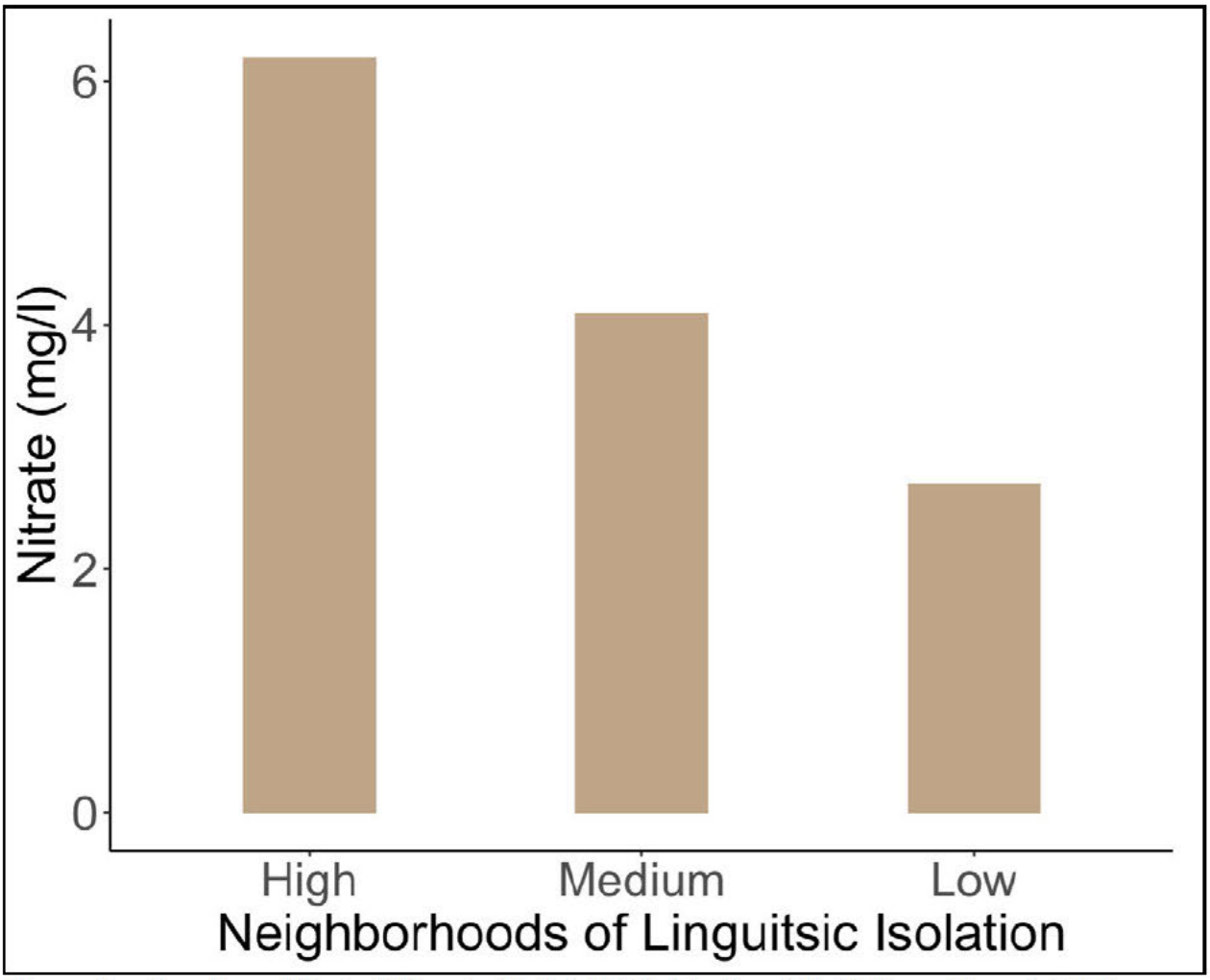


Figure Caption: Mean Nitrate Values in High (>50%), Medium (25-50%), and Low (<25%) areas of Populations with Linguistic Isolation

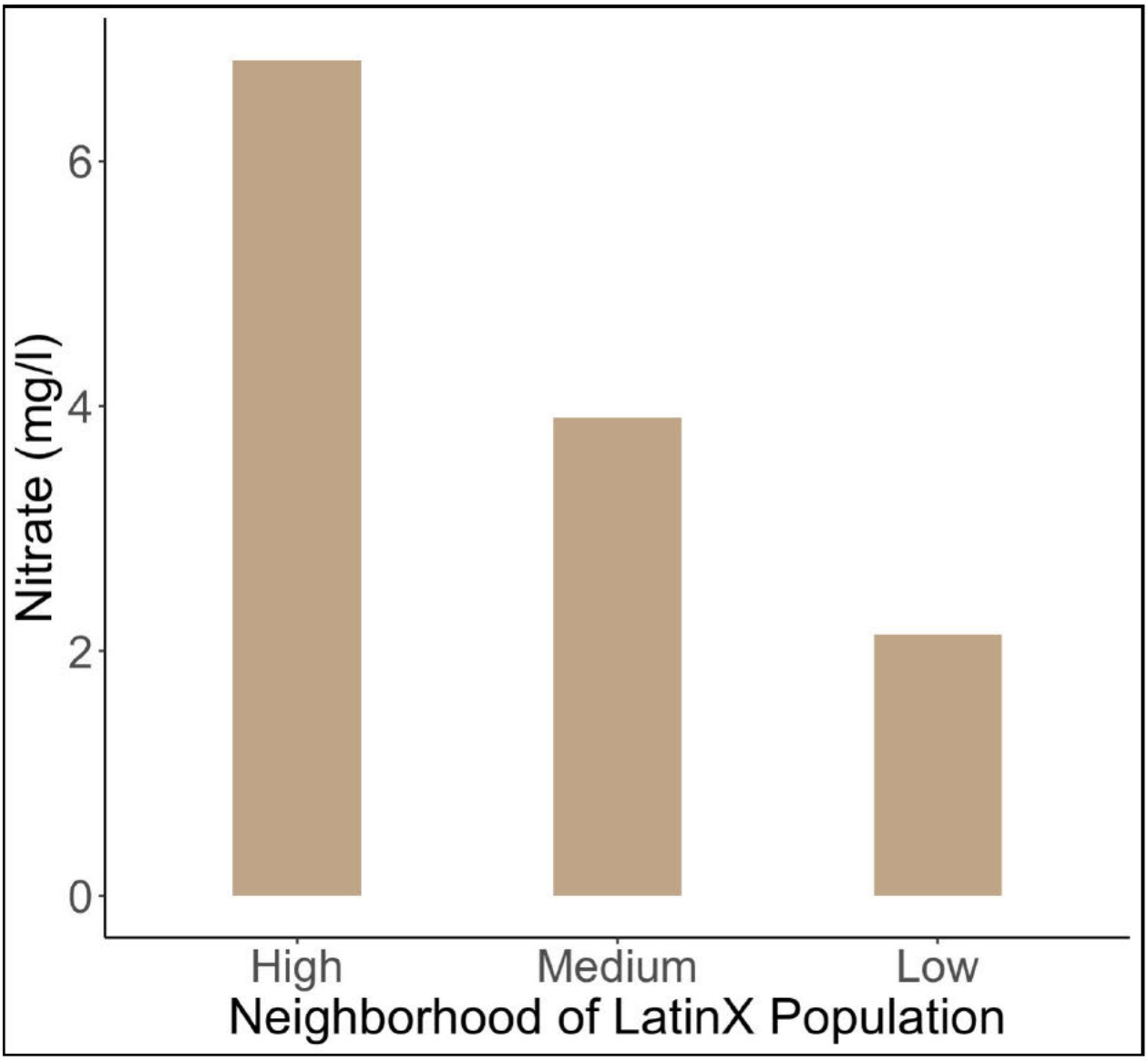


Figure Caption: *Mean Nitrate Values in High (>50%), Medium (25-50%), and Low (<25%) areas of Populations with Latinx Populations*

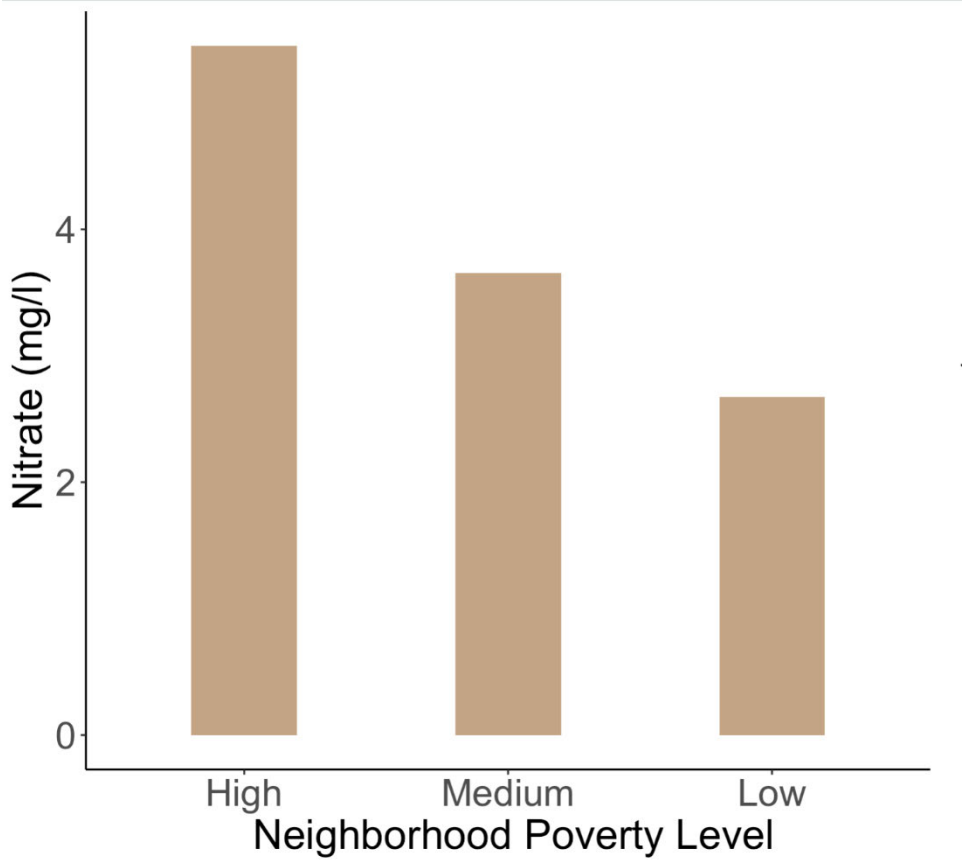


Figure Caption: *Mean Nitrate Values in High (>50%), Medium (25-50%), and Low (<25%) areas of Populations living below the poverty line*

	% Wells testing above MCL for Nitrate (10 mg/l)			
Census tract characteristic	Low (<25%)	Medium (25-50%)	High (>50%)	Very High (>75%)
% Linguistic Isolation	13.2%	27.4%	42.8%	53.5%
% Poverty	20.6 %	16.2%	43.3%	62.6%
% Community of Color	10.4%	14%	46%	55%
% Latinx	10.9%	17.4%	50.1%	54.7%

Table 1: Percentage of domestic wells, where average nitrate concentrations (2010- 2023 Gama data base) in shallow (<=200 ft) wells are above the MCL (10 mg/l) for census tracts with different characteristics. In census tracts where linguistic isolation, poverty, and the percent of Latinx and non-white populations are high (above 75%), average nitrate concentrations are above the MCL in more than half of the shallow wells. By contrast, in census tracts where linguistic isolation, poverty, and the percent of Latinx and non-white populations are low (below 25%), average nitrate concentrations are above the MCL in less than ¼ of the shallow wells. Thus, nitrate concentrations are higher in census tracts with predominantly Latinx populations or Communities of Color.

II Areas/communities of highest concern:

Watsonville, California (Including Las Lomas and Pajaro Valley)
Latinx Population: 75.2%
% Poverty: 74%
%Linguistic Isolation: 81.9%
% Non white: 78.4%
Percent of Wells Testing above MCL (10 mg/l): 44.2%

Salinas Valley , California: (Salinas, Gonzalez, Soledad, King City)
Latinx Population: 84.4%
% Poverty: 71.4%
%Linguistic Isolation: 81.2%
% Non white: 90.2%
Percent of Wells Testing above MCL (10 mg/l): 53.4%

Santa Maria, California
Latinx Population: 90.4%
% Poverty: 83%
%Linguistic Isolation: 84.2%
% Non white: 94.2%
Percent of Wells Testing above MCL (10 mg/l): 77.4%

III Supporting Maps

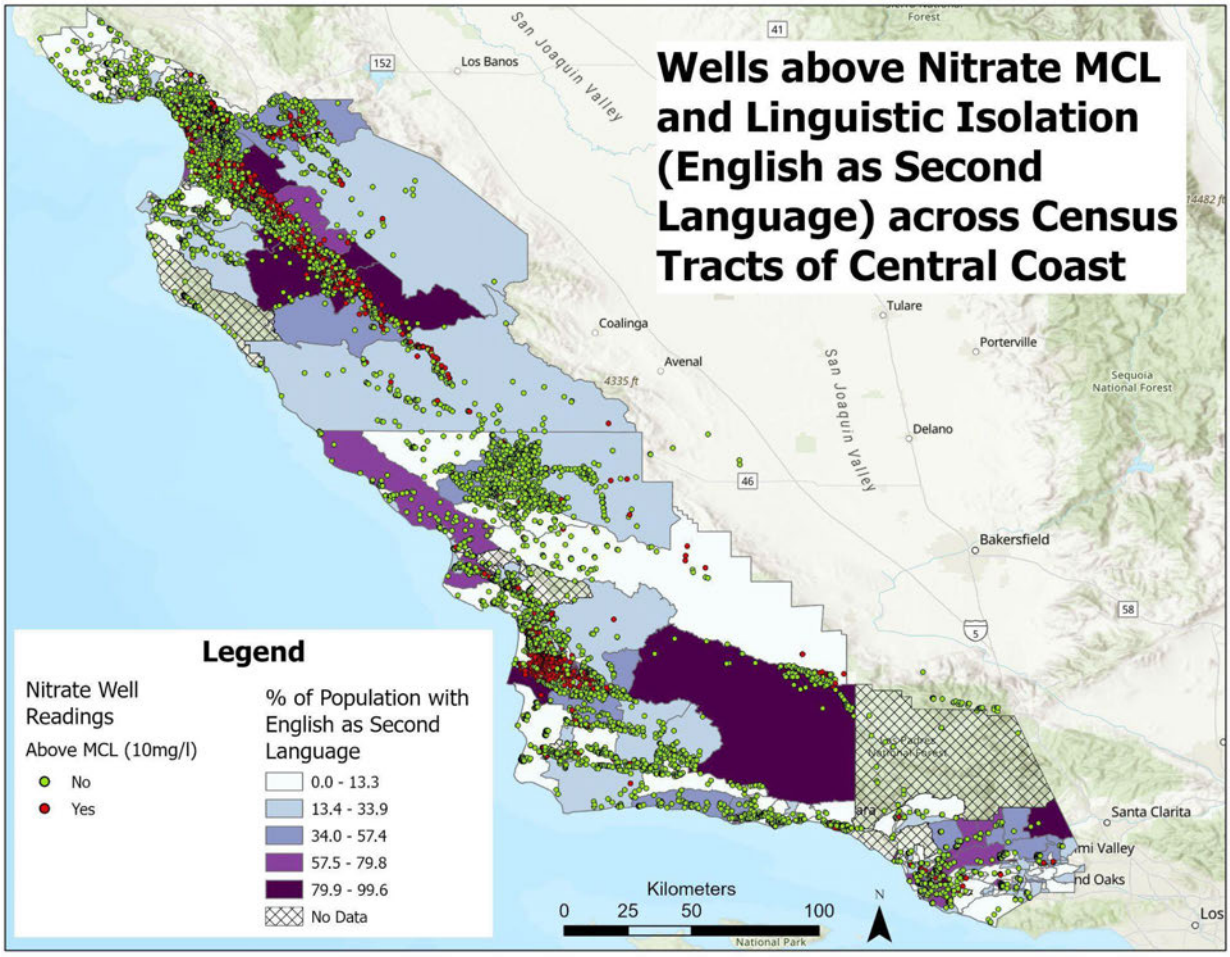


Figure 1: % English as Second Language by Census Tract and Well Nitrate Levels (2010-2023)
Data Source: Groundwater Ambient Monitoring and Assessment (GAMA) Program and Calenviorscreen Data (OEHHA)

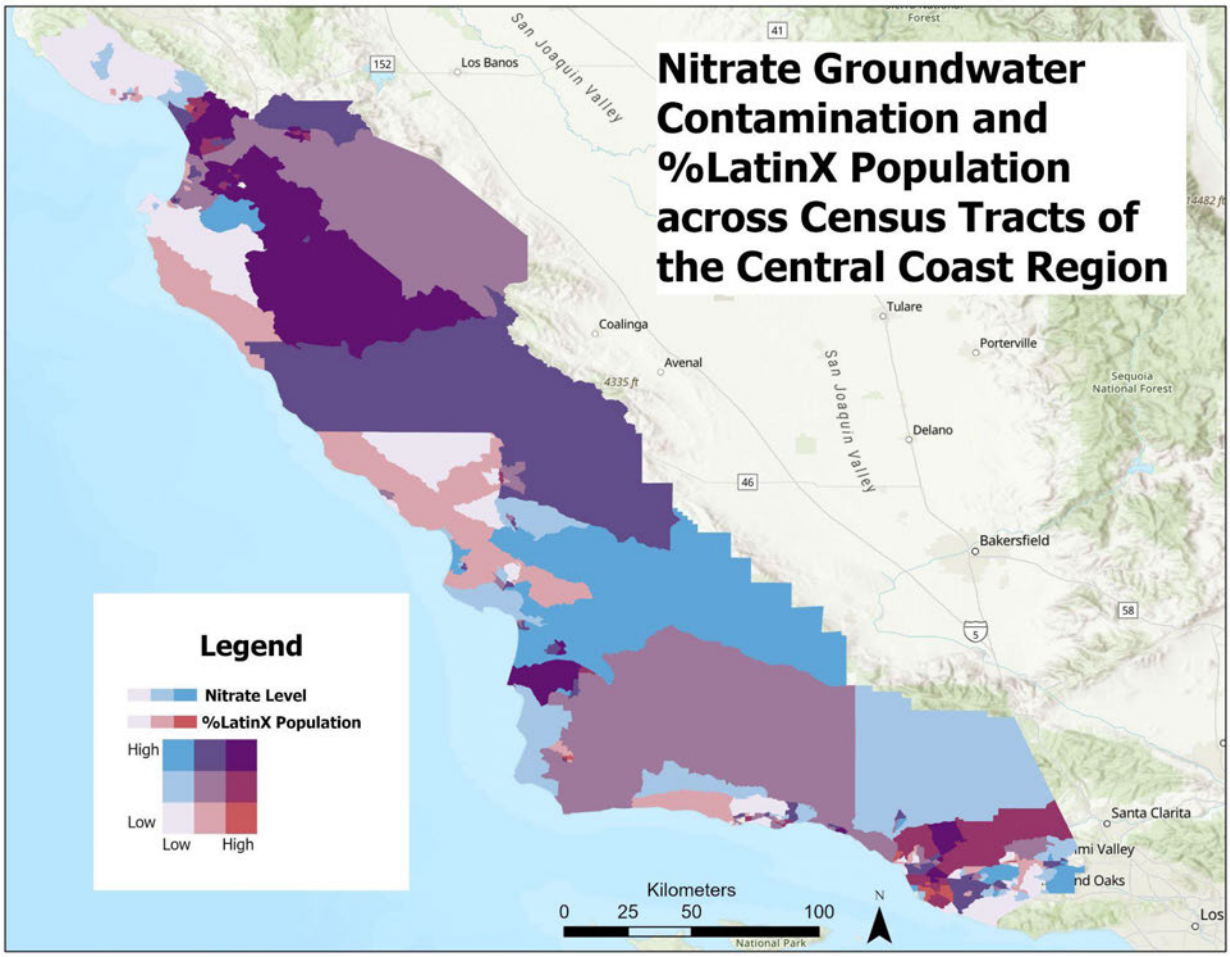


Figure 2: %Latino/a Population by Census Tract and Ambient Groundwater Nitrate Levels (2010-2023) in the Central Coast Region

Data Source: Groundwater Ambient Monitoring and Assessment (GAMA) Program and Calenviorscreen Data (OEHHA)

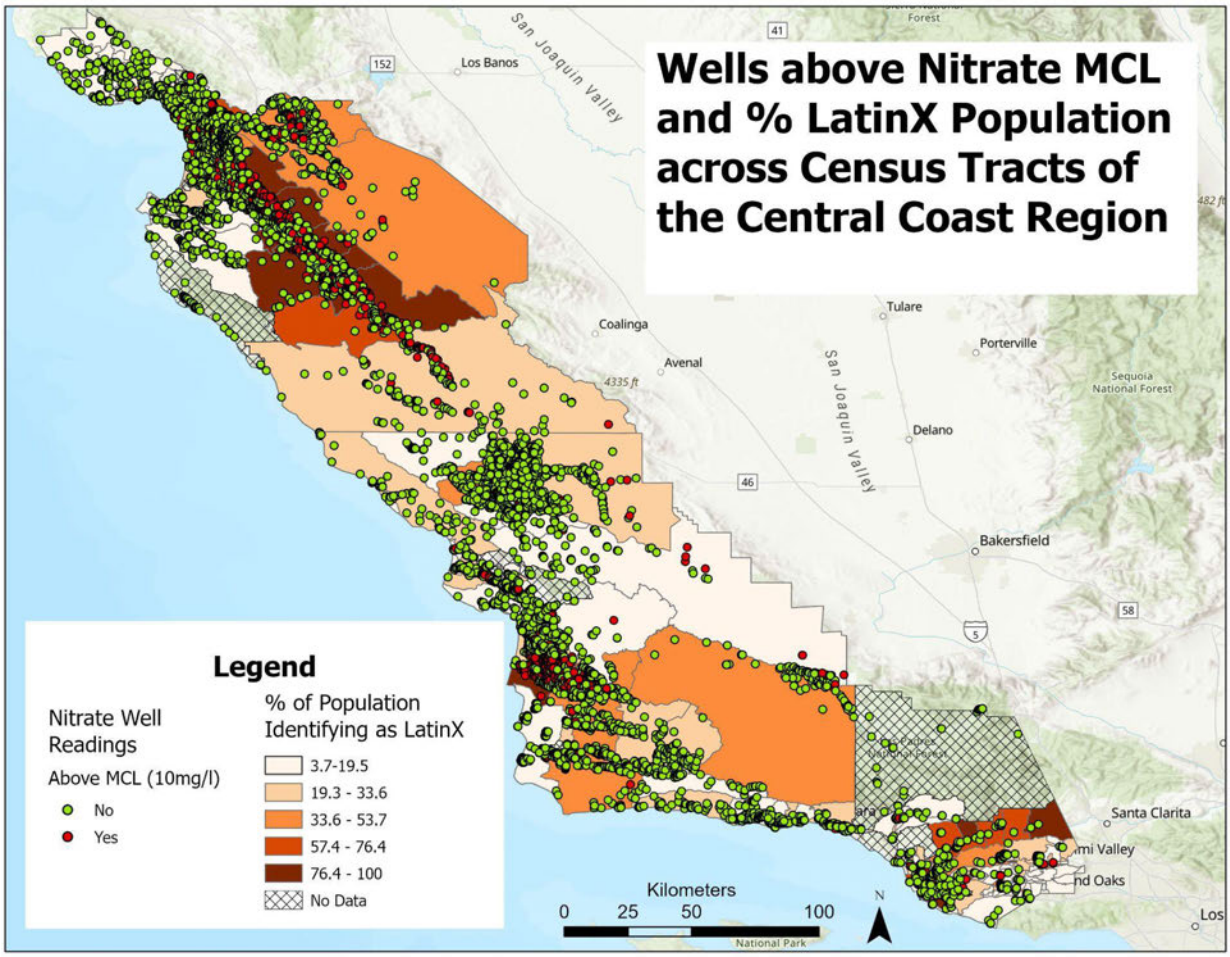


Figure 3: %LatinX Population by Census Tract and Well Nitarte Levels (2010-2023) in the Central Coast Region

Data Source: Groundwater Ambient Monitoring and Assessment (GAMA) Program and Calenviorscreen Data (OEHHA)

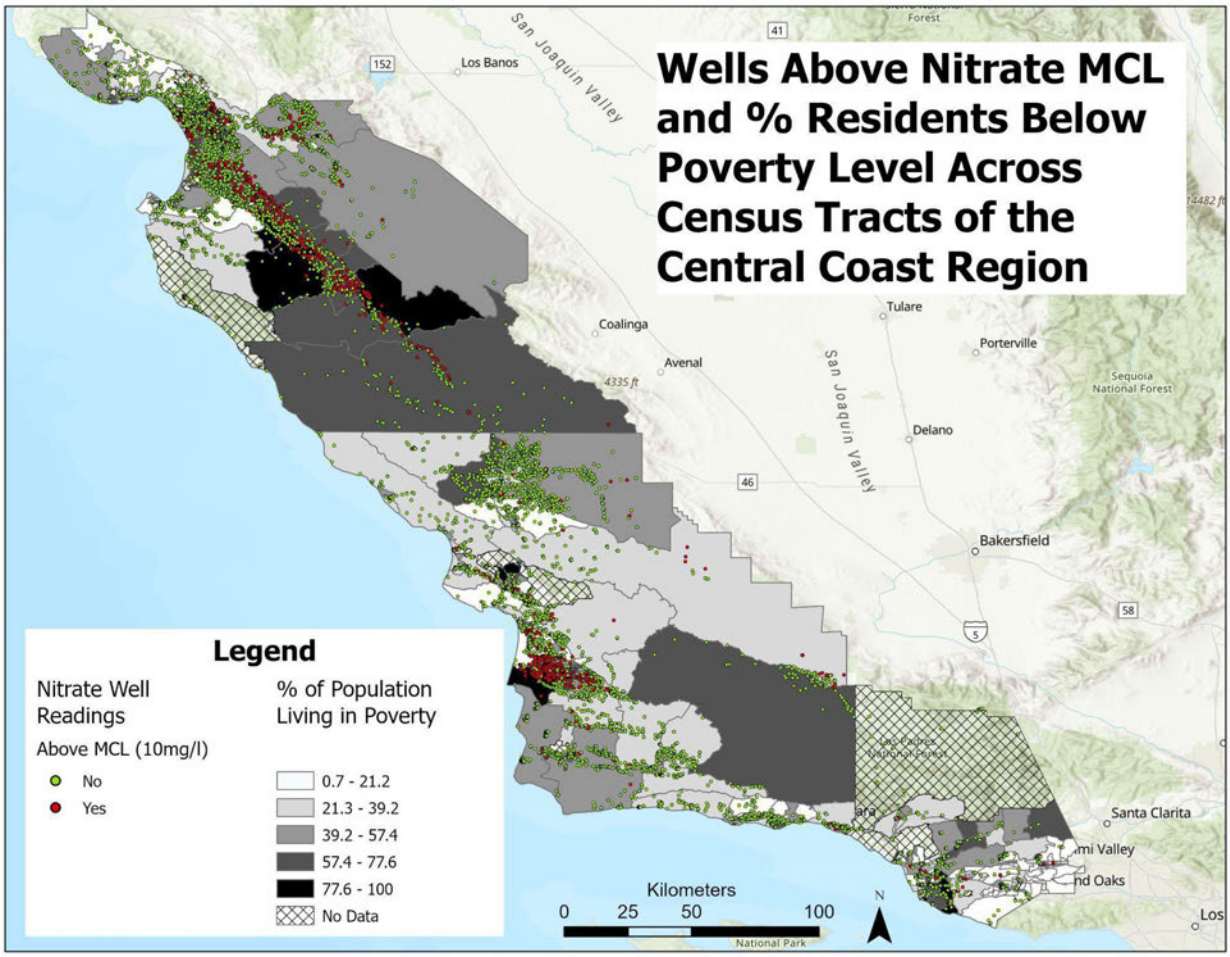


Figure 4: %Population Living below Poverty Level by Census Tract and Well Nitrate Levels (2010-2023) in the Central Coast Region

Data Source: Groundwater Ambient Monitoring and Assessment (GAMA) Program and Calenviorscreen Data (OEHHA)

EXHIBIT B

DECLARATION OF (b)(6) Privacy
MEMBER, (b)(6) Privacy, (b)(7)(C) Enf. Privacy

I, (b)(6) Privacy, based on personal knowledge, do declare and if called on could competently testify as follows:

1. I make this declaration in support of the Title VI Complaint filed against the California State Water Resources Control Board (State Board) to the U.S. Environmental Protection Agency (EPA) by Complainants (b)(6) Privacy, (b)(7)(C) Enf. Privacy and Monterey Waterkeeper.

2. I am a member of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy an unincorporated association. The (b)(6) Privacy, (b)(7) stays apprised of legal issues impacting low-income residents in Monterey and Santa Cruz Counties. All (b)(6) Privacy, (b)(7)(C) members are of Latino/Latina descent.

3. The (b)(6) Privacy, (b)(7)(C) has been involved with efforts to reduce nitrate contamination in the Salinas and Pajaro Valleys for the past six to eight months. The (b)(6) Privacy, (b)(7)(C) submitted written and oral comments on the State Board's Order 2023-0081 (State Board Order) in August and September 2023. The (b)(6) Privacy, (b)(7)(C) written and oral comments cautioned the State Board that their actions would have drastic effects on Latino/Latina communities on the Central Coast. Specifically, we commented that the State Board's removal of protections like fertilizer application and discharge limits would allow nitrogen discharges to continue to contaminate the sources of drinking water on the Central Coast—especially the drinking water sources in areas with high Latino/Latina populations. Despite our efforts, the State Board eliminated these protections in their State Board Order.

4. I am a farmworker organizer and for the past two decades have worked extensively with the farmworker community on the Central Coast. I also spent more than twenty years working in various roles as a farmworker. I am familiar with farm working conditions on the Central Coast.

5. My family and I have lived in South Monterey County, including the City of Soledad and the City of Greenfield, for fifty years. Because I am a farmworker, my family lives in areas that are close in proximity to my places of employment. Many other Latino/Latina farmworkers do the same. Additionally, many of these farmworkers are first- or second-generation immigrants from México. A significant percentage of farmworkers on the Central Coast have a low level of English proficiency.

6. The city where I live, Greenfield, California is located within the boundaries of the Forebay Subbasin. Latino/Latina residents comprise a high percentage of the City's population.

Groundwater is the only source of drinking water in this area. It is my understanding that most on-farm domestic wells in this area have levels of nitrate contamination that exceed what is allowed by the State.

7. While preparing comments on the proposed State Board Order, Comité members were informed that the proposed Order would eliminate existing numeric limits on fertilizer application and discharge. This would have a severe, and worsening, economic and health impacts on me and other farmworkers in my area.

8. The City of Greenfield, where I reside, is primarily served by a City water system. Other members of the [redacted] similarly reside in areas with municipal water. We understand that the City must treat the water from its wells to reduce the amount of nitrate in the water to a permissible level. We believe that the ongoing treatment costs are high and that this increases water bills for residents. Members of the [redacted] are extremely worried that eliminating numeric limits for nitrates will increase the amount of nitrate contamination in the drinking water in their communities, further increasing the costs of treatment and making water bills unaffordable for low-income individuals like ourselves.

9. The [redacted] members, including myself, are also concerned that removing the fertilizer limits will endanger the health of farmworkers by increasing, rather than reducing, groundwater contamination. Farmworkers—including members of the [redacted]—rely on on-farm wells for drinking water. Although I previously believed water from wells was healthy, I now understand that it is unhealthy and dangerous to drink from wells that are highly contaminated with nitrates. If farmworkers seek to avoid this danger, they must spend extra money to buy their own clean water to bring to work.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on March 18, 2024, in Salinas, California.

(b)(6) Privacy

Translator: *I, (b)(6) Privacy, declare that I am a Certified Court Spanish Interpreter as described in Government Code 68561. I am certified to translate from the English language to the Spanish language. I further declare that I have translated the attached document from the English language to the Spanish language to the best of my ability and belief.*

March 17, 2024

(b)(6) Privacy

EXHIBIT C

DECLARATION OF (b)(6) Privacy

MEMBER, (b)(6) Privacy

I, (b)(6) Privacy based on personal knowledge, do declare and if called on could competently testify as follows:

1. I make this Declaration in support of the Title VI Complaint filed against the California State Water Resources Control Board (State Water Board) to the U.S. Environmental Protection Agency (EPA) by Complainants (b)(6) Privacy, (b)(7)(C) Enf. Privacy, and Monterey Waterkeeper.

2. I am a member of (b)(6) Privacy, (b)(7)(C) Enf. Privacy an unincorporated association. (b)(6) Privacy supports the needs of low-income residents in San Lucas, California (San Lucas or town). All members of (b)(6) Privacy are of Latino/Latina descent. All members of (b)(6) Privacy live in San Lucas.

3. San Lucas is a small unincorporated town located at the southern portion of Monterey County (County). With a population of around 350 residents, our town has had a history of being ignored by the local government. Our town lacks basic municipal infrastructure like stop signs and adequate drainage. After many years without, the County recently installed sidewalks and streetlights. Most important of all, our town currently lacks access to clean drinking water.

4. In fact, San Lucas has lacked access to clean drinking water since at least the 1980s. The town is supplied by a local water district, the San Lucas County Water District (District). The understaffed District is comprised of a Board of Directors and has faced obstacles providing consistent clean water to San Lucas residents.

5. The story of San Lucas residents' most recent exposure to nitrate contamination began in 2011. In 2011, the main supply well that provides water to the town tested with nitrate levels above the State's Maximum Contaminant Level (MCL). As a result, the local health department issued a "do not drink" order to all residents. Our community, including the children at our local elementary school, was forced to drink bottled water and could not drink the water from our taps. At some point during this time, the owner of the land on which the primary municipal well is located (Grower) began providing residents and elementary school students with free bottled water.

6. In 2012, the Central Coast Regional Board (Regional Board) issued a Notice of Violation (NOV) to the Grower due to increased levels of nitrate found in the municipal water. The

Regional Board identified recent changes in the Grower's farming practices—moving from vineyards to row crops—as the cause of the nitrate increase. The NOV required the landowner to provide alternative water supplies while the primary well continued to test above nitrate levels.

7. Two years later, in 2014, the Grower drilled a new "interim" well on their property to supply the town with water. Initially, the water from this well tested below the state MCL for nitrate and residents were able to drink tap water again. But in 2016, nitrate levels in the water again increased past the State MCL. Since 2016, the residents of our town have been under a "do not drink" order—we remain unable to drink municipal water and are forced to rely on drinking bottled water supplied by the Grower.

8. Throughout this time, the State Water Board was providing the local County health department funding to study the feasibility of long-term options for providing clean drinking water to residents of San Lucas. Five options were proposed. In September of 2015, the District selected the option to "intertie" (consolidate) the town's water system with a nearby city's water system located eight miles away. The cost of the "intertie" project was estimated at $10-12 million dollars. The planning for the project was underway for about a year until the State Board issued a stop work order on the project. In their view, the project did not live up to its cost-benefit analysis.

9. The State Board thereafter directed Monterey County to explore a different alternative recommended in the feasibility study—one that proposed a new groundwater source that would be combined with treatment. However, the State Board also notified the County that the State funding for this proposal had expired. The County and the District continue to seek funding to implement the proposed alternative. Yet, residents of our town continue to have access to only bottled water rather than drinking from the tap.

10. Although the future of our town's access to drinking water is unclear, it is inarguable that limiting the amount of nitrogen used on our local farmland will reduce the amount of nitrates entering our water supply. Thus, any regulations to reduce the amount of nitrogen applied to growers' crops supports [redacted] members' access to clean drinking water.

11. The State Board's prohibition on fertilizer application and discharge limits has drastic effects on the members of [redacted] and our community. As a result of water contamination, I pay an

unsustainable price for tap water that I cannot even drink. I must frequently replace appliances in my home due to the wearing effect that the tap water has on home appliances. I endure health costs from the frequent rashes I experience from showering with tap water. The health impacts from the stress that I endure from the lack of access to safe drinking water are impossible to quantify.

12. The detrimental economic and health impacts that ongoing and increasing nitrate contamination will have on me and residents in my area is severe and will worsen because of the State Board's removal of numeric fertilizer limits.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on March 16, 2024, in San Lucas, California.

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Declarant