



May 2, 2017

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: info@waterboards.ca.gov

Re: Language Access—Consumer Confidence Report

Dear Members of the Board:

The American Civil Liberties Union of Northern California (“ACLU-NC”) writes to express concern over the existing 2016 Consumer Confidence Report (“CCR”) template (“CCR Template” or “current Template”) that the State Water Resources Control Board (“the Board”) provides to public water systems. The current Template, which is solely in English except for a two-sentence “note of importance”¹ in additional languages, fails to provide meaningful access to members of the public with limited-English proficiency (“LEP”).

We believe the Board should translate the CCR Template into all major languages used within the state, but at a minimum, revise the “note of importance” to ensure adequate notice to LEP populations about the information included in the report. In addition, the Board should alert public water systems to their legal obligations concerning CCRs. These actions will, at minimal cost to the Board, secure compliance with language access and civil rights laws in the state of California and fulfill the Board’s mission of providing critical water safety information to as many residents as reasonably possible.

I. Consumer Confidence Reports are Important Public Documents

CCRs are critically important documents for public health, and public participation seeking solutions to problems related to drinking water. Community water systems are required to prepare annual CCRs and deliver the report to consumers by July 1 of each year. Cal. Code Regs. tit. 22, § 64480. In addition to other requirements, CCRs must provide information about detected drinking water contamination, violations of health-based standards, and upcoming Board Meetings concerning water quality. Cal. Health & Saf. Code § 116470; Cal. Code Regs. tit. 22, § 64481. Many public water systems throughout the state rely on the Board’s template to transmit CCRs to their consumers, and this Board actively encourages small water systems to use the template to fulfill their CCR obligations.²

¹ See State Water Resources Control Board, *Translations for CCRs* (referring to sentence as “note of importance”), http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/CCR.shtml (last visited May 1, 2017).

² See State Water Resources Control Board, *Instructions for Completing the 2016 Consumer Confidence Report (CCR) Form for Small Water Systems*, at 2,

II. English-only CCRs Harm the Public

California law requires that “[e]very state agency which serves a substantial number of non-English-speaking people” should provide its materials “in any non-English language spoken by a substantial number of the public served by the agency.” Cal. Gov’t Code § 7295.2. There can be no doubt that the Board and local water agencies “serve a substantial number of non-English-speaking people.” Census data indicates that 43.8% of the California population aged five years and over speaks a language other than English in the home.³ Additionally, as of 2013, California had the highest concentration in the United States of LEP individuals, with 6.8 million people, or 19.3% of the population.⁴

In order to take the necessary steps to mitigate the harms associated with drinking contaminated water,⁵ residents must first understand what those harms are. This is particularly important because some community members may be more vulnerable to contaminants in drinking water and may need to take specific precautions or seek advice from their health care providers. *See* Cal. Code Regs. tit. 22, § 64481(j).

All residents are entitled to information that will enable them to advocate for changes that would improve community health. When CCRs are inaccessible to non-English speakers, it forecloses their ability to engage with decision-makers. The damaging effect of limiting information access to English speakers is magnified by the fact that contaminated water systems are disproportionately located in the Central Valley and San Diego County,⁶ areas with larger Spanish-speaking and LEP populations.⁷

III. Consumer Confidence Reports Should be Provided in an Accessible Format

The Board has oversight responsibility to ensure all communities have access to critical drinking water information. The current Template fails to meet that responsibility because many LEP communities are not receiving the information outright, and language access is not available after

http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/ccr/4CCR_SWSInstructions_20161230.doc. (last visited May 1, 2017).

³ United States Census Bureau, *Language Use in the United States: 2011* “Table 4. Language Spoken at Home and English-Speaking Ability by State: 2011,” at 11 (2013), <https://www.census.gov/prod/2013pubs/acs-22.pdf> (last visited May 1, 2017).

⁴ United States Department of Justice-Civil Rights Division, *2013 Language Map App*, <https://www.lep.gov/maps/lma2013/Final/> (last visited May 1, 2017).

⁵ For example, arsenic exposure is known to increase the risk of developing cancers, and to cause skin damage and circulatory system problems; cyanide exposure is associated with nerve damage or thyroid problems; and trihalomethane (TTHM) exposure may lead to liver, kidney and central nervous problems in addition to increased risks of cancer. *See generally* United States Environmental Protection Agency, *National Primary Drinking Water Regulations*, <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations> (last visited May 1, 2017).

⁶ State Water Resources Control Board, *Exceedance/Compliance Status of Public Water Systems*, <https://waterboards.maps.arcgis.com/apps/webappviewer/index.html?id=573c97635cc747b8bb73cf1c8706fc22&mobileBreakPoint=480> (last visited May 1, 2017).

⁷ The United States Department of Justice- Civil Rights Division estimates that large percentages of county populations are LEP. Specifically, 16.25% of residents in San Diego County, 19.33% of residents in Fresno County, 19.07% of residents in Kings County, 22.58% of residents in Tulare County, and 18.71% of residents in Madera County. *See* <https://www.lep.gov/maps/lma2013/Final/> (last visited May 1, 2017).

the fact. The Board can and should remedy this problem by providing local agencies with translations of the Template.

The Bilingual Services Act and both state and federal civil rights statutes provide protections for communities who lack adequate access to important information due to their English-proficiency. Cal. Gov't Code §7290 *et seq*; Cal. Gov't Code §11135(a); 42 U.S.C. § 2000d *et seq*. Local water systems that do not provide adequate language access are failing their responsibilities to the residents in their jurisdictions. The most effective means of assisting these communities is for the Board to provide systems with translated copies of the Template and, at the very least, revise the “note of importance” in order to make the documents more accessible.

a. The Board should translate the 2016 template in its entirety

Providing an English-only template necessarily limits community access to CCR information and falls short of the regulatory goal of making this information accessible to everyone. Title 22 directs, “A Consumer Confidence Report shall contain information in Spanish regarding the importance of the report or contain a telephone number or address where Spanish-speaking residents may contact the system to obtain a translated copy of the report...” Cal. Code Regs. tit. 22, § 64481(l). Title 22 contemplates translated versions of the information included in CCRs be made available to LEP populations. Due to its oversight responsibility, this Board has a special obligation to aid public water systems in complying with CCR regulations. In order to carry out the legislative intent of Title 22, this Board should provide a CCR template in as many languages as possible; but at least those languages that make up 5% of the water system population. *See* Cal. Gov't Code. § 7296.2 (defining a “substantial number of non-English-speaking people”).

b. At a minimum, the Board should revise the “note of importance”

The Board has provided a “note of importance” in the current Template that is inadequate for non-English speakers.⁸ The single phrase included in the form document provides, “Este informe contiene información muy importante sobre su agua potable. Tradúzcalo ó hable con alguien que lo entienda bien.”⁹ Procedurally, the “note of importance” fails to fulfil the requirements of the California Code of Regulations concerning information in a different language. *See* Cal. Code Regs. tit. 22, § 64481(l). In particular, it does not provide adequate notice of the information contained in the CCR, and incorrectly places the burden on consumers to translate the important information.

The Board should revise the “note of importance” to adequately alert LEP populations about the content of the CCR. Specifically, the Board should adopt a translated note that reads, “This document contains important information about the safety of your drinking water and opportunities to become involved with the Board that is responsible for regulating water contamination. Children and people with compromised immune systems may need to seek

⁸ *See* State Water Resources Control Board, *Template for 2016 CCR*, http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/ccr/3CCR_SWSRptForm_20161230.doc. (last visited May 1, 2017).

⁹ “This report contains very important information about your drinking water. Translate it or talk to someone who understands it well.”

medical advice before continuing to consume the water. A translated version of this report is available at [phone number or office location].” Public water systems have relied on the current Template since the Board made it available in January 2017. Accordingly, the Board should provide the translated information directly to water systems as soon as possible and in advance of the July 1st distribution deadline.

IV. Translation is Feasible

Translating the CCR would not be difficult to implement and would be cost-effective. This Board has already translated the “note of importance” into 22 different languages.¹⁰ Therefore, it would be reasonable for the Board to employ similar methods to translate the template in its entirety. Additionally, the Board would only need to provide translation services once. The costs associated with providing the translated template would be significantly less than having each water system conduct its own certified translations.

Certain public water systems have already provided translated CCR versions to consumers. The City of Chowchilla, located in Madera County, provides an annual water report in both Spanish and English.¹¹ Merced County provides CCRs in English, Spanish and Hmong.¹² The City of Corona, located in Riverside County, uses translation technology to provide direct content translation for community members.¹³ This Board should follow the lead of these communities by translating its current CCR Template into as many languages as possible to ensure more populations have access to this critical information.¹⁴

V. Conclusion

In a state as diverse as California, it is imperative that this Board ensure information pertaining to water quality be provided to all communities regardless of their primary language. The information contained in CCRs is exceedingly important. In addition to educating consumers about the quality of their water, CCRs also facilitate meaningful public participation. The current CCR template provided by this Board fails to take into consideration the diversity of Californians and falls short of the Board’s responsibility to provide adequate access to water contamination information. We ask that this Board (1) provide an updated template in as many translations as possible, and (2) issue a note to public water systems regarding their obligations under language access laws, no later than **May 31, 2017**.

¹⁰ State Water Resources Control Board, *Appendix E: List of Translations of “Note of Importance” for CCR*, http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/ccr/2CCR_Translations_NoChange.doc (last visited May 1, 2017).

¹¹ City of Chowchilla California, *Annual Water Quality Report*, <http://www.ci.chowchilla.ca.us/> (last visited May 1, 2017).

¹² City of Merced Public Works- Water Division, *Water Consumer Confidence Reports*, https://www.cityofmerced.org/depts/pw/water_division/confident.asp (last visited May 1, 2017).

¹³ City of Corona, Department of Water & Power, *City of Corona DWP 2016 Consumer Confidence Report*, <http://www.discovercoronadwp.com/CCRtranslation/index.html> (last visited May 1, 2017).

¹⁴ The State Board currently provides the notice of importance in Arabic, Chinese, Farsi, French, German, Greek, Hebrew, Hindi, Hmong, Irish, Italian, Japanese, Khmer, Korean, Laotian, Polish, Punjabi, Russian, Swahili, Tagalog, Turkish, and Vietnamese.

Sincerely,

A handwritten signature in black ink, appearing to read "Kena Cador", with a long horizontal flourish extending to the right.

Kena C. Cador
Equal Justice Works Fellow, Sponsored by Apple Inc. and O'Melveny & Myers
ACLU of Northern California