3.2 Regional and Local Agency Comments and Responses

This section contains comment letters received from regional and local agencies and responses to those comments.

Table 3-3. List of Comment Letters from Regional and Local Agencies

Letter	Agency	Comment Letter Signatory
80	Arvin-Edison Water Storage District	Steve Collup, Engineer-Manager
91	Arvin-Edison Water Storage District	Steve Collup, Engineer-Manager
3	Chowchilla Red Top Resource Conservation District	Tim Coelho, Director
98	City of Sacramento, Department of Utilities	Sherill Huun, Supervising Engineer
41	Colusa Glenn Subwatershed Program	Larry Domenighini, President
119	Colusa Glenn Subwatershed Program	Larry Domenighini, President
37	County of El Dorado Board of Supervisors	Norma Santiago, Chair
107	Dixon / Solano Resource Conservation District	John S. Currey, District Manager
48	El Dorado County Water Agency	James R. "Jack" Sweeney, Chairman, Board of Directors
142	Fire Safe Council of Nevada County	Joanne Drummond, Executive Director
1	Kern Delta Water District	L. Mark Mulkay, General Manager
118	Kern Delta Water District	L. Mark Mulkay, General Manager
143	Nevada County Consolidated Fire District	Tim Fike, Fire Chief
129	Penn Valley Fire Protection District	Gene Vander Plaats, Fire Chief
47	Plumas County Flood Control and Water Conservation District	Brian L. Morris, General Manager
10	Regional Council of Rural Counties	Nick Konovaloff, Legislative Analyst
95	Sacramento County Farm Bureau	Charlotte Mitchell, Executive Director
116	Sierra County Board of Supervisors	Dave Goicoechea, Chairman of the Board
134	Stanislaus County Environmental Review Committee	Christine Almen, Senior Management Consultant
102	Sutter County Resource Conservation District	James Cornelius, P.E., Water Resources Engineer
127	United Auburn Indian Community of the Auburn Rancheria	Greg Baker, Tribal Administrator
45	Westlands Water District	Orvil D. McKinnis Jr., Watershed Coordinator
108	Wheeler Ridge-Maricopa Water Storage District	Thomas Suggs, P.E., P.G., H.G., Staff Engineer

3.2.1 Letter 80 and 91—Arvin-Edison Water Storage District, Steve Collup, Engineer-Manager

Comment Letter IL80

ARVIN-EDISON WATER STORAGE DISTRICT

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ARVIN, CALIFORNIA 93203-0175

TELEPHONE (661) 854-5573
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EMAIL arvined@aewsd.org

September 27, 2010

VIA ELECTRONIC MAIL
ILRPcomments@icfi.com

ILRP Comments Ms. Megan Smith 630 K Street, Suite 400 Sacramento, CA 95814 Joe Karkoski California Regional Water Quality Control Board, Central Valley 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670-6114	Katherine Hart, Chair Cheryl K. Maki, Vice Chair Julian C. Isham, Board Member Karl E. Longley, Board Member Sandra O. Meraz, Board Member Dan Odenweller, Board Member Robert G. Walters, Board Member California Regional Water Quality Control Board, Central Valley 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670-6114

Dear Ms. Smith, Mr. Karkoski, Board Chair Hart and Board Members Maki, Isham, Longley, Meraz, Odenweller and Waters:

Arvin-Edison Water Storage District (District) hereby incorporates by reference the extensive comments submitted this date by the Southern San Joaquin Valley Water Quality Coalition (Coalition), among other things pointing out the deficiencies of the subject Draft Environmental Impact Report, Economic Evaluation, and Staff Report for the Irrigated Lands Regulation Program (ILRP). The District provides the following additional comments, including importing the Coalition comments, and on behalf of this District and our landowners, which covers approximately 130,000 acres in southeastern Kern County. The District defers to the expertise of the Coalition in these matters as it applies to the Southern San Joaquin Valley generally, and wishes to point out the "real world" factors as it relates to water quality in our area. 80-1

The District has been engaged in conjunctive use of surface and groundwater as well as groundwater banking projects since the mid '60s and since then has imported approximately 6.8 million acre-feet to the area for various purposes. As pointed out in the Coalition comments and particularly the engineering analysis, the best way to maintain

Page 1 of 2

and improve groundwater quality is to import water. In our case, the base supply is high quality Friant-Kern water which the District aggressively and actively defends. Maintenance of this and other high quality supplies will have a better effect and potentially improve groundwater quality than any of the means proposed in the referenced DEIR and ILRP Staff Report, many of which proposals are draconian and unnecessary.

The District believes the best strategy for the Regional Board to pursue to maintain and improve water quality would be to encourage its sister agencies, like water districts, to take appropriate actions affecting their import of surface water to the San Joaquin Valley to insure those historical imports continue, to among other things, maintain groundwater quality. Irrigating agricultural lands by importing surface water is beneficial to the groundwater basin. Therefore the erroneous link, made by Regional Board Staff, that irrigated agriculture and resultant activities are a potential waste discharge to groundwater is greatly simplified and a false assumption. 80-1 cont'd

The District encourages you to work with the Coalition and follow the advice of its comments to implement meaningfully measures to help maintain water quality in our region.

Sincerely,

Steve Collup
Engineer-Manager

cc: Jeevan Muhar, P.E.
Ernest Conant, Esq.

Page 2 of 2

3.2.1.1 Responses to Letter 80

Note: Letter 91 is a duplicate of Letter 80.

80-1

See responses to Comment Letter 111.

The Central Valley Water Board acknowledges that, in some locations, the use of imported surface water for agricultural irrigation may have beneficial effects on local groundwater quality, relative to the use of local groundwater as an irrigation water source. However, a number of researchers, including Thomas Harter (2007), report findings that indicate irrigated agriculture practices (such as use of fertilizers and some pesticides) contribute to the contamination of the underlying groundwater aquifer.

The Board appreciates the informative comment on the District's surface water imports and how good quality surface water benefits groundwater quality when used for irrigation purposes.

In many cases, the comment is accurate about how good quality water benefits groundwater quality. However, in many cases, combined with other factors such as use of fertilizers and some pesticides, this is not the case. For example, Thomas Harter analyzed the use of fertilizers on California farms in 2007 and estimated that on average more than 80 pounds nitrogen per acre per year (lbs N/acre/year) may leach into the groundwater beneath irrigated lands, usually as nitrate. [Footnote 4: Harter, Thomas (2009) Agricultural Impacts on Groundwater Nitrate. Southwest Hydrology, volume 8, number 4.] Harter concluded that "without attenuation, 80 lbs N/acre/year would lead to groundwater NO_3-N concentrations at the water table that are two to four times higher than the maximum contaminant level (MCL)." There are many other studies that prove the connection between irrigated agriculture and how it affects groundwater quality.

3.2.2 Letter 3—Chowchilla Red Top Resource Conservation District, Tim Coelho, Director

Comment Letter IL3

Chowchilla Red Top
Resource Conservation District
Post Office Box 531
Chowchilla, CA 93610

August 19, 2010

ILRP Comments
Ms. Megan Smith
630 K Street, Suite 400
Sacramento, CA 95814
ILRPcomments@icfi.com

RE: Opportunity for Public Comment on Draft Program Environmental Impact Report for a Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley Region

To whom it may concern:

We are aware that the California Regional Water Quality Control Board, Central Valley Region, as the lead agency, has released a Draft Program Environmental Impact Report for a waste discharge regulatory program for irrigated lands within the Central Valley Region.

We are also aware that the Draft PEIR evaluates and describes the potential environmental impacts associated with the ILRP, identifies those impacts that could be significant, and presents mitigation measures, which, if adopted by the Central Valley Board or other responsible agencies, could avoid minimize these impacts.

Our organization, the Chowchilla Red Top Resource Conservation District, would like to take a position on how the SWQCB is changing their scope of the Waste Discharge Regulatory Program. After discussion we would like the California Regional Water Quality Control Board to stay within their original task. This means to only worry about surface water and surface water run-off. Do not involve yourself in groundwater.

3-1

Thank you for recording this with the other comments during your comment period.

Sincerely,

Tim Coelho

Tim Coelho
Director
Chowchilla Red Top Resource Conservation District

3.2.2.1 Responses to Letter 3

3-1

See Comment Letter 74, Response 1.

3.2.3 Letter 98—City of Sacramento, Department of Utilities, Sherill Huun, Supervising Engineer

Comment Letter IL98

DEPARTMENT OF UTILITIES
ENGINEERING SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

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95822-2911

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September 27, 2010
101789:EC

ILRP Comments
Ms. Megan Smith
Central Valley Regional Water Quality Control Board
630 K Street, Suite 400
Sacramento, CA 95814

VIA EMAIL: ILRPcomments@icfi.com

Subject: Comments on Draft Public Environmental Impact Report for a Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley

Dear Ms. Smith:

The Sacramento River Source Water Protection Program appreciates the opportunity to provide comments on the Draft Public Environmental Impact Report for a Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley (Draft PEIR). We are providing several general comments regarding the overall development of the Waste Discharge Regulatory Program as well as several specific comments on the published documents.

Overall, we continue to support the acknowledgment of the need to protect beneficial uses. Protection of public health and safety through protection of the quality of sources of drinking water should remain one of the State's highest priorities.

- We support the continuation of watershed groups as the primary mechanism for implementing the long term program and believe that significant progress has been made under the current Conditional Waiver Program.

98-1

- We support a reasonable monitoring program designed to continue to identify where there are problem areas, what corrective actions are needed, and to ascertain that the remedies are successful. We believe that these programs need to be flexible in nature to adjust for changes in conditions, such as agricultural management practices, regulatory standards, and identification of new constituents of interest. We believe that these monitoring programs need to include drinking water constituents of interest related to agriculture, including constituents with primary and secondary drinking water

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standards and those with treatment technology requirements. This would include herbicides, pesticides, total organic carbon, bromide, and microbiological constituents. 98-1 cont'd

- We support the coordination with other federal and state regulatory programs to ensure that issues are being addressed comprehensively, without duplication or conflict.

Specifically, we have several concerns related to protection of the drinking water beneficial use.

- Page 3-7, Alternative 1 Monitoring Requirements (Table 3-2): We believe that total organic carbon and bromide need to be specifically listed, given the special study conducted by the California Rice Commission indicating large amounts of carbon in rice drainage. Also, the note indicates that the current program provides flexibility to reduce monitoring. We believe this note should be expanded to allow for flexibility to expand as well if conditions change and require addition of new constituents. 98-2

- Page 3-8, Alternative 2 Optional Watershed or Area Management Objectives Plan: It is indicated that areas implementing management objective plans would be allowed to reduce surface water monitoring. We do not support the reduction of monitoring until there has been documentation of success of the management program and sufficient verification procedures have been put in place to confirm that the management practices are being successfully implemented. Without monitoring data, it will be impossible to determine whether the practices are effective. We strongly recommend that some monitoring continue as verification. 98-3

- Page 3-16, Alternative 3 Monitoring Provisions: This alternative does not include a water quality monitoring component. We strongly disagree with this philosophy as it does not allow for identification in changes to source water quality conditions, whether improvements or degradation, and does not allow for assessment of management practices. We recommend that the Regional Board modify this alternative to include at least some form of monitoring designed to assess overall watershed conditions and effectiveness of management practices. 98-4

- Page 3-17, Alternative 4 Criteria for Tier System: The criteria outlined here appear to apply to Alternatives 2 and 5 as well. Our major concern is with understanding when the Regional Board will be conducting the tier ranking and how frequently it will be updated. Agricultural use patterns (i.e. crop types, pesticides applied, fertilizer use) can vary significantly and therefore field rankings could change. It seems that there is a large discretionary interpretation on this item which could significantly affect the management of the fields. We strongly encourage the Regional Board to provide more specific information on the criteria for tier ranking and the procedures for triggering a revised ranking. 98-5

- Page 3-24, Alternative 4 Surface Water Monitoring: The individual monitoring requirements have been laid out quite specifically based on timing of discharges and storm events. We are concerned that this concise timing may reduce or eliminate the potential to capture periods of peak pesticide application with relation to discharge. Our experience with the Rice Pesticide Program strongly supports timing sampling to periods of peak pesticide use. We recommend that there should be program flexibility to allow 98-6

for determining which sample timing method is more appropriate based on crop type, irrigation practices and pesticide application practices.

98-6 cont'd

- Page 3-28, Alternative 5 Monitoring Provisions: We have the same comment as above for Alternative 4.

- Appendix A, Page 31 – Malathion and Thiobencarb Evaluation: The concluding paragraph of this discussion states that malathion and thiobencarb exceedances caused by rice applications in the Sacramento River Basin are addressed through the Central Valley Water Board's Rice Pesticide Program, rather than the Irrigated Lands Regulatory Program (ILRP). Please provide clarification regarding coverage of malathion use on wild rice under the ILRP through the Sacramento Valley Water Quality Coalition.

98-7

We appreciate the opportunity to provide comments on the Draft PEIR. We sincerely believe that development of this long-term program will continue the improvements in water quality and protection of beneficial uses that have begun under the Conditional Waiver Program. Please call Elissa Callman at (916) 808-1424 if you have any questions on our comments or need additional information.

Sincerely,

Sherill Huun
Supervising Engineer

cc: Marty Hanneman, City of Sacramento Dept of Utilities
Dave Brent, City of Sacramento Dept of Utilities
Mike Yee, City of Sacramento Dept of Utilities
Roland Pang, City of Sacramento, Dept of Utilities
Forrest Williams, Sacramento County DWR
Vicki Butler, Sacramento County DWR
Amy de la Salle, Sacramento County DWR

3.2.3.1 Responses to Letter 98

98-1

Comment noted.

98-2

See Comment Letter 99, Response 56. This comment will be considered in development of the Long-term ILRP.

98-3

Under Alternative 2, watershed-based monitoring would be reduced, but operators would be required to track and monitor the effectiveness of practices implemented under the plan. The comment's support to include some amount of monitoring, as described in Alternatives 4, 5, and 6, will be considered in the development of the Long-term ILRP.

98-4

The Draft PEIR, Appendix A evaluates whether each of the alternatives is consistent with the program goals and objectives, California Water Code, NPS Policy, and Antidegradation requirements. In this evaluation, Alternative 3 was not fully consistent with the NPS and Antidegradation policies, mainly because the alternative does not specify water quality monitoring (Draft PEIR, Appendix A, pages 107–116 and 165–168). The knowledge gained in this evaluation of alternatives has been used to develop Alternative 6, which includes surface and groundwater monitoring.

98-5

Alternative 4's tier system would be implemented at the individual field level; this approach would not apply under Alternatives 2 and 5 as suggested in the comment. The Central Valley Water Board would be responsible for enrollment and assessing tier placement for individual fields under Alternative 4. These steps would occur as part of the application process for enrollment (see Draft PEIR, Section 3.5.3, first bullet item under Regulatory Approvals, page3-21). Operations would be required to submit an annual certified statement describing whether changes have been made that would affect tier placement (see Draft PEIR, Section 3.5.3, last bullet item under Regulatory Approvals, page 3-22). Reassignment of field tiering could occur during annual review of the certifications. These details will be considered in the development of a Long-term ILRP.

98-6

The individual sampling design described in Alternative 4 is specific to irrigation discharges and storm water events. The concern is that the sampling requirements under this alternative are too specific and my lead to inadequate characterization of waste discharge. In the event that the recommended alternative includes individual sampling, the comment's recommended flexibility will be considered in the development of any orders requiring such monitoring.

98-7

The Draft PEIR, Appendix A (page 31) will be modified to clarify that the Rice Pesticides Program does not cover discharges of pesticides and other wastes associated with wild rice. The ILRP provides coverage for waste discharges to state waters associated with wild rice. See Chapter 4, Revisions to the Draft Program Environmental Impact Report pages 4-11–4-12 in this Final PEIR.

3.2.4 Letter 41 and 119—Colusa Glenn Subwatershed Program, Larry Domenighini, President

Comment Letter IL41

Colusa Glenn

Subwatershed Program

P.O. Box 1205, Willows, California 95988 - Phone (530) 934-8036 - Email cgsubwatershed@sbcglobal.net

September 22, 2010

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive
Rancho Cordova, California 95670-6114

RE: ***Comments on Long Term Irrigated Lands Regulatory Program Programmatic Environmental Impact Report (PEIR), Recommended Program Alternative (Recommended Program), and Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis)***

Dear Executive Officer Creedon:

On behalf of the 1,700 plus members of the Colusa Glenn Subwatershed Program (CGSP) with over 280,000 acres of irrigated and managed wetlands enrolled in the Conditional Waiver of Waste Discharge, the following comments, questions and suggestions are made on the *Programmatic Environmental Impact Report (PEIR), Recommended Program Alternative (Recommended Program), and Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis)* released on July 28, 2010.

As a member of the Sacramento Valley Water Quality Coalition (SVWQC), the CGSP appreciates the opportunity of the year-long stakeholder process. It allowed for discussion of important water quality issues, interpretation of policies (e.g. Tributary Rule, anti-degradation), presentation of data and modeling on key constituents of concern, and transparency during the development of the five alternatives. As we believe, the SVWQC has been and will be a key component in allowing for a successful Irrigated Lands Regulatory Program (ILRP). 41-1

The Regional Board staff appears to have crafted a document that recommends ***Best Performing Program Elements*** (Page 136-142) which are responsive to comments and concerns made by the agricultural and water quality coalition stakeholders during both the year-long stakeholder process as well as during review of the two iterations of the straw proposals earlier

this year. Being able to view the two straw proposals, in advance of the PEIR, is an opportunity we greatly appreciated. 41-1 cont'd

Now to our comments, questions and suggestions:

- The Recommended Program is a major expansion of the current ILRP. It will place increased regulatory financial burdens on Sacramento Valley agriculture that bear no correlation to the need for protection of water quality. In fact, the water quality testing performed by agriculture during the ILRP has shown very few water quality problems caused by agriculture. 41-2

- The Regional Board estimates in the PEIR that costs to administer the program will range from approximately $4,000,000 to $66,000,000 depending on the alternative selected. Upwards of 97% of these costs would be funded by agriculture thru acreage fees assessed by the Regional Board. These numbers are concerning as the water quality monitoring performed is also a Public benefit. 41-3

- The Recommended Program will have a disproportional impact on smaller farming operations/landowners and some crop types. The *Economic Analysis* estimates it would cost a grower $5,000 to characterize surface and groundwater quality for low impact areas in addition to costs for water quality testing. 41-4

- There are many flaws and fundamentally wrong assumptions in the *Economic Analysis*. Monitoring costs are underestimated and changes in the underlying assumptions will result in substantial increases in the costs to agriculture. 41-5

- Groundwater quality in the Sacramento Valley is very good with few problems associated with agriculture. There are several state programs monitoring and protecting groundwater already. To duplicate these efforts is wasteful of our money. Coordination with existing programs with a sharing of their data is the prudent course to take. 41-6

- Point of Discharge - First encounter of groundwater is defined as groundwater that needs to be protected even though there are areas where first encountered groundwater is not and has never been usable water for drinking or agriculture use. 41-7

- The assumption the act of irrigating a crop is considered a discharge to groundwater that causes the degradation of groundwater is not provable or plausible in many areas of the State. Many areas throughout the State are irrigated and do not discharge to groundwater. 41-8

Additionally, we believe the below to be important in the current program and any future iteration:

Implementation Mechanism (Page 138) - *Recommendation: A series of area-, geographically based, or commodity-based implementation mechanisms with prioritized requirements. Implementation mechanisms could include waivers in low-priority areas* (emphasis added) *and general WDRs in high-priority areas. Individual WDRS could be developed and implemented as an enforcement tool.* 41-9

Lead Entity (Page 138) - *Recommendation: Third-party structure established in Alternative 1 and 2 (Coalition model) with additional structure and third-party transparency requirements.* The SVWQC already meets many of the transparency requirements. 41-10

Program Organization (Page 139) - *Recommendation: Establish geographically based tiering system to reduce costs to low threat areas.* 41-11

Water Quality Management Plans (Page 140) - *Recommendation: Regional water quality plans similar to those described in Alternatives 1 and 2 with additional requirements to (1) ensure the plans are designed to implement BPTC (best practicable treatment and control) to minimize degradation and address exceedances of water quality objectives, and (2) develop individual water quality management plans where regional plans have been ineffective (emphasis added).* 41-12

However, the ***Recommended Long-Term Irrigated Lands Regulatory Program (Recommended Program)*** paints in some cases an entirely different, confusing and/ or conflicting picture of compliance, leaving our members with the feeling that the regulatory proposal lacks flexibility we were led to believe, and will cost growers exponentially more. For example, Regional Board staff has recommended Tier 1 and Tier 2 areas, with Tier 1 being low threat areas. However, at the bottom of **Page 151** is the following:

"Examples of high-priority areas for surface water would be those under SQMPs (Surface Water Quality Management Plans) in the current ILRP (where irrigated agricultural operations are a source of the water quality concern). Area priority may be re-classified by the Central Valley Water Board based on review of new information collected during program implementation (see feedback loop in Figure 22)." 41-13

This leaves the impression that everyone starts in Tier 2 and with justification can move to Tier 1. In the SVWQC there are 54 management plans that are related to E. coli, Dissolved Oxygen and/or pH, all of which are found in the CGSP area. As part of the Management Plan approved in 2009, we are in the process of source identification, management practice surveys, and if agriculture is the source, establishing goals and a schedule implementation of additional management practices to address the exceedances. However with significant sources of DO

and pH from non-irrigated lands, the SVWQC members could implement management practices on every acre of irrigated ground in the Sacramento Valley and the exceedances of water quality objectives would continue, either as a result of natural causes, or flow, or both. Given the State Water Resources Control Board's recent adoption of a Delta Flow Report that threatens to dewater the farms and habitat of the Sacramento Valley and leave Shasta and Oroville Reservoirs at dead pool levels for longer periods of the year and more frequent years, the challenges of meeting these water quality objectives only increases.

41-13 cont'd

There needs to be clearer prioritization. Perhaps if AWEP/EQIP, Prop 84/50 or other sources of funding are in place or about to be granted to address the Management Plan issues, these areas would be viewed as having an "action plan" to improve water quality and categorized as Tier 1. The CGSP was the largest recipient of AWEP funding in the nation this year to address our Management Plan requirements. And, we have obligated in conjunction with the Natural Resources Conservation Service (NRCS) almost $1.2 million in 2010 for water quality and water conservation Best Management Practices (BMPs) within our area. This proves that irrigated landowners and wetland managers are serious about keeping water quality issues to a minimum and addressing them immediately if there is an issue.

41-14

The following comments augment comments submitted on behalf of the Sacramento Valley Water Quality Coalition, several agricultural organizations and other water quality coalitions, by Teresa Dunham, Esq., are organized by the specific document (PEIR, Staff Report, Economic Analysis, etc.) and include recommended changes where appropriate:

I. Draft Programmatic Environmental Impact Report (DPEIR)

General Comment: The DPEIR does not analyze the Recommended Program Alternative (Recommended Program). The PEIR analyzes five proposed alternatives. Staff has combined elements of many of these alternatives to develop a sixth alternative, which staff is now recommending for approval. As the recommended alternative, the staff-developed alternative has become the proposed project. However, the Draft PEIR does not analyze this project at all.

41-15

Section 5.6 Climate Change: The DPEIR provides a narrative of the greenhouse gas inventories and impacts related to operation of well pumps, but does not take into account any carbon sequestration as an offset to air quality or climate change impacts from crop production.

41-16

II. Staff Report and Recommended Program Alternative (Recommended Program)

Surface and groundwater quality is vital to success of irrigated agriculture. Sacramento Valley growers are active stewards of this vital resource, as the number of acres in management practices, active participation of the Resource Conservation Districts, Farm Bureaus, and Agricultural Commissioners in our area, and the water quality results indicate.

41-17

The Recommended Program Alternative (Recommended Program) for the Long Term Irrigated Lands Regulatory Program represents a significant expansion of the programmatic requirements on family farmers, placing increased cost burdens on Sacramento Valley agriculture that are disproportional to the water quality monitoring results we have recorded for the last five years and stewardship practices exhibited by our growers to protect water quality.

41-17 cont'd

A. <u>All Areas Classified As Tier 2 (High Impact)</u> – (Page 151) Despite assurances to the contrary our reading of sections like this in the Recommended Program

> "Examples of high-priority areas for surface water would be those <u>under SQMPs in the current ILRP (where irrigated agricultural operations are a source of the water quality concern)</u>. Area priority may be re-classified by the Central Valley Water Board based on review of new information collected during program implementation (see feedback loop in Figure 22)."

led us to believe that irrigated agriculture would be classified as a Tier 2 (high threat) area if it is required to have a Management Plan under the current Irrigated Lands Regulatory Program. Surface Water Quality Management Plans are required when 2 or more exceedances occur in a specific watershed, within a three year period. Currently, the SVWQC has 54 Management Plan requirements related to DO and pH, and E. coli and seven related to pesticides.

41-18

In these instances irrigated agriculture could implement management practices on every acre and there would still be violations of DO and pH because of inputs from natural causes.

Figure 23. Long – Term ILRP Prioritization Scheme Example – (*<u>Page 161)</u>* This exposes the fact that very few if any areas will be Tier 1. In the portion of the diagram marked "Area A" it refers to exceedances without distinguishing if these are irrigated agricultural related exceedances, which trigger management plan requirements, as it does in the "Area B" diagram. It simply says "Surface Water Objectives exceeded" and "trending degradation of surface water attributable to ". Under this scenario an E. coli exceedance in surface water that has been determined to come from a wastewater treatment plant or non-irrigated agricultural sources would still fall under Tier 2.

<u>Recommendations:</u> There needs to be some better prioritization of constituents of concern.

It is requested that the language be eliminated that automatically places an area in Tier 2 if you have a Surface Water Quality Management Plans for E. coli, DO and pH in the Sacramento Valley. Additionally if AWEP/EQIP, Prop 84/50 funding is in place or about

to granted, an area would be viewed as having an "action plan" to address the water quality exceedance and be classified as Tier 1 (low impact).

Figure 23 needs to refer to exceedances that are associated with irrigated agriculture, not as it does now "surface water quality exceedances. . ."

41-18 cont'd

B. Prioritization of Surface Water Quality Issues and Groundwater Quality Issues (Pages 159- 160) The relationship between the prioritization of water quality issues and the *Priority Factors* (Pages 150-151) is unclear. Specifically if you have a management practice in place that is protective of water quality do you become a Tier 1 area?

Which water bodies are considered priority?— streams tributary to water bodies in the Basin Plan with aquatic life uses based on the "tributary rule", tributary streams with identified municipal or domestic drinking water intakes; water bodies

Comment: Again aquatic life beneficial use includes DO, pH, and temperature as constituents of concern. Irrigated agriculture's ability to address this issue is limited. Also the tributary rule may potentially expand the number of water bodies beyond what should be a priority. Legacy OC Pesticides are a constituent of concern for human consumption beneficial use. Since existing background levels of Legacy OC Pesticides exist in the sediment almost 40 years after it was banned, detections and exceedances of water quality objectives will exist without a contribution from irrigated agriculture.

41-19

Recommendation: Eliminate or lower the priority of DO, pH, temperature and Legacy OC Pesticides as criteria for establishing a waterbody as a priority.

C. Priority Groundwater Quality Issues (Page 160)

Comment: The Regional Board has developed two important policies protective of groundwater quality. The first is its "Groundwater Quality Protection Strategy: A Roadmap for the Central Valley Region" and secondly, the alternatives for the Long-Term Irrigated Lands Regulatory Program (ILRP). The SVWQC is very committed to protecting and improving groundwater quality. To be clear, most landowners who irrigate their lands use groundwater in some manner, including domestic uses, and therefore have a vested interest in either maintaining or improving the quality of groundwater in their area. With this in mind, the SVWQC believes the following approach will help the Regional Board more effectively utilize its authorities to protect groundwater while providing a sound approach for farmers, ranchers and wetlands managers to address groundwater quality.
As the Department of Water Resources (DWR) Bulletin 118 (2003 Update) states about the Sacramento Valley Hydrological Region:

41-20

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"Groundwater quality in the Sacramento River Hydrologic Region is generally excellent. However, there are areas with local groundwater problems. Natural water quality impairments occur at the north end of the Sacramento Valley in the Redding subbasin, and along the margins of the valley and around the Sutter Buttes, where Cretaceousage marine sedimentary rocks containing brackish to saline water are near the surface. Water from the older underlying sediments mixes with the fresh water in the younger alluvial aquifer and degrades the quality.

Wells constructed in these areas typically have high TDS. Other local natural impairments are moderate levels of hydrogen sulfide in groundwater in the volcanic and geothermal areas in the western portion of the region. In the Sierra foothills, there is potential for encountering uranium and radon-bearing rock or sulfide mineral deposits containing heavy metals. Human-induced impairments are generally associated with individual septic system development in shallow unconfined portions of aquifers or in fractured hard rock areas where insufficient soil depths are available to properly leach effluent before it reaches the local groundwater supply.

From 1994 through 2000, 1,356 public supply water wells were sampled in 51 of the 88 basins and subbasins in the Sacramento River HR. Samples analyzed indicate that 1,282 wells, or 95 percent, met the state primary MCLs for drinking water. Seventy-four wells, or 5 percent, have constituents that exceed one or more MCL. Figure 34 shows the percentages of each contaminant group that exceeded MCLs in the 74 wells."

41-20 cont'd

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The following chart from DWR's Bulletin 118 illustrates the groundwater quality issues in the Sacramento Valley.

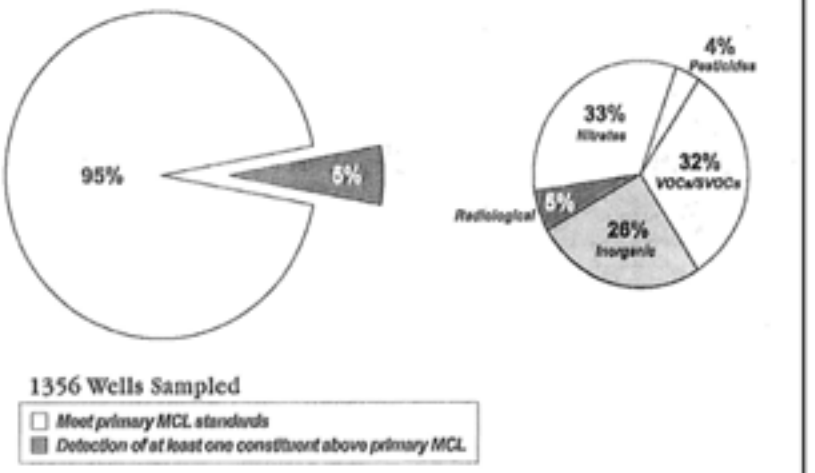

Figure 34 MCL exceedances in public supply wells in the Sacramento River Hydrologic Region

41-21

<u>Recommendations:</u> The Regional Board has important authorities to protect groundwater quality. The Central Valley is a vast region and a strategic approach to groundwater quality will be important for these various programs to be effective and to assure that both the Regional Board and the Coalitions are utilizing their resources effectively to protect groundwater quality. To help carry out this authority, we urge the Regional Board to pursue the following:

1. As a foundation to the ILRP, compile, analyze, and utilize existing groundwater data prior to proceeding with the adoption, regulation, and enforcement of groundwater monitoring programs within the ILRP.

- Sources of existing data that should be fully utilized include: GAMA, Department of Pesticide Regulation, CV-SALTS, Department of Public Health, and Department of Toxic Substances Control data.
- Once all sources of data are analyzed collectively, gaps in groundwater data will be identified. Such targeted identification will allow for proper determinations regarding necessary and appropriate actions to take to address groundwater monitoring.

41-20 cont'd

2. Provide a report to the Board that describes the groundwater data and helps prioritize the areas in the Central Valley that have groundwater quality issues. The report, to the extent possible, should demarcate agricultural-related from urban and natural issues.

3. Work with the SWRCB to extend a comprehensive monitoring program established in Water Code §10781 until 2024 as called for in Water Code §10782(a) (1).

41-20 cont'd

D. Compliance time schedule —*5 to 10 years.* For watershed areas with multiple water body/pollutant issues to address, schedule may be staggered between 5 and 10 years, but cannot exceed 10 years.

Comment: When constituents of concern originate in nature, every management practice Ag could do would not result in compliance. The Methylmercury TMDL has a longer compliance timeline.

Recommend: Eliminate compliance deadlines for DO, pH, temperature and Legacy OC Pesticides.

41-22

E. Appendix D - Surface and Ground Water Quality Management Plans

Comment: The submittal requirements in Appendix D appear to expand present requirements for management plans and add cost. Specifically ***Footnote 74,*** "The intent of data verification is to provide confidence that the information being reported is accurate. This may include field visits to a subset of growers reporting their data or other methods to confirm data validity."

Recommendations:

1. A general caveat should be included in the language on each of the Elements 4-9, which states "If irrigated agriculture is identified as the predominant source . .." then, 4. identify practices to address constituents of concern, 5. evaluate management practice effectiveness, 6. describe outreach to growers, 7. track management practice implementation, 8. monitoring plan to track changes in water quality, and 9. Describe schedule and milestones. In some instances, despite best efforts to identify monitoring sites that are representative of irrigated agriculture, inputs from other non-point sources contribute to the exceedances.
2. Element 3 makes reference to ensuring that "all" growers are implementing practices to achieve BPTC for the parameter of concern. It might not be

41-23

necessary to have "all" growers implement practices to achieve WQOs. Recommend eliminating "all" and reference BPTC.

3. Element 5 refers to "field studies" as an acceptable approach. We want to ensure this is not "the preferred" approach but one of a menu of approaches.
4. Footnote 74 refers to "field visits" as a method of data verification to give the Regional Board "confidence the information being reported is accurate." Again, in the SVWQC region it may only take broader implementation of management practices to improve water quality. The Regional Board might be able to improve their confidence level by compiling information available about AWEP/EQIP, Prop 50 and 84 grant funding, etc., to get a broad sense of what of management practices being implemented. It wouldn't provide specific locations, but would broaden the publics' understanding that irrigated landowners are stewards of water quality.
5. Element 8 of the Groundwater Quality Management Plan requirements have cost implications. To track changes in water quality – which in groundwater's case may be decades before changes are realized—"The monitoring plan may need to include other sites or a different depth to groundwater (e.g. monitoring first encountered groundwater versus supply wells (emphasis added) or the frequency of sample collection. . ." Maintain regional monitoring unless there is a significant change in agricultural practices.
6. Lastly, Element 9, goals and schedules need to be reasonable. Management practices are slowly adopted and in some cases highly dependent on funding.

41-23 cont'd

F. Three distinctly different timelines for developing a Groundwater Quality Management Plan

Page 152 2nd Paragraph under Tier 1 - Tier 1 it appears you have 5 years to "describe the area's existing water quality management objectives in a report to the Central Valley Water Board. Management Practices tracking, every 5 years would be the method by which the Central Valley Water Board would evaluate, in general, whether operations are continuing to meeting existing management objectives."

Low priority areas (Tier 1) described using factors on Page 150-151.

Page 154 *High Priority Groundwater* This section of the Recommended Program states there would be 18 months from adoption of WDR, which is 12 months after Water Board certifies Final PEIR. It is unclear, if and how the three (3) year phase-in (Page 143) would impact this timeline. See Footnote 59 which further confuses what the timeline is for submitting GWQ Management Plans where AB 3030 and SB 1938 programs exist.

41-24

Page 157 3rd Paragraph- Priority Undetermined - in the 3rd paragraph it states, "Areas with insufficient information to determine prioritization would be required to complete assessment monitoring or studies with 5 years of long term program adoption." 41-24 cont'd

G. **Public involvement in the Tiering decision of an area makes the process potentially political versus technical.**

Page 151, last paragraph

"Third-party groups and the Central Valley Water Board would identify low and high-priority areas in the development of watershed/area/commodity–specific implementation mechanisms during the 3-year transition period. The Central Valley Water Board intends to use existing information in this prioritization. However, there will be the flexibility for third-party groups and other interested parties to provide additional information during the process." 41-25

See *Footnote 57* "During this process, there would be opportunity for public input.

H. **Tier 1 Regulatory Requirements are contradictory**

Comment: On *Page 152* Tier 1 requirements are described similar to the Pilot Management Practices in the SVWQC *Monitoring and Reporting Program Order R5-2009-0875*

Under this tier, the Central Valley Water Board considers the existing level of management objectives as BPTC, and protective of surface and groundwater quality. Third-party groups are required to describe the area's existing water quality management objectives in a report to the Central Valley Water Board. Management practices tracking, every 5 years, would be the method by which the Central Valley Water Board would evaluate, in general, whether operations are continuing to meet existing management objectives. 41-26

On *Page 157* under Monitoring it states

Surface Water
Monitoring would consist of tracking of management practices and watershed based assessment monitoring 1 year every 5 years (similar to the assessment monitoring required under the current ILRP). Monitoring and tracking results would be submitted in a report every 5 years to the Central Valley Water Board. Additional monitoring may be required where assessment monitoring identifies a water quality concern.

Recommendation: Do not require assessment monitoring every 5 years unless there is significant increase or change in the agricultural practices. In subwatersheds with little acreage or few members monitoring, even every 5 years is expensive. 41-26 cont'd

I. **Other interested parties** (*Page 154, Paragraph 2 and 3*) –

Comment: Language here appears to open the door for negotiations on SQMP and GQMP to other parties – undefined. The SVWQC Management Plan (February 2009) and Monitoring and Reporting Program Order (December 2009) were approved by the Executive Officer and didn't require Regional Board action or multi-party negotiations. This language also appears on Page 155, Paragraphs 1 and 2. 41-27

Recommendation: Delete reference to "other interested parties"

J. **Compliance Timelines of 5-10 years are problematic** - especially for groundwater quality and especially when constituents are legacy pesticides or the source of the constituent of concern is from non-irrigated agricultural sources. 41-28

K. **Ultimate Goal - Individual Farm Water Quality Management Plans** (*Page 155, Paragraph 3*) The Recommended Program states, the failure to meet water quality objectives will require Individual Farm Water Quality Management Plans (FWQMP). As defined in Alternative 3 and summarized on Page 1-2 of the ***Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis)*** FWQMP would be required "regardless of whether water quality problems have been identified". 41-29

L. **Fees** (*Page 160*) – "Fees charged will be dependent on the amount of State funding allocated through legislative appropriation and the State Water Board's analysis of the level of staff effort required to implement the program. The Central Valley Water Board will recommend that the fee structure reflect the differing levels of effort for the different tiers and oversight of irrigated agricultural operations as individuals versus as part of a third-party group." 41-30

Not sure how this works, but can understand how growers are tying the SWRCB action on the Ag Waiver Fee increase in the Governor's budget with the CVRWQCB Recommended Alternative.

M. **Point of Discharge** - First encounter of ground water is defined as groundwater that needs to be protected even though there are areas where first encountered ground water is not and has never been usable water for drinking or agriculture use. 41-31

The assumption that the act of irrigating a crop is considered a discharger to groundwater that causes the degradation of groundwater is not provable or plausible in

many areas of the State. Many areas throughout the state are irrigated and do not discharge to groundwater.

Recommendation: Eliminate this as point of compliance. Use existing water quality data to determine if discharge is impacting surface or groundwater quality.

41-31 cont'd

III. Economic Analysis

As the *Economic Analysis* states on Page 1-3, ". . . a change in the underlying assumptions . . . could substantially alter the study results." There are numerous instances in the document where it is incorrect or based on faulty assumptions. As just one example, information provided on "Enrolled and Total Acres. . ." Table 2-3 on Page 2-4 and Table 2-4, "Enrolled and Total Growers", which are used to determine fees in Alternatives 1-5, bear no relation to reality. For instance, Table 2-3 shows enrolled acreage of 173,438 in Butte Yuba Sutter watershed. It does not appear all acreage or crops are included in this figure, since the SVWQC reported 220,000 and 206,000 enrolled acres in 2009 and 2010. In some cases there are more enrolled growers in a watershed than estimated growers (Upper Feather Upper Yuba, Delta Mendota).

41-32

Tables 2-3 and 2-4 are just two examples of where is it difficult to determine how the results in the Economic Analysis were arrived at, leaving us to ask the question teachers for years have preached: "Show your work."

Comment: The Recommended Program Alternative has not been analyzed as part of the economic analysis.

41-33

Recommendation: An independent review of the Economic Analysis should be conducted.

Comment: The Central Valley Production Model (CVPM) not appropriate for Foothill areas The model is applied to too large an area.

41-34

Chapter 1 - Analytical Objectives and Approach

1.2 Key Study Assumptions (Page 1-3, Paragraphs 2 and 3)

"As discussed further in Chapter 3, the model assumes that growers will react to increased costs and other compliance requirements by adjusting crop production as needed to maximize net income and stay in business. Results from the Central Valley were extrapolated to affected areas in the foothills and upper watersheds.

41-35

"It is likely; however, that growers will find or develop less expensive ways to modify their production practices, and therefore direct impacts on their revenues and production would be less than those estimated in Chapter 3."

41-35 cont'd

Comment: This seems to be a generalized statement that doesn't take into account Associated start up costs (seed, field preparation) in order to modify. Orchards for instance would not have the flexibility presumed here.

Forward linked effects understated "Because Regional economic analysis results presented in Chapter 4 do not include forward linked effects, total regional impacts are understated."

41-36

Comment: Regional Board should provide estimate of understated impacts, as this makes validity of results otherwise suspect.

Page 1-4, Paragraph 2

"Results of the farm income analysis in Chapter 3 indicated that other crops would not be as affected as those linked to the livestock sector, so the forward-linked effects would also be smaller. Nevertheless, the exclusion of these additional forward-linked effects understates the total regional economic impacts of the Program alternatives".

41-37

Comment: We disagree that forward-linked effects of other crops would be smaller. Wine grapes for example have significant forward-linked effects. As the text points out forward-linked effects are understated. Several examples of forward-linked effects that could be included are agrotourism, food processing (e.g. tomato processing), and retail sales of wine from local vineyards.

Chapter 2 - Compliance and Management Practice Costs

2.2.1.3 Acreage and Grower Data (Page 2-3)

"The Central Valley Water Board provided information on the number of enrolled growers by watershed (Table 2-4). Enrolled growers are those currently enrolled in the Board's program and are derived from the management plan acreage. Estimated growers are based on the total acreage in the ECR watersheds. Enrolled growers were used to determine fees in Alternative 1. The estimated growers were used to estimate fees for Alternatives 2–5."

41-38

Comment: As mentioned previously this information is significantly flawed and the Regional Board should correct the information and recalculate impacts.

Creedon, Comments on ILRP PEIR
September 22, 2010
Page 15

2.3.1 When and Where Water Quality Management Practices Are Applied (Page 2-6)

"Water quality management practices are applied when there are documented COCs (Figure 2-1, Table 2-5). The practices applied for pesticides were based on the constituent's use by crop type (Footprint 2010; PAN 2010)."

41-39

Comment: The Regional Board should use objective sources of information. The use of the Pesticide Action Network (PAN) as source is inappropriate when objective sources exist.

2.3.2 Water Quality Management Practice Cost Calculations (Page 2-14)

"In the watersheds without COCs the only practices considered are nutrient management and water management, but only if there are acres that are vulnerable to leaching."

41-40

Comment: Why is nutrient management practices considered in areas without constituents of concern? These are costs to growers and producers that bear no relationship to need.

2.4.1.1 Monitoring Costs (Page 2-17)

"The alternatives have two types of sampling: basic, which covers nitrate and electrical conductivity, and comprehensive, which covers other constituents such as organic compounds and native elements such as boron or selenium. Sampling location and frequency depend on the alternative."

41-41

Comment: Are these sampling types reflective of the Monitoring and Reporting Program Order requirements on Coalitions? If not, this understates costs.

Table 2-10. Surface and Groundwater Monitoring Cost Breakdown for Use in All Alternatives

41-42

Comment: The frequency of sampling in this table significantly understates costs. In much of the Sacramento Valley Water Quality Coalition area, we sample 8-12 times a year for field parameters and constituents of concern.

Table 2-11. Estimated Cost per Acre for Current Program (Page 2-20)

DRAFT Estimated Current Annual Cost for Compliance Actions Average $/acre
State Board Ag Waiver Fees $0.15

41-43

Comment: The current fee is $0.12/acre

"Surface water or groundwater characterization is necessary to meet the Tier 1 requirements under Alternative 4. Using the Natural Resource Conservation Service (NRCS) time estimates (NRCS 2010), it was assumed that each review would result in a one-time cost of $2,500 (Table 2-13) for evaluation plus testing for water quality. These costs are applied on a per-grower basis. Therefore, a grower who needed to conduct a site-specific evaluation of both surface water and groundwater would be required to spend $5,000 in addition to costs for water quality testing."

41-44

Comment: This example of how the Recommended Program Alternative could have a disproportional impact on small farming operations and low value crops. These costs are per grower regardless of size of property. Why would additional testing be required if a grower has an approved farm water quality management plan?

2.5 Water Quality Management Practices and Other Compliance Costs, by Alternative

Tables 2-19 thru 2-22 under report actual costs

41-45

Comment: The Regional Board estimates in the PEIR that their costs to administer the program will range from approximately $4,000,000 to $66,000,000 depending on the alternative selected. Upwards of 97% of these costs would be funded by agriculture thru acreage fees assessed by the Regional Board. But these costs are footnotes to the tables and not factored into Total Compliance Costs.

Comment: In Tables 2-18 thru 2-22 are costs annual or one time? Our estimate is the cost of compliance is $13,000 per landowner, but not sure if that is a one time or annual cost.

Table 2-19. Costs by Hydrologic Basin for Alternative 2 – Third-Party Lead Entity (Page 2-25)

41-46

Comment: Growers fees increase to $548,227, what is this based on? How was Groundwater Reporting to Third Party of $1,080,996 determined?

Table 2-20. Costs by Hydrologic Basin for Alternative 3 – Individual Farm Water Quality Management Plans (Page 2-25)

41-47

Comment: Why is there $11,874,774 Monitoring Cost for this Alternative?

Again, we thank you in providing us with this opportunity. However, we strongly encourage you to take these comments, questions, and suggestions into consideration. Agriculture is a major factor in California's economy, in our nation's security, the economic lifeblood of many

communities in the Central Valley, as well as many other important facets of our communities. Please contact our office at (530) 934-8036 if you have any questions.

Sincerely,

Larry Domenighini
President

cc CGSP Board of Directors
SVWQC

3.2.4.1 Responses to Letter 41

Note: Letter 119 is a duplicate of Letter 41.

41-1

The support for implementation of an ILRP alternative that strongly protects drinking water will be considered in development of the Long-term ILRP.

41-2

See Comment Letter 14, Response 1 and Comment Letter 40, Response 2.

41-3

See Master Response 17.

41-4

See Master Response 17.

41-5

See Master Response 17.

41-6

See Comment Letter 41, Response 6 and Comment Letter 1, Response 45.

41-7

See Master Response 18.

41-8

See Comment Letter 1, Response 4.

41-9

In situations where an individual operation is not (1) compliant with ILRP requirements or (2) responsive to a third-party group, individual WDRs could be developed to facilitate compliance and enforcement. The concept of developing individual WDRs to facilitate enforcement and development of orders, as described in Alternative 6, will be considered in the development of the Long-term ILRP.

41-10

The proposed coalition or third-party transparency requirements are intended to ensure that irrigated agricultural operations are (1) fully aware of program requirements and (2) compliant with program requirements. Transparency requirements are also intended to ensure that third-parties provide information to the Central Valley Water Board regarding any non-compliant operations. In evaluating whether the Central Valley Water Board should implement these or similar

transparency requirements, it is helpful to know that there are coalitions (i.e., Sacramento Valley Water Quality Coalition [SVWQC]) that are already meeting similar standards for transparency.

41-11

The Central Valley Water Board recognizes the comment's support for the tiering system and will consider this in development of the Long-term ILRP.

41-12

The support for regional water quality management plans will be considered in the development of the Long-term ILRP.

41-13

See Comment Letter 97, Response 6 and Comment Letter 111, Response 21.

41-14

The priority systems described in Alternatives 2, 4, and 6 are intended to help reduce ILRP costs for areas/operations that do not have water quality problems. In general, the priority systems allow areas that have no water quality concerns to be considered low priority. Also, the priority systems allow consideration of existing management practices. For example, under Alternative 2, areas implementing approved watershed or area management objectives plans would be eligible for reduced monitoring. In the example presented in the comment, the consideration of whether funding was in place for implementation of practices would be a first step in the process of developing and implementing a watershed or area management objectives plan. In order to qualify for reduced monitoring, management plans must be developed, approved, and under implementation. Generally, these conditions are also required under the priority systems of Alternatives 4 (priority system is based on fertilizer and pesticide use) and 6 (priority factors include the consideration of management practices in place).

41-15

See Master Responses 3 and 4.

41-16

See Master Response 15.

41-17

See Comment Letter 41, Response 2.

41-18

See Comment Letter 97, Response 6, Comment Letter 111, Response 21; Comment Letter 1, Response 23; and Comment Letter 41, Response 14.

41-19

See Comment Letter 10, Response 3; Comment Letter 111, Response 21; and Comment Letter 9, Response 4.

41-20

See Comment Letter 50, Response 14 and Comment Letter 45, Response 20.

41-21

No response needed.

41-22

See Master Response 13.

41-23

The Central Valley Water Board agrees that the data verification requirement in Appendix D may impose costs, with the actual amount dependent upon the method used to verify the information. See Comment Letter 50, Response 8 regarding programmatic cost estimations.

The following response elements correspond to the numbering in the comment letter.

1. This requirement is not consistent with the goals and objectives of the Long-term ILRP to *"minimize waste discharge from irrigated agricultural lands that could degrade the quality of State waters."* Where agriculture is a contributing source of a water quality concern, then the ILRP's goals and objectives would require action be taken to minimize their contribution. Just as other sources would be required to minimize contributions (dairies, wastewater treatment plants, etc.). However, where agriculture is not a contributing source, then additional practices should not be required. Clarifying language to address this comment will be considered in development of the Long-term ILRP.

2. It is correct that all operations would not need to implement BPTC; only those that could cause degradation of a high quality water. See Comment Letter 1, Response 32. It is expected that operations would implement practices necessary to solve the water quality concern, and/or work to minimize any degradation of a high quality water.

3. Field studies are described as one acceptable approach for evaluating the effectiveness of management practices. This element does not describe a preferred approach.

4. The monitoring required under Alternatives 2–6 includes tracking management practice implementation. Alternative 6 would also require that the third-party group develop a system to verify information reported by operators (such as field visits). The Board is supportive of the outside funding to assist in management practice tracking, but compliance actions would be required even if outside funding is not available.

5. As the comment describes, there may be costs associated with this type of monitoring (e.g., first encountered groundwater monitoring), especially where there are not existing wells in place. See Comment Letter 50, Response 8. Regional monitoring results would be acceptable where the

monitoring can provide information on whether the practices being implemented are working to address the water quality concern.

6. The Central Valley Water Board intends to work with funding entities to support agriculture's efforts to improve water quality. However, availability of outside funding will not be a primary factor in considering the reasonableness of schedules and milestones. See Comment Letter 111, Response 34.

41-24

There are differing timelines proposed in the Draft PEIR, Appendix A for Alterative 6; timelines are specific to the two tiers, as well as areas not yet classified in a tier. However, the Tier 1 timeline mentioned by the comment (Draft PEIR, Appendix A page 152) is not a groundwater management plan timeline; Tier 1 requirements do not include management plans. The 5-year proposed timeline is for assessment monitoring (where insufficient information is available for prioritization) and for submitting reports on monitoring and practices.

The 18-month time frame for third-party development of groundwater quality management plans would be in place upon adoption of ILRP implementation mechanisms. Because the Central Valley Water Board intends to develop implementation mechanisms within 12 months of EIR certification, the timeline to develop groundwater quality management plans would occur within the 3-year implementation timeframe for Alternative 6.

41-25

See Comment Letter 1, Response 48. The same rationale applies to public involvement in identifying which areas fall under the different tiers.

41-26

See Comment Letter 126, Response 3.

41-27

See Comment Letter 1, Response 48.

41-28

See Master Response 13 and Comment Letter 111, Response 34.

41-29

Alternatives 3, 4, and 5 would have individual FWQMP requirements for all operations. Alternatives 1, 2, and 6 would have regional water quality management plans required in areas with water quality concerns.

Alternative 6 would require individual FWQMPs only (Draft PEIR, Appendix A page 155) *"if objectives are not met, improvements in water quality do not occur within the approved time schedule for implementation, or where irrigated agricultural operations are not implementing requirements in SQMPs/GQMPs [regional plans]."* Essentially, where regional plan objectives are not met, effective, or being implemented, individual plans would be required.

Also see Master Response 13 and Comment Letter 111, Response 34.

41-30

See Comment Letter 97, Response 25.

41-31

See Master Response 12, 18 and Comment Letter 9, Response 14.

41-32

See Master Response 17.

41-33

See Master Response 17.

41-34

See Master Response 17.

41-35

See Master Responses 7 and 17. Also see Comment Letter 99, Responses 54 and 55.

41-36

See Master Response 17.

41-37

See Master Response 17.

41-38

See Master Response 17.

41-39

See Master Response 17.

41-40

See Master Responses 12 and 17.

41-41

See Master Response 17.

41-42

See Comment Letter 50, Response 8.

41-43

See Comment Letter 97, Response 38 and Master Response 17.

41-44

This comment will be considered in development of the Long-term ILRP.

41-45

See Master Response 17.

41-46

See Master Response 17.

41-47

See Master Response 17.

3.2.5 Letter 37—County of El Dorado Board of Supervisors, Norma Santiago, Chair

Comment Letter IL37

COUNTY OF EL DORADO
330 Fair Lane
Placerville, CA 95667
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SUZANNE ALLEN DE SANCHEZ
Clerk of the Board

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September 21, 2010

ILRP Comments
Ms. Megan Smith
630 K Street, Suite 400
Sacramento, CA 95814

RE: Comments on the Draft Program Environmental Impact Report for a Waste Discharge Program for Irrigated Lands within the Central Valley Region

Dear Ms. Smith:

Per the Notice of Availability regarding the opportunity to provide comments on the Draft Program Environment Impact Report (PEIR) for a Waste Discharge Regulatory Program for irrigated lands within the Central Valley Region the following comments are being submitted for review and consideration. The draft PEIR analyzes the environmental impacts of five program alternatives plus a proposed staff recommendation for a long term plan to best meet the applicable statutory requirements and the goals and objectives of the Irrigated Land Regulatory Program (ILRP). Each alternative has their individual merits, but the alternatives are not flexible enough for the non water basin areas of the central valley such as El Dorado County.

Based on the Department of Water Resources Bulletin 118 California Groundwater Basins and Sub-basins Map El Dorado County west of the Sierra Nevada crest does not contain a groundwater basin or sub-basin. Therefore, it would seem appropriate that this area is covered under Water Code Division 6, Chapter 1, Part 2.11, Section 10921 which precludes El Dorado County from conducting groundwater monitoring and irrigated landowners will continue to use established management practices. 37-1

A large portion of the County of El Dorado is located on the Western Sierra Nevada Mountains where irrigated lands are limited to 10 or 20 acre parcels with generally poor to rocky soil conditions. Groundwater in these areas generally is deep, over 200 feet, with low productivity and used for domestic and/or small farming activities. In Table 5.9 of the PEIR the County of El Dorado is not recognized as having any pesticides detected in wells from 1985-2003.

In lieu of a single alternative for regulating waste discharges from irrigated agricultural lands, we respectfully suggest a tiered approach similar to other State Water Board Regulations with the least regulated tier applying to those agriculture lands that are not in a recognized water basin or sub-basin. In conjunction with this tiered methodology an approved management practice program would be required and existing groundwater data will be reviewed and assessed to determine whether the objectives of the regulatory programs are being achieved.

Based on the information provided, it appears that the County of El Dorado County irrigated lands should not be required to conduct groundwater monitoring and placed in a least regulated tier as identified above. It is the intent of the County to work with the El Dorado County Agricultural Water Quality Management Corporation and the El Dorado County Water Agency in the development of a compliance work plan. We support the El Dorado County Agricultural Water Quality Management Corporation irrigated land coalition in their action to comply with the Pilot Watershed Management Practices Plan and support their desire to achieve a reasonable and logical management practices plan for the irrigated lands of the County of El Dorado. 37-2

Thank you for your time and consideration of the County of El Dorado's position regarding the Draft Program Environmental Impact Report for a Waste Discharge Program for Irrigated Lands within the Central Valley Region.

Sincerely,

Norma Santiago

Norma Santiago, Chair
County of El Dorado Board of Supervisors

Cc: El Dorado County Water Agency
El Dorado County Agricultural Water Quality Management Corporation

3.2.5.1 Responses to Letter 37

37-1

See Comment Letter 100, Response 41 and Comment Letter 5, Response 1.

37-2

This suggestion will be considered in development of the Long-term ILRP.

3.2.6 Letter 107—Dixon / Solano Resource Conservation District, John S. Currey, District Manager

Dixon Resource Conservation District
Solano Resource Conservation District
1170 N. Lincoln Street, Suite 110, Dixon, CA 95620
Phone (707) 678-1655

Comment Letter IL107

September 27, 2010

ILRP Comments
Ms. Megan Smith
630 K Street
Sacramento, California 95814

RE: ***Comments on Long Term Irrigated Lands Regulatory Program Programmatic Environmental Impact Report (PEIR), Recommended Program Alternative (Recommended Program), and Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis)***

Dear Ms. Smith:

On behalf of the 580 plus members of the Dixon / Solano RCD Water Quality Coalition (DSRCDWQC) with over 111,000 acres of irrigated and managed wetlands enrolled in the Conditional Waiver of Waste Discharge, the following comments, questions and suggestions are made on the *Programmatic Environmental Impact Report (PEIR), Recommended Program Alternative (Recommended Program), and Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis)* released on July 28, 2010.

As a member of the Sacramento Valley Water Quality Coalition (SVWQC), the DSRCDWQC appreciates the opportunity to be involved in the year-long stakeholder process. It allowed for discussion of important water quality issues, interpretation of policies (e.g. Tributary Rule, anti-degradation), presentation of data and modeling on key constituents of concern, and transparency during the development of the five alternatives. *As a subwatershed of the SVWQC we participated in the development of the comments submitted September 27, 2010, on behalf of SVWQC, however, upon additional review we would also like to provide the following comments on the proposed regulatory requirements.* 107-1

The Recommended Alternative under the Regulatory Requirements section on page 150 of Appendix A states that "Where a management practice is proposed, for compliance with the ILRP, and the irrigated agricultural operation determines that it may affect a sensitive resource (e.g., endangered species habitat, sensitive plant communities), the irrigated agricultural operation must (1) select a different management practice that meets water quality goals, but does not involve impacts on a sensitive resource, or (2) locate the management practice outside of sensitive resource areas, or (3) implement the mitigation measures described in the implementation mechanism (e.g., WDRs/ waiver) for the potentially affected resource, or (4) work with the Central Valley Water Board to obtain an individual waste discharge permit and site-specific CEQA analysis. 107-2

Comment:

We are concerned that this regulatory requirement establishes an expectation that the individual landowner decisions when installing best management practice would be documented and reported to the Regional Board. If the installation of the best management practice is not documented it will be impossible to prove that avoidance was implemented. As a result, this requirement would at a minimum require landowners and/or third party leads initiate a substantial and burdensome requirement to produce and maintain these records or defend themselves against a claim that the management practice required CEQA review.

107-2 cont'd

The Description of options under the Water Quality Management Plans section on page 139 of Appendix A provides the example of "…where a water quality problem is attributable to multiple sources, an overarching regional plan could be developed to address the concern." In addition, the Recommendation under the Monitoring Section on page 141 of Appendix A states "…that the inability of regional monitoring to determine irrigated agricultural waste contributions to identified water quality problems will not excuse action to work toward minimizing contributions to identified water quality problems."

107-3

Comment:

Who is the responsible entity for organizing an overarching regional plan and/or determining the extent of contributions from non-agricultural sources to a water quality problem? The costs and responsibility for multiple source water quality issues should be distributed accordingly and not unfairly burden agriculture.

Again, we thank you in providing us with this oppoetunity. However, we strongly encourage you to take this comment and SVWQC comments, questions, and suggestions into consideration. Agriculture is a major factor in California's economy, in our nation's security, the economic lifeblood of many communities in the Central Valley, as well as many other important facets of our communities. Please contact our office at (707) 678-1655 if you have any questions.

Sincerely,

John S Currey

John S. Currey
District Manager

cc Dixon RCD Board of Directors
Solano RCD Board of Directors
SVWQC

3.2.6.1 Responses to Letter 107

107-1

See Comment Letter 41, Response 1.

107-2

Alternatives 2–6 require tracking of management practices implemented to comply with the ILRP. In order to enroll in the ILRP, operations would be required to certify that practices implemented do not involve impacts on a sensitive resource unless mitigation measures are implemented. Operations implementing practices that impact sensitive resources would be required to report on implementation of mitigation measures.

Operations choosing to implement management practices for compliance with the ILRP that would impact a sensitive resource but do not implement mitigation measures would not be eligible for enrollment in the ILRP. These operations would be required to work individually with the Central Valley Water Board to obtain regulatory coverage for their waste discharge.

See Master Response 6.

107-3

The purpose of the ILRP is to regulate irrigated agricultural waste discharges to surface or groundwater. However, the ILRP does not require that the amount of each participating contribution to a water quality problem be determined. If a water quality problem (e.g., degradation occurring, or not meeting objectives) exists, operations that potentially contribute to the problem are required to minimize their waste discharge. If the selected ILRP alternative's monitoring program is regional in nature (i.e., individual field effects on receiving waters are not monitored), it is not possible to determine whether and how much each operation is contributing to the problem—water quality assessment and feedback mechanisms are based on the watershed-scale for multiple sources. Therefore, the ILRP requires that operations that *potentially* contribute sources to the problem implement management practices designed to minimize their contribution. Often times the cost of conducting a source control study may be greater than the cost of implementing measures to minimize waste contributions. Local third-party groups would need to weight this consideration in determining whether to focus on source control or studies in program implementation. However, where agriculture is not a source, the ILRP would not require implementation of practices. Also see Comment Letter 100, Response 40. The overarching regional plan described is an optional plan that could be developed and funded by participating entities within a watershed or area.

Agricultural operations that do not wish to participate in implementing practices under the ILRP have the option to file a report of waste discharge and obtain individual waste discharge requirements. These requirements would specify individual monitoring of effluent and/or receiving waters designed to ensure that the operations waste discharge does not cause or contribute to an exceedance of water quality objectives and that BPTC is implemented where there is degradation of a high quality water.

3.2.7 Letter 48—El Dorado County Water Agency, James R. "Jack" Sweeney, Chairman, Board of Directors

Comment Letter IL48

El Dorado County Water Agency

Ron Briggs	John P. Fraser	James R. Jones	Norma Santiago	James R. "Jack" Sweeney
Board of Supervisors	*El Dorado Irrigation District*	*South Tahoe P.U.D.*	*Board of Supervisors*	*Board of Supervisors*

September 24, 2010

Central Valley Regional Water Quality Control Board
Irrigated Lands regulatory Program
Ms. Megan Smith
630 K Street, Suite 400
Sacramento, CA 95814

Subject: Comments on the Irrigated Lands Regulatory Program- Program Environmental Impact Report

Dear Ms. Smith:

The El Dorado County Water Agency has reviewed the Program Environmental Impact Report (PIER) for the Irrigated Lands Regulatory Program (ILRP). The proposed ILRP will involve the adoption of one or more general Waste Discharge Requirements (WDRs), Conditional Waivers of WDRs, and Prohibitions of Discharge to regulate the discharge of waste to ground waters of the State from irrigated agricultural operations, managed wetlands and nursery operations. The stated objectives of the ILRP are to: 1) restore and/or maintain the highest reasonable quality of state waters considering all the demands being placed on the water; (2) minimize waste discharge from irrigated agricultural lands that could degrade the quality of state waters; (3) maintain the economic viability of agriculture in California's Central Valley; and (4) ensure that irrigated agricultural discharges do not impair access by Central Valley communities and residents to safe and reliable drinking water.

The El Dorado County Water Agency is a County-wide planning agency with responsibility for ensuring adequate water supplies for the residents of El Dorado County, including surface and ground water quality. As such, EDCWA offers the following comments. It is important first, to preface the comments with a summary of the character of agriculture, existing water quality and ground water geology in El Dorado County.

Agriculture in El Dorado County

Irrigated agricultural operations in El Dorado County are typically patchwork, low intensity, small family owned and operated farms with an average parcels sizes of 38 acres that include an irrigated agricultural production area of 10 acres. Agricultural operations are limited to small geographic area in the County, due to elevation, poor soils, topography and limited water availability. While high volume sprinklers are used, primarily for frost protection, a majority of irrigation is done with more efficient micro-sprinklers or drip systems. The primary commercial

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edcwa@co.el-dorado.ca.us http://www.co.el-dorado.ca.us/water

commodities are permanent crops consisting of fruit and nut orchard, wine grapes, Christmas trees, berries with a few vegetables and a small amount of irrigated pasture.

Water Quality

Local water districts, Sacramento Municipal Utility District and Low Threat Waiver surface water quality testing done in the South Fork American and Cosumnes River watersheds, show excellent water quality with no evidence of any adverse effects resulting from agricultural operations within the County.

As a result of low intensity farming, irrigation practices and excellent water quality, El Dorado County watersheds, through the El Dorado County Agricultural Water Quality Management Corporation, have been approved for a management practices-based Pilot Program that eliminates surface water monitoring for two years.

Groundwater Geology

Based on the Department of Water Resources Bulletin 118, California Groundwater Basins and Sub-basins Map, El Dorado County west of the Sierra Nevada crest does not contain a groundwater basin or subbasin. Water Code Division 6, Chapter 1, Part 2.11, Section 10921 also recognizes the absence of significant ground water on the western slope, by exempting areas not designated as having a groundwater basins or sub-basin from investigative monitoring of groundwater elevations.

A large portion of El Dorado County and virtually all irrigated lands within the County are located on the western slope of the Sierra Nevada. Unlike the Central Valley, groundwater in these areas is found in fractured hard rock, generally to depths over 200 feet. Fractures may be large or small and may run up and down or sideways. They may be a few millimeters to hundreds of meters long, but most are less than a millimeter wide (DWR Water Facts, Number 1). The varied orientation and interconnectivity, or lack thereof, of these fractures make it virtually impossible to identify the source or the destination of the water. Wells in the hard rock of El Dorado County are generally low producing and are used for individual residences and/or small farming activities. In Table 5.9 of the PEIR, the County of El Dorado is not recognized as having any pesticides detected in wells from 1985-2003, indicating that agricultural operations are not likely to be affecting the deep domestic wells typical of the western slope.

Groundwater sufficient to supply public water systems is unavailable, and the few groundwater supplies that have been used for municipal purposes, on the western slope, have been abandoned. Public water agencies on the western slope therefore, deliver only surface water to their customers.

Comments

The draft PEIR analyzes the environmental impacts of five program alternatives and a proposed staff recommendation for a long term plan to best meet the applicable statutory requirements and the goals and objectives of the Irrigated Land Regulatory Program (ILRP). Each alternative has its individual merits, but the alternatives are not flexible enough for the non-water basin areas of the Central Valley, such as El Dorado County, where the objectives of the ILRP are already being met. Water quality is excellent in El Dorado County and there is no evidence that

48-1

agricultural operations are contributing to surface or groundwater degradation. Irrigation practices, low intensity farming and mixed land uses minimize discharges that could degrade water quality. There is no evidence of impairment of drinking water supplies. For these reasons the EDCWA requests that the Board consider a tiered approach similar to other State Water Board Regulations with the least regulated tier applying to those agriculture lands that are not in a recognized water basin or sub-basin. In conjunction with this tiered methodology an approved management practice program would be required and existing groundwater data reviewed and assessed to verify the objectives of the ILRP are being achieved. 48-1 cont'd

Based on the information provided, it appears that the County of El Dorado County irrigated lands should not be required to conduct groundwater monitoring and should be placed in a least regulated tier as discussed above. It is the intent of the El Dorado County Water Agency to support and work with the El Dorado County Agricultural Water Quality Management Corporation and the El Dorado County Environmental Health department in the development of a compliance work plan. We support the El Dorado County Agricultural Water Quality Management Corporation irrigated land coalition in their action to comply with the Pilot Watershed Management Practices Plan and support their desire to achieve a reasonable and logical management practices plan for the irrigated lands of the County of El Dorado. 48-2

Thank you for your time and consideration of the El Dorado County Water Agency's comments on the Draft Program Environmental Impact Report.

Sincerely,

James R. "Jack" Sweeney
Chairman, Board of Directors

TEB

Cc: El Dorado County Environmental Management
El Dorado County Agricultural Water Quality Management Corporation

3.2.7.1 Responses to Letter 48

48-1

See Master Response 12. Also see Comment Letter 44, Response 3 and Comment Letter 97, Response 6.

48-2

See Comment Letter 5, Response 1.

3.2.8 Letter 142—Fire Safe Council of Nevada County, Joanne Drummond, Executive Director

FireSafe COUNCIL NEVADA COUNTY

Fire Safe Council of Nevada County
P.O. Box 1112
Grass Valley, CA 95945-1112
Phone (530) 272-1122
Fax (530) 272-3232
www.firesafecouncilnevco.com

Comment Letter IL142

July 1, 2010

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive
Rancho Cordova, CA 95670

Re: Comments to EIR economic analysis of the Long Term Irrigated Lands Program (ILP)

Dear CVRWQCB:

The Fire Safe Council of Nevada County works very closely with landowners to reduce and manage the fuel loads on their property to reduce fire severity in our county. Agricultural landowners with irrigated pastures provide "green belts" in our very high and high fire severity areas and are an important asset to our community. These green, irrigated areas provide a form of fuel breaks throughout communities and allow areas for the fire fighters to gain control or slow an oncoming wildfire.

Our county-wide Community Wildfire Protection Plan (CWPP) recognized the value of these ecosystem services values during the planning effort to address the wildfire issue across the landscape. We identified these managed agricultural lands as areas that would be likely to be continually managed and therefore would provide long lasting wildfire mitigation benefits. In 1988, the 49'er fire in Nevada County was the largest and most destructive in California history until the late1990's. The 49'er fire was slowed and stopped in areas where ranchers had irrigated pastures. 142-1

The cost to irrigate acres is an expense borne by the agricultural landowner, yet the entire community and watershed benefits. Without these irrigated fuel breaks, fire suppression estimates from CAL FIRE are between $10,000-$100,000 per acre. Removal of these private green belts would likely increase fire suppression costs to the state and counties.

Due to the current CVRWQCB Regional Board's Irrigated Lands Program and the proposed quadrupling of fees to agricultural landowners, some landowners have stopped irrigating because they can not bear any additional costs to their agricultural operations. This in turn will reduce irrigated areas that have proven in the past to be valuable areas for fire protection and suppression.

We strongly urge CVRWQCB to consider the loss of irrigated acres in our county due to the proposed increased costs to agricultural landowners from the Long Term ILP program along with the potential destruction of entire watersheds to catastrophic wildfire.

Sincerely,

Joanne Drummond
Executive Director

3.2.8.1 Responses to Letter 142

142-1

See Comment Letter 46, Response 3 and Master Response 7.

3.2.9 Letter 1 and 118—Kern Delta Water District, L. Mark Mulkay, General Manager

Comment Letter IL1

Kern Delta Water District
501 TAFT HIGHWAY
BAKERSFIELD, CALIFORNIA 93307-6247
TELEPHONE (661) 834-4656
FAX (661) 836-1705

September 23, 2010

ILRP Comments
Ms. Megan Smith
630 K Street, Suite 400
Sacramento, CA 95814

Email: ILRPcomments@icfi.com
FAX: (916) 456-6724

RE: ILRP CEQA Comments

Dear Ms. Smith:

The Kern Delta Water District, a California Water District formed pursuant to, and operating under, Division 13 of the California Water Code (District), appreciates the opportunity to comment upon the Draft Program Environmental Impact Report for a Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley Region.

Please be advised the District is concerned about the intended scope of the newly proposed Program, the anticipated costs associated with the Program, and the environmental analysis performed under the California Environmental Quality Act, which we believed is flawed, all as set forth and explained in the attachment entitled ANALYSIS OF THE INTEGRATED LONG RANGE LAND PROGRAM/AMENDMENT AND EXPANSION OF THE AG WAIVER, CEQA ANALYSIS, AND ECONOMIC EVALUATION, which is incorporated herein as though set forth in full. Please include these comments in the official record of proceedings. 1-1

Again, thank you for the opportunity to comment.

Sincerely,

L. Mark Mulkay
General Manager
Kern Delta Water District

Encl.

Cc: Robert W. Hartsock, esq.

ANALYSIS OF THE INTEGRATED LONG RANGE LAND PROGRAM / AMENDMENT AND EXPANSION OF THE AG WAIVER, CEQA ANALYSIS, AND ECONOMIC EVALUATION

The 2000+ page CEQA alternative document is long, unclear, disjointed, repetitive and has its meaningful components totally camouflaged by voluminous content. The document thoroughly analyzes the five alternatives that have been identified for over a year and which captured the broad extent of program options. These alternatives have been analyzed, vetted through the interested parties and have become familiar to Board members. They have also been evaluated under an economic analysis, unfortunately an analysis with significant flaws, to determine the economic impact of each alternative. The CEQA review did not evaluate what has become the preferred staff alternative. Similarly, the Economic Analysis also did not evaluate the recently developed staff alternative. The preferred alternative is actually a misnomer as it was not even referenced in either the CEQA or Economic Analysis, but instead was merely attached thereto as an Appendix. As discussed below we believe that is improper, however, because the staff is trying to reverse this entire process and focus only on the staff alternative, we will commence these comments with the staff preferred alternative and then discuss the Draft Programmatic Environmental Impact Report ("DPEIR"). 1-2

I. Long- Term Irrigated Lands Regulatory Program
Staff Report / Recommended Program Alternative

Notwithstanding the extensive environmental review and lengthy period of analysis, the Regional Board staff has recently come forward with what it envisions is their regulatory program to
be included under the Long-Term ILRP. In recent weeks staff has concentrated its efforts on what was first known as a "staff straw proposal." The "straw proposal" has been offered in multiple iterations during its short life and is now presented in Long-Term ILRP Staff Report ("Report") as the Recommended Program Alternative ("RP A") - even though it is not one of the five alternatives analyzed under the DPEIR. When it first emerged as a straw proposal, the agricultural, agribusiness, and ag water quality coalitions were in strong opposition to this late arriving alternative, and in particular voiced significant opposition to consideration of this proposal if it was not going to be subjected to a full CEQA analysis. Notwithstanding this strong opposition, Regional Board staff has persisted in their efforts to implement this "staff straw proposal" by selectively mixing and matching elements from identified alternatives to arrive at the RP A. This approach circumvents CEQA and violates the due process and public notice rights of landowners and agricultural operations subject to the regulations. The law does not allow a lead agency to avoid CEQA analysis by belatedly developing a program alternative, arbitrarily choosing and mixing certain elements from EIR proposed alternatives. 1-3

A. Groundwater

1. Staff seeks to have the Long-Term ILRP program expanded to include not only the existing surface water waiver, but also the very complex area of groundwater. The Staff Report wrongfully asserts that virtually all agricultural lands, including those that do not drain to surface waters of the state, shall be considered as discharging to groundwater. (Staff Report at p. 143 et seq.) As we have pointed out many times, this is simply factually incorrect. By example, lands that are farmed many hundreds of feet above groundwater and use drip irrigation 1-4

- 1 -

constituting only a few inches of irrigation water during the summer months coupled with annual winter rainfall of less than ten inches have absolutely no percolation or discharge to groundwater whatsoever, much less have the capability of carrying a contaminant from the surface many hundreds of feet to underlying underground water which itself may be decades or hundreds of years old, and may have originated dozens of miles away. 1-4 cont'd

2. The incorrect position that all irrigated lands discharge to groundwater leads to the erroneous conclusion that the Regional Board has jurisdiction over all lands and, under that alleged jurisdiction, the Regional Board has the authority over all irrigators. This assertion of jurisdiction and requirement that all irrigators must comply with waiver restrictions ignores the limitations on Regional Board authority to discharges that affect the water quality of waters of the state. (Wat. Code § 13000 et seq.) This assumption of discharge attempts also to shift the burden of proof from the Regional Board to the farm owner or land operator to disprove the erroneous postulation (that all irrigated lands discharge waste to groundwater). This is also inconsistent with the burden expressly outlined in California Water Code section 13267, which states that the Board "shall provide a written explanation of the need for such reports and shall identify the evidence that supports requiring reports." (Wat. Code, § 13267, subd. (b)(l).) 1-5

3. The assumption that the act of irrigating a crop is considered a discharge to groundwater that causes the degradation of groundwater is not provable or even plausible. The general notion of groundwater vulnerability is not a surrogate for groundwater quality data and cannot be used as the basis for (1) assuming discharge to groundwater aquifers or (2) placing virtually all parcels in Tier 2. To do so would be unreasonable because landowners would be faced with the burden of trying to "prove" a negative, which if achievable at all, could only be done at unreasonable great expense. 1-6

4. The staff proposal indicates that the Regional Board anticipates that the authority to regulate discharges to groundwater would increase their regulatory jurisdiction over an additional two million acres. This is certainly an incorrect number as there are more than two million irrigated additional acres in the Southern San Joaquin Valley Water Quality Coalition alone, which do not drain to surface water. This error is indicative of the failure of the Staff Report to accurately address the realities of groundwater or reflect the actual impacts of proposed program. 1-7

5. The Regional Board has two overreaching related obligations in this regulatory process: (1) it must advance a factually correct waiver, and not merely allege improper facts just to satisfy a zeal for regulation; and (2) it must carry the burden to clarify for those who have had no previous connection to the ag waiver, that they may now have an exposure to this new regulatory program. The staff proposal fails to comply with the Porter-Cologne requirement of notifying the person potentially discharging. (Wat. Code, § 13263(f).) By not developing and publishing an applicable standard (where groundwater discharges occur) concerning the lands potentially affected under the proposed new program, there has not been effective regulatory notice, nor the required CEQA notice. (pub. Resources Code, § 2 1092, subd. (b)(l); CEQA Guidelines, § 15072, subd. (f)(1)-(6).) 1-8

6. In the Staff proposal, first encountered groundwater is identified as the basis by which tiers will be assigned. However, first encountered groundwater is an improper 1-9

- 2 -

standard to use when evaluating water quality impacts. It should not be used to judge water quality impacts because the term does not accurately reflect groundwater conditions in the Central Valley. First encountered groundwater in most areas is not and has never been of suitable quality for either drinking or agriculture use. 1-9 cont'd

B. Grandfather Status

1. In the many meetings with Regional Board staff and with those responsible for crafting the CEQA document and the regulatory proposal, it has been indicated that existing grower participants in coalitions would be grandfathered in and not have to reapply under the new waiver. It has also been agreed to in principal that the new waiver would begin with the existing coalitions (should coalitions continue to be willing to implement the waiver on behalf of the Regional Board). The long-term ILRP program as presented in the staff proposal does express that members would be grandfathered in (Report at p. 144), but it fails to put in writing, what has been stated to us, that the waiver would commence with the existing coalitions. We find that problematic especially when contrasted with the language (Report at p. 145) that Regional Board staff believes there will be 8 to 12 new orders. This would not be consistent with the five major coalitions in existence today. 1-10

2. In contrast to the treatment of agricultural coalitions, the staff Report recommends that greenhouses and entities with operational spills (water districts) will be jettisoned from waiver coverage. (Report at pp. 142-156.) This provision as proposed will have a major impact on greenhouse operations and it does not appear that these amendments have yet been vetted back to greenhouse operators. Water districts have also been eliminated from coverage under the waiver without suitable replacement coverage. 1-11

3. The Report also confirms that managed wetlands (including federal refuges) are expressly covered by the waiver. However, this is a change from the dichotomy of how the Regional Board currently deals with refuges. Northern refuges participate in coalitions and are covered under the existing waiver, but the southern refuges are not. Regional Board staff should take appropriate steps to have a uniform policy regarding these managed wetlands. 1-12

4. The Southern San Joaquin Valley Water Quality Coalition does not have extensive water quality issues. The Report indicates that there are 686 waste water combination exceedances that resulted in management plans. The Report discusses total exceedances in the Central Valley and across the Tulare Lake Basin. It points out that there are only a total of 12 exceedances in the entire Tulare Lake Basin, and only five of those exceedances attributed to agriculture. Specifically, our coalition has only a couple of required management plans. The Report also indicates that across the entire Southern San Joaquin Valley Water Quality Coalition, there is only one water segment having a 303d listing. (Report at p. 20.) This data is supportive of the argument that the current waiver is working and that coalition participants are entitled to be grandfathered into any new program and any new regulatory requirements be moderate. 1-13

5. The Report states that most coalition groups have no regulatory authority over members. (Report at p. 9.) This is an inaccurate statement in respect to the Southern San Joaquin Valley Water Quality Coalition that is largely managed by water districts and water experts. Member water districts have a certain amount of regulatory authority over the delivery 1-14

- 3 -

of water and discharge of water in their districts. Member districts have been aggressive in removing agricultural drains to control discharges. 1-14 cont'd

C. Unreasonable Timelines

1. In respect to timelines, the staff proposal indicates that (a) within the first three months of adoption there would have to be a declaration of involvement, (b) by 12 months the Regional Board would issue responses or approvals and (c) that within 30 months all that are to be required to do so would be enrolled.

2. These are unreasonable timelines. The regulatory expansion to include groundwater issues will require each coalition to struggle with and determine if they can possibly implement the terms of the new waiver. This evaluation process will certainly take more than three months to understand all the issues and ramifications. Thirty months is extremely optimistic for the coalition to be able to convince growers who have never been part of the waiver, that they may have to become part of the waiver if, in fact, there is a demonstrable potential that their irrigation water may percolate to groundwater. 1-15

3. Implementation will be further impeded and delayed because of the complexity associated with the proposed mix of general WDRs and waivers, a mix between groundwater and surface water regulations, a mix of low and high priority (tier 1, tier 2) areas, and the expansion of all these provisions to groundwater.

4. The Report appropriately indicates that Porter-Cologne authority allows some reasonable degradation of waters if the purpose behind the discharge has an over-riding "maximum benefit to the people of the State." (Report at p. 66.) Clearly, agriculture is the most important economic engine of the state and certainly of this region. Therefore, the significant and important public benefits associated with agriculture need to be factored in when assessing exceedances and developing timelines for achieving water quality objectives. For the reasons stated above, these time lines and the timelines for achieving objectives included in the staff proposal are unreasonable.

D. Internal Inconsistencies

1. The Report indicates that a coalition could be comprised of a mix of high and low priority areas. This mix would be based on exceedances and risks, and could vary independently between surface water and groundwater. Yet, there is one reference that indicates that if there is a mix of high and low priority that the area would be deemed "high priority" for all purposes. (Report at p. 151.) This seems to be internally inconsistent, and also inconsistent with the overall notion that low priority areas will have less regulatory rigor. 1-16

2. The three year phase-in referenced on Page 143 seems to be in direct conflict with other stated timelines of 18 and 30 months. (See point C. above) 1-17

3. See also Footnote 59, which further confuses what the timeline is for dealing with AB 3030, SB 1938 programs and Integrated Regional Plans.

-4-

E. Prohibition of Discharge

1. The Report advances the regulatory option that there would be a "prohibition of any discharge" if a farmer is not appropriately signed up under the waiver. Such a prohibition is essentially a death penalty not just to that farm operation, but any other farm operation situated down gradient that might rely on tail water from the targeted farm. Consequently, such a prohibition would in most every instance be a very inappropriate remedy. The problem is compounded when associated with the regulatory expansion to groundwater which raises the likelihood that it is going to take a multi-year process to convince even those growers that may actually have a potential to percolate to closely associated groundwater to sign up under the waiver, and there is very little chance to get those who have no such potential (and are therefore outside the jurisdictional scope of the Porter-Cologne), to subject themselves to this regulation. Consequently, it is easy to anticipate that there are going to be many farmers in this category, particularly relative to groundwater. 1-18

2. This also raises a second issue: how does the Regional Board impose the remedy of a prohibition to discharge if in fact the alleged discharge is by percolation to groundwater. 1-19

F. Low Threats to Water Quality

1. The Report indicates on page 149 that there would be a separate category for areas that have no or little impact to state water and it references the Existing Conditions Report which expressly indicates that there are areas that have no such impact. This raises the possibility of a no threat or low threat component. It seems that some areas of isolation from surface water with no reasonable connection to groundwater would qualify under this provision. This would also be true of mountain valley areas with limited agriculture that have either no, or very limited, potential impact to surface water. Therefore, it seems such areas need only advance to the Regional Board very modest monitoring proposals. This is expressly provided in Water Code § 13269(3), which states the Regional Board may waive monitoring requirements for discharges that do not pose a significant threat to water quality. 1-20

G. Tiering

1. We understand the staff alternative proposes to categorize lower risk areas as Tier 1 and higher risk areas as Tier 2. Presumably, Tier 2 will be limited only to areas which have management plan requirements. The relevant questions are how will the determination between areas be made and what is the process to determine the extent of those categories. In order to be able to appropriately evaluate this proposal, we need the opportunity to sit down with the Regional Board staff and determine the isopleths of what would be regarded as the nitrate groundwater area and the impact areas leading to our groundwater and affecting our two management plans. 1-21

a. It should also be clarified as to if general water constituent and characterizations such as DO, EC, pH, pathogen would be utilized to classify lands into Tier 2. We believe they should not. 1-22

- 5 -

2. Under the Long-Term ILRP Prioritization Scheme Example set forth in Figure 23 (Report p. 161.), it appears as though very few if any areas will be Tier 1. In the portion of the diagram marked "Area A" it refers to exceedances without distinguishing if these are irrigated agricultural related exceedances, which trigger management plan requirements, as it does in the "Area B" diagram. It simply says "Surface Water Objectives exceeded" and "trending degradation of surface water attributable to." First, this reverses what should be the regulatory burden - Tier 1 unless a demonstrated problem moves it to Tier 2. Under this scenario, multiple fecal coliform exceedances in surface water giving rise to a management plan that actually came from a wastewater treatment plant source would still compel a determination as a Tier 2 area. 1-23

H. Monitoring

1. Attachment C of the staff proposal deals with groundwater management plans and requires groundwater monitoring and further requires the evaluation of the effectiveness of any management practices that are employed to address an impairment. The proposal, however, does not make any attempt to clarify the level and intensity of such monitoring, nor how monitoring would be designed to track the effectiveness of 2012 management practices where problem constituents many have been applied in prior decades. This lack of detail on this major requirement is a fatal flaw in the proposal. 1-24

2. The Report indicates that Tier 2 groundwater monitoring would include establishment of baseline and trend data and evaluation of changes in management practices. The Report is silent on how staff believes this could possibly be achieved. In addition, the Economic Analysis omits any discussion of this issue including its significant cost. 1-25

3. The Report indicates that groundwater monitoring would be required, however, it is completely silent as to what would be considered the acceptable level of monitoring, therefore this provision is impossible to evaluate and, once again, the economic analysis did not evaluate how many new monitoring wells would be compelled by this provision. The Report is unclear as to the specifics of groundwater monitoring itself. It indicates that baseline, trend and impairment monitoring would all be required, particularly in respect to nitrates and pesticides, but does not state how this would be accomplished. In order to evaluate both the impact and the cost associated with this proposal, the Regional Board has to bring clarity to the questions regarding the adequacy of existing monitoring in what areas, and what additional monitoring would have to be engaged. It cannot be left to implementation on a "trust us" basis. 1-26

4. The proposal goes on to indicate that if there is "insufficient progress" on data, then the coalitions would be required to augment additional monitoring within five years. The document, however, is unclear as to what would constitute sufficient or insufficient monitoring. This uncertainty gives rise to problems as to reasonable notice as well as to make the Economic Analysis impossible if there is ever an economic analysis of the staff proposal. 1-27

5. Appendix B of the staff proposal deals with nitrates and suggests that there needs to be some means by which to identify the source of nitrate problems. It expressly recognizes that any leaching of nitrates is not exclusively related to the amount applied, but also 1-28

- 6 -

can be significantly influenced by irrigation methods, rainfall, soil, etc., and depth of groundwater. These realities need to be reflected in the program requirements.

6. On page 25 of Appendix B, it talks about nitrate impacted areas, and expressly evaluates Kern County. On page 33, it states that only two of 17 wells in Kern County had exceeded nitrate standards, and also indicates on page 34 that the Tulare study of nitrates shows an exceedance of the nitrate MCL value, however, it indicates that the study is presently being reevaluated. Further, clarification on the impact of these monitoring results is therefore needed. 1-28 cont'd

7. Appendix B on page 43 sets forth the extreme position that up to 50% of nitrate applications can reach groundwater, but indicates that experts are highly divided in this area, so no particular conclusion can be reached. This language should be deleted from the Report. 1-29

1. State Anti-Degradation Policy

1. The Report references the State anti-degradation policy on page 57, and discusses its application to high quality waters of the state. However, the Report fails to address the many foundational issues associated with the policy before it determines how it will be applied. In place of a meaningful analysis the Report simply states that "[g]iven the complexity of determining baseline quality in the Long-term ILRP context ... any anti-degradation analysis ... will assume that at least some of the waters into which agricultural discharges occur are high quality waters because unpermitted degradation has occurred since 1968." (Report at p. 61.) The assumption made in the Report is conclusory, and lacks factual support. As a result, the application of the State's anti-degradation policy is improper and subject to challenge. 1-30

2. The Report seeks to apply the best practical treatment or control ("BPTC") of a discharges under a WDR. This attempt to force additional regulatory requirements on dischargers tails in application because even though the source of some Central Valley waters may be of high quality, the waters receiving ag discharges are not high quality waters as the term is used in State Water Resources Control Board Resolution 68-16. The resolution specifically states that "any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained." (SWRCB Res. No. 68-16.) The Report attempts to redefine "high quality waters" using the concept of "baseline condition." (Report at p. 60.) There is no legal basis for this approach. The Report admits as much when it states the "term 'baseline' is not used in the State of federal anti degradation policies but is a significant concept for application of the antidegradation law." *(Ibid)* 1-31

3. The anti-degradation policy of the ILRP must be consistent with SWRCB Resolution No. 68-16 in its application to high quality waters of the state. Policy requirements as to lower quality and impacted waters must reflect a different standard. 1-32

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4. Further, even if BPTC of a discharge is required there are limitations to its application. The BPTC approach to pollution control is based on adopting the best technology for pollution control available at a reasonable cost and operable under normal conditions. BPTC is derived from the phrase "best practical control technologies" referred to in Sections 301 (b) and 304(b) of the Clean Water Act (which does not extend to agricultural non-point waters). In these sections, best practical control technologies is referred to when discussing the control of point source effluent from private operations. In application, BPTC refers to the best practical control technology currently available. The staff proposal on page 152 indicates that existing management objectives on Tier 1 lands will be considered as BPTC. Accordingly, The Report needs to clearly define the term and recognize that even though BPTC is the preferred approach, it has significant limitations on its application. 1-33

5. The associated tributary rule which has applicability in most other regions of the state, therefore, has limited application in our coalition area because our waters are tributary only to the valley floor sinks which are not sources of municipal water, and, therefore, the tributary rule has very limited application in our coalition area. 1-34

J. Groundwater Management Plans

1. The Report recognizes that current groundwater quality programs already in place. (SB 1938, Integrated Regional Programs, etc.). (Report at p. 88.) The Report also calls for groundwater management plans to be developed in 18 months. (Report at p. 154). This, like other timelines addressed above in section C, is wholly unreasonable. The Southern San Joaquin coalition is largely covered by SB 1938 or Integrated Regional Plans which the Legislature has codified in statute as being the means by which groundwater quality should be addressed. Therefore, the development of new groundwater management plans is unnecessary in most of our coalition area. At most, the upgrade of existing plans would be all that is needed to fully conform to any regulatory water quality program. Based on coalition experience in developing SB 1938 and Integrated Regional Plans, it is very clear that 18 months is a wholly insufficient time frame. Any Regional Board waiver program should be consistent with these existing provisions of law and based on a local realistic time frame for compliance. 1-35

2. It remains somewhat unclear if the Regional Board has the authority to go beyond the statutorily created multi-jurisdictional local plans (SB 1938 and IRMPs) in its water quality efforts. If it holds that the Regional Board does have some additional authority, some of the items discussed immediately below will need to be included into the Regional staff proposal. Any additional provisions required under the new waiver program will certainly take more than 18 months to go through the multi-disciplinary and multi-agency steps necessary to make amendments to these existing plans that took years to create. 1-36

K. Nutrient Budgeting and Irrigation Efficiency

1. The Report states that under certain situations groundwater programs would require nutrient budgeting and irrigation efficiency. (Footnote 60, at p. 154.) It is uncertain, whether the Regional Board has the authority to demand specific on-farm practices. The Regional Board is not the agronomic or fertilizer agency of the state as that authority is vested expressly in the California Department of Food and Agriculture. The application of 1-37

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fertilizer is a necessary agronomic feature, and is entirely distinct from the dairy program which involves applying a waste product to the land, and, thus, offers a jurisdictional nexus to the Regional Board.

2. By way of example, the Regional Board is without authority to tell Chevron how to operate a refinery or a high tech firm how to manufacture or clean their equipment. Using the same line of reasoning the Regional Board does not have authority to dictate to a farmer what to grow or how to grow it. The Regional Board's jurisdictional authority starts at the discharge point. 1-37

3. Beyond these legal and jurisdictional questions, the Report does not define nor explain how nutrient budgeting would occur or how irrigation efficiency would be determined or a particular irrigation practice either prohibited or mandated (report at p. 154). The environmental effects from just these two major uncertain actions in the Recommended Alternative were not addressed under any alternative evaluated under the DPEIR. Correspondingly, the economic impacts from these major actions may be huge, but were not evaluated in the economic analysis completed as part of the CEQA requirements. 1-38

4. In respect to nitrogen, the Report identifies the total tonnage of nitrogen fertilizer applied by agriculture in California. However, this gross number is meaningless without: (1) limiting tonnage to that applied in the Central Valley; and (2) reflecting an appropriate agronomic calculation as to how much nitrogen was taken up by the crops it was applied to across the Valley. The Report on page 20 recognizes that there is a long lag time between the use of a soil amendment and its ultimate detection in the event that any is leached into a groundwater aquifer. The Report should delete any discussion of nutrient budgeting as it fails to cite any regulatory authority over nutrient applications and does not even attempt to address any of the CEQA requirements associated with such an action. The economic impacts associated with limiting a farmer's yield on a crop due to nutrient budgeting limitations or irrigation efficiency restrictions was totally ignored. 1-39

5. The EA indicates that annual agricultural production in the Central Valley region is approximately $9.866 billion. In 2008 the value of agricultural production in Fresno, Tulare, Kern and Kings counties alone was $16.48 Billion. The overall value of California agriculture in 2008 was $36.2 billion. Again, this type of inaccurate statement of facts is indicative of the weaknesses inherent throughout the CEQA documents. (EA at p. 3-6.) 1-40

L. Agricultural Management Practices

1. The Report indicates that there should be an identification of (a) existing agricultural practices and (b) identification of what agricultural practices would have to be amended or enacted in certain areas. (Report at p. *150.)* Any farm operation would involve several dozen to hundreds of separate management decisions during the course of the year for each field. Coalitions clearly cannot be obligated to identify the hundreds of thousands of management decisions and management practices that are involved across the millions of acres in the coalition. The scope of management practices should be limited to identification of particular management practices that are directly related to a water quality problem. 1-41

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M. Compliance Timelines and Enforcement Actions

1. The proposal states that water quality exceedances should all come into basin plan objective compliance within five to ten years. (at p. 159). This (like other timelines discussed above in sections C and J) is wholly unrealistic even as to surface water. In areas where multiple issues exist in surface water like DO, Ph, pathogens, salinity, etc., and water quality improvement efforts are under way and have been for years, it is unrealistic to assume because the Regional Board creates another program that these issues are going to somehow magically improve under a new specified timeline. 1-42

2. The proposal states that if any objectives are not reached within the applicable five to ten year period, then all growers in the coalition would be compelled to prepare individual farm management plans. Such a policy would only be justified if certain conditions were found to exist. First, if it was determined that the individual farmer was directly responsible for causing the impairment. Second, if specific management practices were identified as causing the problems, and those identified practices could be modified to cure the problem. Third, that the required individual farm plan would be more effective than a collective, coordinated approach through the coalitions. (Report at p. 155). The staff proposal apparently makes the assumption that individual farm plans may be more effective than broader monitoring and management plans with the strength of the coalition behind it. That assumption is not supported in the Report, and likely cannot be supported. Instead, it is apparently offered merely as a retaliatory penalty. 1-43

3. The compliance timelines, as stated above, are problematic overall, but are especially troublesome when dealing with groundwater quality. Groundwater issues are typically years in the making and may be the result of legacy pesticides, or water constituents such as pH, DO, salinity. 1-44

N. Coordination of Existing Programs

1. The proposal states that there should be coordination between the irrigated land program, the diary program, SWAMP, DPR, etc. (Report at pp. 156-57.) Such coordination is meritorious and has been stressed for years by our coalition, particularly regarding coordination with the dairy program and other Regional Board programs dealing with E.coli/fecal coliform. The Regional Board has been reluctant to fully coordinate these programs, and this needs to happen. 1-45

2. The proposal at page 33 discusses E.coli, which has no basin plan objective level. Fecal coliform does have a 200 colonies per hundred milliliters objective. There have certainly been pathogen detections in some of the water column samples, but a University of California study indicated that much of the pathogen is not attributable to irrigated agriculture. This point was omitted from the proposal. The proposal also fails to acknowledge that there should be a high level of coordination between other Regional Board programs dealing with these pathogens and the ILRP. 1-46

3 The proposal infers that the bright/clear line between the dairy program ↓1-47

- 10-

and the ILRP is going to be eliminated or significantly altered. The proposal, however, is unclear as to how this will occur, and does not address the confusion that could arise if it is not done properly. 1-47 cont'd

O. Outside Party Participation

1. The language concerning "other interested parties" (Report at p. 154) appears to improperly open the door for negotiations on surface and groundwater management plans to other uninvolved parties. Management Plans and Monitoring and Reporting Program Orders have historically been approved by the Executive Officer and do not require multi-party negotiations. This language regarding public input also appears on page 155. 1-48

2. The proposal suggests that the public would be involved in determining the Tiering of an area. "Third-party groups and the Central Valley Water Board would identify low and high-priority areas in the development of watershed/area/commodity-specific implementation mechanisms during the 3-year transition period. The Central Valley Water Board intends to use existing information in this prioritization. However, there will be the flexibility for third-party groups and other interested parties to provide additional information during the process." (Report at p. 151) 1-49

3. Footnote 57 also appears to indicate that when the coalitions identify their priority areas within the first three years of transition, that there would be public input on those determinations as well. This type of input is not required under the law and is unnecessary. It will delay and complicate development of required documents and certainly cause even extended timelines to be missed. It may also detrimentally affect participation.

P. Tributary Rule

The Report indicates it will focus on waters that are tributary to areas having aquatic life and would treat these as priorities. Due to the tributary rule it asserts, that would transpose such standards to upper basin waters. We addressed the tributary rule above in Section 1., but it is noteworthy that this particular reference indicates that this would not involve "ag drains". The Regional Board needs to clarify what is considered an ag drain as it applies to this section and return ag flows. 1-50

II. Draft Programmatic Environmental Impact Report

A. The DPEIR Does Not Describe or Analyze the Proposed Alternative

1. The DPEIR includes five proposed alternatives. However, it does not include a description or analysis of the RPA discussed in the staff Report. The RPA apparently combines elements of the five identified alternatives to belatedly develop a staff preferred appendix which they are now calling an alternative. The RP A is now the proposed project and must be analyzed. The DPEIR does not make any attempt to analyze the environmental impacts that would result if all of the identified elements were combined with each other, which is how they would be implemented if the staff alternative RPA were selected. 1-51

2. A draft environmental impact report (EIR) must include a general

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description of the proposed project's technical, economic, and environmental characteristics. (State CEQA Guidelines, § 15124(c).) The project description must be stable, accurate, and consistent throughout the EIR. "An accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient *EIR."* (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193.) "A curtailed or distorted project description may stultify the objectives of the [CEQA EIR] process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." (Id. at pp. 192 93.)

1-51 cont'd

3. The DPEIR does not mention the staff RPA anywhere in its text. The RPA is only presented in the appendices. In *Vineyard Citizens for Responsible Planning* v. *City of Rancho Cordova* (2007) 40 Ca1.4th 412, the Supreme Court reaffirmed that key pieces of the CEQA analyses cannot be buried in the appendices. Here, the RP A - *the proposed project itself* - staff is recommending that the Regional Board implement as the program - is presented *only* in the appendices. This is a blatant violation of *Vineyard,* and it results in serious errors in the environmental analysis. An EIR is required to analyze the environmental impacts associated with any proposed mitigation measures. (State CEQA Guidelines, § 15126.4(a)(1)(D).) Thus, the DPEIR suffers from both substantive and procedural flaws that are fatal.

B. Cumulative Impacts of the RPA Have Not Been Analyzed

1. The RP A is "a conglomeration of elements presented" in the five alternatives that are analyzed in the DPEIR. The RP A was not analyzed, whatsoever, in the DPEIR. Further, no attempt has been made to analyze the effects of the combined components of this alternative. Compounding this error, the DPEIR does not identify "any projects or programs adequately similar in nature, location, and type to result in a meaningful comparative analysis." "A cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (State CEQA Guidelines, § 15l30(a)(1).)

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2. In contravention of State CEQA Guidelines section 15130, the DPEIR employs neither a list nor a summary of plans and projections approach to the cumulative impacts analysis. In fact, the DPEIR does not identify a single program, policy, plan, or project to be included in the cumulative impacts analysis. Instead of analyzing the cumulative effects of the project together with other projects causing related impacts, the DPEIR concludes that there are no other projects - and analyzes the cumulative impacts of the project, standing alone. This analysis cannot withstand scrutiny. Other programs and projects that have the potential to affect water quality in the program area include U.S. EPA's recent action banning pesticide application in certain areas, and numerous pending NPDES and other permit actions.

C. The Environmental Analysis is Flawed Due to Inaccurate Baseline Conditions

1. The Environmental Setting fails to describe accurately the existing environmental conditions, even at a programmatic level. "Knowledge of the regional setting [of the project] is critical to the assessment of environmental impacts . . .. The EIR must

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demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (State CEQA Guidelines, § 15125(c).) Toward that end, the DPEIR "must include a description of the physical environmental conditions in the vicinity of the project, ... from both a local and a regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Id. at § 15125(a).)

2. First, the "Existing Setting" chapter is, by its own admission, incomplete. For example, the description of the existing conditions related to surface water makes no mention whatsoever of the amount of surface water currently being diverted or the amount being used for irrigation by participants in the Irrigated Lands Regulatory Program (ILRP). Likewise, there is no indication of how much water is returned to stream systems after agricultural use, and how much of that water is derived originally from groundwater basins or surface water sources. Absent this information about the existing physical conditions, it is not possible to determine whether the proposed new regulatory program will cause significant impacts on water supplies, stream systems, or the fish, wildlife and plants dependent on those systems.

1-53 cont'd

3. The DPEIR attempts to overcome the gaps in the "Existing Setting" chapter by adding a discussion of environmental setting to each of the impact analyses. This is confusing to the reader because these supplemental discussions of the "existing setting" are not entirely consistent with the description provided in the "Existing Setting" chapter. Moreover, even the supplemental discussions in the impact analyses are improperly truncated. For example,

4. To the extent the Draft PEIR relies on the "No Program" Alternative to represent the existing baseline conditions, this is improper in this case. The "No Program" Alternative misstates what will occur absent any Water Board action. Because neither this nor any of the other attempts in the EIR to describe the environmental setting is legally adequate, the EIR lacks any accurate baseline against which to judge the environmental impacts of the proposed program.

D. The DPEIR Fails to Evaluate the Reasonably Foreseeable Effects of the RPA on the Environment

1. "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (State CEQA Guidelines, § 15064(d).) "An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment." (State CEQA Guidelines, § 15064(d)(2).)

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2. The DPEIR fails to achieve this charge. For example, the DPEIR acknowledges that, under the alternatives analyzed, the higher cost of irrigation would result in less water being used and some land going out of agricultural production. However, the

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DPEIR's analysis stops there. It does not consider what impacts will be caused by the reasonably foreseeable result of less irrigation, such as less water returning to stream systems and diminished flows at certain times of year, and less irrigation water reducing the amount of groundwater recharge that would otherwise occur, particularly in the San Joaquin Valley where many of the surface water delivery systems were built with the intent to increase local groundwater basin recharge.

1-54 cont'd

3. Similarly, the DPEIR acknowledges that the program will result in the conversion of agricultural lands to other uses, but it fails to analyze the reasonably foreseeable impacts associated with that conversion, such as increased valley temperatures (see Climate Change comments, infra), and conflicts with existing land use regulations and zoning (see Land Use comments, infra). All of these direct and indirect impacts resulting from the implementation of the program must be analyzed in the DPEIR.

4. The staff alternative was not analyzed whatsoever and raises the possibility of nutrient restrictions which will impact cropping patterns. It also suggests regulatory action to restrict certain irrigation practices (i.e., a 2 ac-ft limit or no row crop irrigation), which would have major environmental, economic and community impacts.

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E. The DPEIR Fails to Address the Program's Potential Impacts on Land Use

1. A draft EIR must "discuss any inconsistencies between the proposed project and applicable general plans and regional plans," including habitat conservation plans and natural communities conservation plans. (State CEQA Guidelines, §15125(d).) While the DPEIR acknowledges the requirement to evaluate its consistency with General Plans and Habitat Conservation Plans (HCPs), it makes no attempt to analyze these impacts even in a qualitative manner. Its characterization as a programmatic document does not wholly excuse undertaking the required environmental analysis. The DPEIR should evaluate the extent to which adopted General Plans within the program area designate agricultural land uses that would be undermined by the increased irrigation costs imposed by the program and the resulting loss of agriculture. Likewise, the DPEIR must discuss whether and how adopted HCPs in the program area rely on agricultural land uses and how the increased irrigation costs imposed by the program, and the resulting loss of agriculture, would affect those plans.

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2. Even more egregiously, the DPEIR utterly fails to analyze the program's land use impacts. The DPEIR acknowledges that agricultural lands are a resource that must be analyzed under CEQA, and it also admits that many jurisdictions have adopted land use plans, regulations, and zoning ordinances to protect agricultural uses. Yet the DPEIR completely fails to analyze, even at a programmatic level, whether the program will conflict with any of these land use plans, regulations, or zoning ordinances. Again, the DPEIR's status as a programmatic document is not an excuse to omit any discussion of these potentially severe impacts - which is the faulty path taken by the DPEIR.

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F. The DPEIR Fails to Identify the Environmentally Superior Alternative

The DPEIR adopts a NEPA-like approach and analyzes each of the alternatives presented in detail. However, the DPEIR ignores the CEQA requirement to identify the

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environmentally superior alternative. (See State CEQA Guidelines, § 15126.6(e)(2).) 1-58 cont'd

G. Alternative 2

1. Among the five alternatives, Alternative 2 is the best option to strengthen the existing surface water waiver and expand the waiver to groundwater. The extensive CEQA review confirms that Alternative 2 is the superior alternative. The Report evaluates the proposed alternatives on pages 96 through 105 (and in other locations), and finds that Alternative 2 was superior to all other alternatives. The only issue raised in the Report concerning Alternative 2 dealt with groundwater. The Report stated, when discussing groundwater monitoring under Alternative 2, that "feedback mechanisms would not include groundwater quality monitoring to determine whether practices implemented would be maintaining and/or restoring beneficial uses or the highest reasonable groundwater quality." (Report at p. 112.) This criticism is inaccurate as the statutorily created local groundwater quality management plans specifically require such monitoring and Alternative 2 expressly calls for monitoring to be included in the newly created groundwater management plans. Therefore, Alternative 2, without reservation, is the superior alternative. 1-59

III. Economic Analysis

A. Economic Analysis is Flawed and Fails to Adequately Address Economic Impacts

1. The Economic Analysis ("EA") is extremely disappointing and inadequate. The analysis shows only very narrow differences in the economic evaluation between the five alternatives, and has no analysis of the RPA whatsoever. To begin with, the EA states that Alternative I's (misnamed the no project alternative) costs would include administration and the management of water quality information. (EA at p. 2-23.) Since it is the "no project alternative" it is assumed that existing programs would remain in place with no changes or additions. This assumption coupled with the fact that virtually all discharges have implemented the management practices necessary to satisfy current program requirements, one would expect the cost of Alternative 1 to be significantly lower than all the other alternatives. However, on management practice, costs for Alternative 1 are listed at $450,581,233. The costs for Alternative 2, 3, and 4, which are aggressive expansions of the program, are listed at $452,449,969 each. (EA Figures 2-18-2-21.) The analysis indicates only a cost difference of $1,868,736 between the current program and alternatives 2 through 4. Given the fact that any of the alternatives, including the RPA, would require significantly more practices than are currently being implemented, the costs of the alternatives and the RPA as compared to Alternative 1 have to be significantly higher. (EA at p. 2-3.) The economic impact between the alternatives is significant and this fact is not apparent from this analysis. Beyond that, the other alternatives also deal with groundwater, as opposed to Alternative 1 which does not. The costs associated with the monitoring and reporting of groundwater quality are significant, and will lead to total costs under the other alternatives significantly higher than those of Alternative 1, perhaps as much as four times higher. 1-60

2. The EA fails to satisfy CEQA because it does not contain an accurate discussion of the economic and social impacts of the proposed project. (See State CEQA Guidelines, § 15131, subd. (a), 15382.) Where an EIR identifies significant environmental 1-61

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impacts, the related economic and social impacts are relevant. The requirement to consider secondary and indirect environmental effects is mandatory. *(Citizens Association for Sensible Development of Bishop Area* v. *County of Inyo* (4th Dist. 1985) 172 Cal.App.3d 151, 170.) When non-environmental factors are determined to be significant, the EIR must explain the reasoning used to reach its conclusions. Here the costs associated with the proposed alternatives, over $450,000,000 is significant. However, the EA fails to accurately analyze or explain the basis for is conclusions. (See State CEQA Guidelines, § 15131, subd. (b).) 1-61 cont'd

3. Focusing only on groundwater, dealing with nutrients requirements, or imposing additional groundwater monitoring, or amending irrigation practices to meet new efficiency standards are just a few examples of components that vary between alternatives and have a huge impact on the cost of a given alternative and were totally ignored. These costs could easily reach into the dozens or hundreds of millions of dollars. These costs are apparently borne by the affected landowners. If only a thousand farmers had to drill only two monitoring wells at a cost of $200,000, the total cost for that component approaches one-half billion dollars. If 500 farmers had to restructure their irrigation system in only four of their 20 fields at a cost of $40,000 per field, that is $400,000,000. These impacts were totally ignored and when addressed to the environmental consultants at the field hearings, they affirmatively acknowledged these are potential requirements and costs, but said they could not address those impacts because the staff proposal was so imprecise as to what they would actually require. This reflects both regulatory notice problems and the inadequacy of the Economic Analysis. 1-62

4. Further, the Economic Analysis did not specifically analyze the RPA, even though they (the Regional Board staff - not the experts actually engaging the Economic Analysis) have selected a number of $492,000,000 in costs, and they assert an assumption of how much ag land would be required to be retired and how many jobs would be lost with the proposal. Yet, they do not deal with any of the big ticket items or set forth any of their assumptions which makes the environmental analysis nearly useless. 1-63

5. The EA indicates that annual agricultural production in the Central Valley region is approximately $9.866 billion. In 2008, the value of agricultural production in Fresno, Tulare, Kern and Kings counties alone was $16.48 Billion. The overall value of California agriculture in 2008 was $36.2 billion. Again, this type of inaccurate statement of facts is indicative of the weaknesses inherent throughout the CEQA documents. (EA at p. 3-6.) 1-64

6. The Report gives some approximation of the values to drill additional wells, and indicates that new wells would cost between $76,000 and $1,000,000. If the 45 communities that have impaired drinking water drilled new wells, that cost would be between $20 and $47 million to merely drill additional wells across these communities. (Report at p. 50.) 1-65

7. Appendix B addresses monitoring well costs, and indicates on page 21 that they anticipate 5,000 monitoring wells. If these 5,000 wells averaged only *$10,000* (absolutely the wrong cost) each, this would result in $50 million in additional costs. Actual well costs to deep aquifers may cost 10 to 20 times this amount.

8. The Report indicates that the Regional Staff proposes to augment their force and increase staffing to as many as a total of 48 staff members. Even Alternative 2 is 1-66

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determined to lose five jobs in the Tulare Lake Basin, versus Alternative 4 which would cost $511 million with 12 jobs lost. As discussed above, the economic analysis is woefully inaccurate, and significantly under evaluates the cost of all the alternatives. 1-66 cont'd

9. Neither the staff proposal nor the Economic Analysis makes any assumption on compliance, enforcement or other impact costs which will be significant. 1-67

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3.2.9.1 Responses to Letter 1

Note: Letter 118 is a duplicate of Letter 1.

1-1

Comment noted.

1-2

See Master Responses 3, 4 and 17.

1-3

See Master Responses 3 and 4.

1-4

See Master Response 12.

1-5

See Master Response 12.

The Central Valley Water Board recognizes that an irrigated agricultural operation may have waste discharges that do not affect the quality of waters of the state. The Board does not assume that all agricultural operations discharge to groundwater and the Board has not attempted to shift any burdens of proof that are not already part of the California Water Code. For example, page 146 of the Draft PEIR, Appendix A (Alternative 6) acknowledges that a "no regulatory program" option may be available in limited, site-specific circumstances. The description of Alternative 6 also provides options for complying with the California Water Code for irrigated agriculture operators that do have waste discharges that could affect the quality of waters of the state (see Draft PEIR, Appendix A pages 142–160).

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See Comment Letter 1, Response 5. In Alternatives 4 and 6, vulnerability zones are used as one of the tools to prioritize management and monitoring requirements. The zones are not used as a basis to determine whether or not irrigated agriculture may discharge waste to groundwater.

It is generally accepted that there are insufficient resources to characterize waste discharge to groundwater from every agricultural operation. Vulnerability zones have been utilized as a Priority Factor because geophysical parameters (e.g., groundwater depth, soil types) suggest that there is an increased risk that irrigated agricultural waste discharge will impact groundwater quality in these zones (see Draft PEIR, Appendix A, text box on page 151). In development of the Long-term ILRP, the Central Valley Water Board will consider the need to work with dischargers who do not wish to rely on vulnerability analyses to develop groundwater monitoring requirements to determine an approach that will provide a more detailed site-specific assessment of the discharger's affect on groundwater quality.

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See Comment Letter 111, Response 5.

1-8

The Central Valley Water Board disagrees with the comment; the public process undertaken for the project complies with and goes beyond minimum CEQA requirements. (Draft PEIR, pages 2-7–2-10).

The comment does not explain how the cited regulations apply to the ILRP Draft PEIR. State CEQA Guidelines Section 15072(f) provides notice requirements for proposed negative declarations or mitigated negative declarations but does not apply to draft EIRs. Similarly, California Water Code Section 13263 applies to issuance of general or individual waste discharge requirements but does not apply to the development of a program or a program EIR.

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See Master Response 18.

1-10

See Comment Letter 9, Responses 18.

1-11

Greenhouses do not have discharges from irrigated lands; accordingly, greenhouses do not fall within the scope of the Long-term ILRP. To the extent greenhouse operators discharge wastes to ground or surface waters that could affect water quality, the owners/operators are still obligated under the California Water Code to submit a report of waste discharge and receive the appropriate regulatory coverage.

The "operational spill" definition in the current waiver referred to supply water that was not applied to irrigated lands. Since these discharges are not from irrigated lands, they do not fall within the scope of the ILRP. Any discharge of waste by the water districts to ground or surface waters that could affect water quality would require regulatory coverage under Porter Cologne. Those water districts that convey discharge from irrigated lands in conveyances that they own or maintain, would still fall within the scope of the ILRP.

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See Comment Letter 111, Response 11.

1-13

Alternatives 2, 4, and 6 all contain mechanisms for prioritizing ILRP requirements. In areas that do not have water quality problems, reduced monitoring and management requirements would apply. Areas with water quality problems, where agriculture is a contributing factor, would have additional monitoring and management requirements intended to address and monitor progress toward solving the water quality concern. Also, Alternative 6, presented in the Draft PEIR, Appendix A (page 144) specifies that, *"Current ILRP participants would be enrolled automatically (i.e., grandfathered into new program; reapplication would not be required) as the relevant provisions are established."*

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See Comment Letter 111, Response 13.

1-15

See Comment Letter 111, Response14.

1-16

See Comment Letter 10, Response 4.

1-17

See Comment Letter 41, Response 24.

1-18

The commenter's concerns with Alternative 6's conditional prohibition of waste discharge will be considered in the development of the Long-term ILRP. However, the remedy for a farm operation to avoid the prohibition is simply to apply for the necessary regulatory coverage, which 25,000 growers in the Central Valley have done.

1-19

Technically, the conditional prohibition would require that operations not discharge waste that could affect the quality of groundwater unless they have coverage under the ILRP. The implementation of this prohibition would differ depending on site-specific geophysical conditions. Porter Cologne identifies the remedies available to the Central Valley Water Board, including requiring technical reports, issuing a cease and desist order, or issuing an administrative civil liability complaint.

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See Comment Letter 39, Response 1.

1-21

See Comment Letter 47, Response 2. There will continue to be opportunities for meetings with staff throughout the development of the Long-term ILRP, including during development of the orders that will implement the program.

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See Comment Letter 111, Response 21.

1-23

The prioritization of areas under Alternative 6 includes the dimension of whether irrigated agricultural operations are a source of the concern. This is described in the Draft PEIR, Appendix A (see Priority Factors on pages 151–152, bullet 1), and in the example on page 151. Figure 23 has

been modified to be consistent with the Priority Factors. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-31 of this Final PEIR.

1-24

See Comment Letter 50, Response 8.

With regards to tracking effectiveness of management practices to address water quality impairment, Alternative 6 states that targeted site-specific studies will be conducted at a selected number of sites to evaluate the effects of changes in management practices on groundwater quality (Draft PEIR, Appendix A, page 158).

1-25

See Comment Letter 111, Responses 24 and 25.

1-26

See Comment Letter 111, Responses 24 and 25.

1-27

See Comment Letter 111, Response 25.

1-28

Alternative 6 recognizes these complexities and permits flexibility in the demonstration of compliance (Draft PEIR, Appendix A, page 160). Changes in management practices may include nutrient monitoring, nutrient management plans, and/or reducing nutrient loading. Modeling of nitrogen fate and transport in soil, surface water, and groundwater may also be utilized to demonstrate compliance.

With regards to the Kern County well data cited in the Draft Nitrate Report (Appendix B of the Draft PEIR, Appendix A), four separate studies are discussed. On pages B-25 to the top of page B-27, the Nitrate Working Group Report results are discussed. Kern County was reported to have high nitrate concentrations near Delano, McFarland, Wasco, Shafter, Famosa, Rosedale, Bakersfield, Arvin, Edison, and Lamont. Additional areas of high nitrate groundwater were reported for the Buena Vista Lake bed near Maricopa and Taft and in the area northwest of Lost Hills. With respect to the high nitrate concentrations in Kern County, the California Department of Food and Agriculture February 1989 Report states (page 18), *In a 1982 ground water quality study performed by the Kern County Water Agency (KCWA) and the Kern County Health Department, it was shown that the areas of greatest nitrate concentrations in the unconfined ground waters were found to be in the sandy soils along the east side of the basin where agricultural development began many years ago. Areas where nitrate levels approached or exceeded the State MCL increased in size from an estimated 49 square miles in 1958 to 372 square miles in 1979.*

On page B-28, the State Water Board's 2002, *Draft Groundwater Information Sheet, Nitrate/ Nitrite* is discussed (>30 Department of Health Services (DHS) wells in Kern County exceeding the Nitrate MCL value). On page B-31, The State Water Board's 2002, 305b Report is cited (Kern County had 38 out of 475 California Department of Public Health (DPH) wells that exceeded the nitrate MCL value). Discussion on page B-33 reported the 2006 GAMA Priority Basin Project sampling conducted

on public groundwater supply wells in Kern County (2 wells out of 17 sampled had nitrate above the MCL value).

The Tulare County Focus Area study conducted by the GAMA Program utilized domestic wells for sampling unlike the studies in Kern County (study subject to re-evaluation referenced in the comment). The Tulare County Report was revised on August 2010 with no changes in the reported nitrate detections.

The major difference between the Kern County studies and the Tulare County study was the type of well sampled (Kern-public supply wells and Tulare-domestic wells). The difference between the two well types is that public supply wells with their long screened intervals and perforated intervals positioned far below first encountered groundwater are generally not effective as a means of monitoring impacts due to irrigated agricultural activities. This is particularly true when using public water supply wells for evaluating management practice changes made to address a water quality concern. As a general rule, the deeper the water below the water table, the older the water or said another way, impacts occur to the shallowest groundwater first and over time, these impacts move deeper into the aquifer.

1-29

The 50 percent figure cited is from the 2008 Burow and Green report conducted by the USGS on three focused study areas (areas near Fresno, Modesto and the Merced River). The 50 percent figure is contained within a quote of the Burow and Green article and it appears in the Draft Nitrate Report as follows, *"Analysis using county level nitrogen applications and a wide range of chemical data from sampling vertical monitoring well transects showed that reconstructed nitrate concentrations are consistent with 50% of the applied nitrogen reaching the water table."*

It is unclear why the results of the USGS study should not be included in the Draft Nitrate Report. The findings are reported for the specific study areas and have not been used by staff to extrapolate beyond the boundaries of the study.

1-30

The Draft PEIR, Appendix A provides a broad overview of the regulatory requirements against which the Long-term ILRP alternatives are evaluated. The state and federal antidegradation policies are considered in the context of a regional program rather than a site-specific project. The discussion of the antidegradation policies in the Draft PEIR, Appendix A is thus, by necessity, general and non-specific. The comment's point about assumptions is not supported by the Draft PEIR, Appendix A, as the conclusion that some of the waters receiving agricultural discharges are high quality waters is based on data review rather than assumptions. For example, Draft PEIR, Appendix A, Figure 16 (page 40) shows surface waters sampled for nitrate and whether these waters exceed objectives. As shown in the figure, there are water bodies sampled throughout the Central Valley that do not exceed water quality objectives for nitrates. These waters are considered "high quality" with respect to nitrates. The determination of whether a water body is high quality is established on a constituent-specific basis; accordingly, even if a water body is degraded with regard to some constituents, it may be high quality with regard to other constituents.

1-31

The Draft PEIR, Appendix A acknowledges that the term baseline is not a term of art in Resolution 68-16, but is discussed for purposes of clarification of the meaning of "high quality waters." The Draft PEIR does not intend to create a new legal standard that is not part of the statutory and regulatory direction of the Central Valley Water Board, nor can the Draft PEIR do so. The Draft PEIR, Appendix A (pages 60–61) language has been revised to clarify that the determination of whether a water body is high quality waters requires comparison of the background quality of the water body unaffected by the discharge to water quality objectives. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, pages 4-16–4-18 in this Final PEIR. The Draft PEIR, Appendix A states that background is generally the existing water quality conditions; however, it also discloses that there may be some situations where determination of background relies on historic data.

1-32

See Master Response 5. Revisions have been made to the Draft PEIR, Appendix A to clarify that water bodies that are not high quality waters are not subject to the antidegradation policies. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, pages 4-15–4-16 in this Final PEIR.

In addition, even where a water body is not a high quality water, the Board is required to impose discharge requirements more stringent than the water quality objectives, if those requirements can be met through "best efforts." A discussion has been added to the Draft PEIR, Appendix A citing the authority in support of requiring best efforts. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-20 in this Final PEIR.

Also see Comment Letter 1, Response 31 and Comment Letter 45, Response 18.

1-33

The term Best Practicable Treatment or Control is found in Resolution 68-16 and is not defined in the Resolution nor is it defined in the California Water Code. Although promulgated federal technology standards may inform BPTC, there is no support for the contention that BPTC is "derived from" these standards, because Resolution 68-16 predates the Clean Water Act. However, it is acknowledged that the BPTC standard is limited by the need for the technology and control to be "practicable." The State Water Board has evaluated what level of treatment or control is technically achievable using "best efforts" and this approach has informed the BPTC analysis. See State Water Board Order Nos. WQ 79-14, WQ 2000-07. The State Water Board has stated "*One factor to be considered in determining BPTC would be the water quality achieved by other similarly situated dischargers, and the methods used to achieve that water quality*." (See State Water Board Order No. WQ 2000-07, at pp. 10-11). In a "Questions and Answers" document for Resolution 68-16 (the Questions and Answers Document), BPTC is interpreted to additionally include a comparison of the proposed method to existing proven technology, evaluation of performance data (through treatability studies), and comparison of alternative methods of treatment or control.

1-34

The application of the tributary rule must be determined on a water body by water body basis. The Central Valley Water Board has designated beneficial uses for listed water bodies, including uses for

certain agricultural drains in its Water Quality Control Plans. See Chapter II of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Basin. Additionally, under the Sources of Drinking Water Policy, Resolution 88-63, with certain narrow exceptions, all surface and groundwater of the state are considered to be suitable, or potentially suitable, for municipal or domestic water supply. To address water bodies that are not separately listed in the Water Quality Control Plans, the Central Valley Water Board set forth the so-called "tributary rule." The Board generally does not use the tributary rule to determine beneficial uses for constructed agricultural drains and other nonstream tributaries. The tributary rule generally applies to agricultural dominated water bodies. Even if a water body is not listed, and the tributary rule does not apply, beneficial uses of water bodies may be designated pursuant to other laws or policies.

1-35

See Comment Letter 111, Response 31.

1-36

See Comment Letter 111, Response 31.

1-37

See Master Response 19.

1-38

See Master Response 19.

1-39

See Master Response 19.

1-40

See Master Response 17.

1-41

See Comment Letter 111, Response 33.

1-42

See Comment Letter 100, Response 14.

1-43

See Comment Letter 111, Response 34 and Master Response 13.

1-44

See Master Response 13.

1-45

The Central Valley Water Board appreciates the acknowledgement of the appropriateness of explicitly discussing coordination issues in the recommended alternative and program alternatives. Inter-program and inter-agency coordination continues to be part of the development of the Long-term ILRP.

1-46

See Comment Letter 1, Response 45 and Comment Letter 102, Response 10. The Central Valley Water Board is aware that a number of sources, not only irrigated agriculture, contribute to the coliform bacteria detected in the state's waters. The Board is and will continue to coordinate ILRP with its other water quality control efforts and programs.

1-47

See Comment Letter 116, Response 3.

1-48

The Central Valley Water Board believes it is appropriate that those interested in the proposed actions of growers in a coalition have an opportunity to provide input. The Central Valley Water Board intends that such involvement will not unduly delay prioritization of geographic areas, the approval and implementation of management plans, or monitoring plans. However, in the interest of transparency and ensuring accountability, the Board believes some public input is appropriate. Also, interested parties can petition the Central Valley Water Board decisions to the State Board; providing an opportunity for public comment and resolution of concerns can minimize petitions that delay program implementation and consume staff and public effort. It is not clear from the comment what the legal basis is for considering such involvement to be improper.

1-49

See Comment Letter 111, Response 40.

1-50

See Comment Letter 1, Response 34.

1-51

See Master Responses 3 and 4.

1-52

See Master Responses 3 and 4.

1-53

See Master Responses 1, 2, and 9.

1-54

See Comment Letter 1, Response 53; Comment Letter 111, Response 53 and Master Responses 14, 16, and 11.

1-55

See Master Response 4. The Long-term ILRP would not dictate the use of specific management practices; it would encourage practices that protect surface and groundwater quality from agricultural-related discharges. The decisions on management changes would remain in the hands of the individual farmer.

1-56

See Master Response 11.

1-57

See Master Response 11.

1-58

See Comment Letter 111, Response 56.

1-59

The comment support for the selection of Alternative 2 will be considered in the development of the Long-term ILRP.

In the evaluation of alternative consistency with program goals and objectives, California Water Code, NPS Policy, and Antidegradation requirements, Alternative 2 was not fully consistent with the NPS and Antidegradation policies. This inconsistency arises primarily because the alternative does not specify groundwater quality monitoring unless a local groundwater management plan is in place and substituted for coalition developed groundwater quality management plans (Draft PEIR, Appendix A, pages 107–116 and 165–168). Because local groundwater quality management plans do not exist in all areas of the Central Valley and the Board cannot require that local plans be established or modified, it is likely that there would be areas under Alternative 2 where groundwater quality monitoring would not be in place.

1-60

See Master Responses 4 and 17.

See Master Response 2.

Alternative 1 assumes that because discharges from irrigated agriculture are presently continuing to create water quality impacts, additional management practices would be required to be implemented; accordingly, there are additional costs for implementation of these practices under Alternative 1.

See Master Response 17.

1-61

The CEQA guideline discussed in the comment, Section 15131, allows discussion of economic and social effects where such effects cause a physical change in the environment, as was the case with Chapter 5, Environmental Impacts and Mitigation Measures, Section 5.9, Agriculture Resources. The Draft PEIR met the obligations of Sections 15131 and 15382.

1-62

See Master Response 17.

1-63

See Comment Letter 111, Response 61.

1-64

See Master Response 17.

1-65

See Comment Letter 111, Response 62.

1-66

See Master Response 17.

1-67

See Comment Letter 1, Response 61. Also see Master Response 17.

3.2.10 Letter 143—Nevada County Consolidated Fire District, Tim Fike, Fire Chief

Comment Letter IL143

Nevada County Consolidated Fire District
"Excellence in Emergency Service"
11329 McCourtney Road, Grass Valley, CA 95949
(530) 273-3158 FAX (530) 273-1780
nccfire@nccfire.com www.nccfire.com

July 6, 2010

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive
Rancho Cordova, CA 95670

Re: Comments to EIR economic analysis of the Long Term Irrigated Lands Program (ILP)

Nevada County Consolidated Fire District (NCCFD) is the largest fire district in Nevada County, protecting over 150 square miles and 35,000 residents. The majority of the area has been identified by CAL FIRE as a Very High Hazard Severity Zone for wildland fire risk.

As the chief of NCCFD, I urge the CVR Water Quality Control Board to strongly consider any effort to reduce burdensome regulations on property owners who wish to irrigate their land. These irrigated greenbelts offer us a significant tactical advantage when combating our frequent urban-interface wildland fires. The greenbelts also offer firefighters a safety zone opportunity that otherwise would not exist. 143-1

Lastly, but of equal or more importance, it remains imperative you consider every opportunity to allow sustainable agriculture to thrive in our communities for the sake of the farmer/rancher the ongoing production of their trade and for the economic health of the community.

Sincerely,

Tim Fike
Fire Chief

RECEIVED
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CVRWQCB
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3.2.10.1 Responses to Letter 143

143-1

See Comment Letter 46, Response 3.

3.2.11 Letter 129—Penn Valley Fire Protection District, Gene Vander Plaats, Fire Chief

Comment Letter IL129

PENN VALLEY FIRE
PROTECTION DISTRICT

Fire Chief
Gene Vander Plaats
P.O. Box 180
Penn Valley, CA 95946
(530) 432-2630
Fax (530) 432-4561
pvfpd.chief@sbcglobal.net

Directors
Kurt Grundel, Chairperson
Randy Casto, Vice-Chairperson
Bill Neville, Director
Rick Nolle, Director
Bob Webster, Director
pvfpd.hughes@sbcglobal.net

August 2, 2010

Central Valley Regional Water
Quality Control Board
11020 Sun Center Drive
Rancho Cordova, Ca. 95670

RECEIVED
10 AUG -4 PM 1:23
SACRAMENTO
CVRWQCB

RE: Comments to EIR economic analysis of the Long Tern Irrigated Lands Program (ILP)

Dear CVRWQCB:

The Penn Valley Fire Protection District covers 92 square miles in the southwest portion of Nevada County. Wildland fires are the greatest risk to lives, property and the environment.

Any steps taken to reduce the threat of a catastrophic wildland fire interfacing with homes and other structures is vital. One of the most practical and important actions that is very effective in reducing the risk if vegetation management. Irrigated lands accomplish that task and provide us with a break in the fuels and an opportunity to make a stand to stop a wildfire. 129-1

We ask that you provide the conditions that will allow farmers to continue to irrigate their land, providing them with an opportunity to support their families, provide the produce and meat for the citizens and, most importantly from our perspective, provide a greenbelt (safe zone) from where our firefighters can do their job safely.

Thank you for your consideration.

Respectfully,

Gene Vander Plaats
Fire Chief, PVFPD

PROTECTING OUR COMMUNITY WITH PRIDE

3.2.11.1 Responses to Letter 129

129-1

See Comment Letter 46, Response 3.

3.2.12 Letter 47—Plumas County Flood Control and Water Conservation District, Brian L. Morris, General Manager

PLUMAS COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

Comment Letter IL47

September 27, 2010

ILRP Comments
Ms. Megan Smith
630 K Street, Suite 400
Sacramento, CA 95814

Dear Ms. Smith:

Thank you for the opportunity to comment on the Draft Programmatic Environmental Impact Report for the Irrigated Lands Regulatory Program (ILRP).

The County of Plumas previously submitted comments dated April 13, 2010, noting the diversity of water quality conditions and problems across the Central Valley watershed and asking that the ILRP be implemented in a manner that is appropriate to the situation in each particular area and groundwater basin. We are pleased that Alternative 2 in the Draft EIR presents a tiered approach to the ILRP based on risk assessment and provides a framework that can be used to establish an effective program that makes the best use of both private and public funds to improve and protect water quality. We encourage the Regional Board to move forward with Alternative 2 as the basis for the long-term program. 47-1

To effectively address our general concerns and obtain the benefits of a tiered approach, elemental aspects of the program will need further consideration and definition, which seems to be acknowledged by both regional board members and staff: 47-2

- How exactly will the lines be drawn between the different risk-based tiers?
- Given the current state of the economy and the strained resources of both local and state agencies to provide assistance and coordination that would otherwise support the most effective program, what is the timeline for implementation and how will priorities be established? 47-3
- How can the ILRP benefit from synergies with programs of the Department of Water Resources, including IRWM and CASGEM? 47-4
- What are the equitable considerations and what are the consequences for maintaining the economic viability of agriculture in higher-elevation watershed areas where the economic returns are relatively "low value" and the agricultural practices are relatively low-impact and low-risk? 47-5

Tiered Approach

The staff report accompanying the EIR includes Figure 23 on page 161 with an example of a prioritization scheme for requiring different levels of surface and groundwater monitoring based upon known or potential water quality problems. The lesser level of monitoring requirements is based upon an area having "no irrigated agriculture related water quality problems." Depending 47-6

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upon how such a standard is interpreted, it could create a "zero tolerance" requirement that would eliminate any practical distinction offered by the multi-tiered approach.

Unless management plans have been required as a result of exceedances of water quality objectives (or water quality impairments caused by agricultural operations have resulted in 303(d) listings), Tier 1 should be the appropriate monitoring level. Beyond that, where water quality is not in a state where beneficial uses are impaired, trends in water quality should be analyzed in each specific situation to determine an appropriate response based on the likelihood that the trend will actually lead to degradation of beneficial uses. 47-6 cont'd

Implementation Timeline

A timeline for the long-term ILRP should consider prioritizing implementation actions by balancing the needs of public health and the environment against current economic conditions and the financial challenges currently faced by both private and public participants. It is understandable that where practices on irrigated lands are significantly impacting the quality of drinking water or habitats for sensitive species, the most immediate practicable implementation timeline would be desired. However, in apparently low-risk regions where significant water quality impairments have not been identified or where there is a paucity of reliable data, additional implementation time would allow collaboration with stakeholders that may still be on the periphery of the irrigated lands program, such as local environmental health agencies, municipally-focused groundwater management programs, and the groundwater programs of the Department of Water Resources. 47-7

Simply being able to budget costs over two years instead of three or over three years instead of five can enable local agencies to participate in collaborative programs from which they may otherwise have to refrain. And without the ongoing participation of those agencies, the ILRP program will lose data, expertise, and financial resources that would otherwise make the program more efficient and more effective in the long run. In the case of the County of Plumas, our workforce has been reduced from over 450 employees in 2005 to less than 370 today – a reduction of nearly 20 percent. While we look toward an economic recovery that is now projected for California in 2012, we would be much more optimistic about engaging in coordination and support with the irrigated lands program if we could look to working over a longer time period. 47-8

That is to say nothing of the burden the ILRP could place on private landowners during these difficult economic times. The EIR identifies some loss of agricultural resources as an unavoidable impact of the program. Given the current economy, the sooner the program is implemented the more likely it is that we will see greater failure or abandonment of agricultural operations. To the extent those losses result in loss of open space and habitat and in conversion to uses that have other water quality impacts, an irrigated lands program that induces conversion seems to be at cross-purposes with the stated program goals. 47-9

Coordination with Department of Water Resources Programs

Another consideration in establishing an implementation timeline should be the opportunity to coordinate with ongoing developments in the Integrated Regional Water Management program (IRWM) and the California Statewide Groundwater Elevation Monitoring program (CASGEM). 47-10

2

CASGEM establishes new requirements for local agencies to implement comprehensive groundwater elevation monitoring programs against the threat of losing eligibility for all water-related financial assistance from the State. In the Upper Feather region we are in the process of surveying local agencies to determine existing groundwater monitoring practices for both water elevations and water quality. Our next steps will be to determine lead agencies in each of our groundwater basins, identify data gaps, and implement a comprehensive groundwater monitoring and management program. To the extent this regional program can help efficiently address ILRP needs (even if it is to only verify that there are no water quality issues), it could reduce the financial burden on agricultural landowners and increase the prospects for continued economic viability. 47-10 cont'd

The Prop. 50 phase of the IRWM program was initiated around the same time as the initial push of the ILRP. In the Feather River region, we ended up with two groups of interests working on parallel tracks when both should have been working hand in hand. Fortunately, in Sierra Valley, our largest groundwater basin, the local groundwater management agency had the foresight to include an inventory and capping project for old and abandoned wells as part of a Prop. 50 grant we obtained. That kind of opportunity is exactly the type upon which the ILRP should capitalize.

With the Prop. 84 phase of the IRWM program now underway, the ag waiver coalition in our region has become a member of the regional water management group. We are working together to incorporate ILRP needs into our regional planning process and to extend previous successful efforts to use available funds to advance BMPs on irrigated lands. 47-11

However, for the ILRP to gain the full benefits that may be achieved through working with regional water management groups, including efficiencies of coordinated planning and monitoring activities, the stately pace of the IRWM program must be considered. Prop. 50, which was approved by the voters in 2002, has only recently begun to see money put to work on the ground. For Prop. 84, which was approved in 2006, the earliest that even planning funds will be available will be well into 2011.

Timelines for achieving ILRP benchmarks that do not consider the status of these other ongoing processes will force agriculture to fend for itself when opportunities for coordination, assistance, and efficiency are coming over the horizon.

High-Elevation Watersheds

A final important consideration is the special combination of factors that define conditions in the high-elevation watersheds like those of the Upper Feather River region, where most of the irrigated lands are found between 3,500 and 5,000 feet in elevation. 47-12

The relatively low-value-per-acre agricultural activities identified in the EIR's economic analysis are the predominant uses of irrigated lands in the Upper Feather River region. To the extent program fees are applied on a per-acre basis, the relative economic burden on agricultural operations is only increased for the people in our region.

3

On the other hand, the upper watersheds have the benefit of generally good water quality – both for surface water and groundwater. As part of the information item presented to the Regional Board on September 22, there was one presentation focused on Environmental Justice that included three maps of the Central Valley watershed: one showed wells exceeding the nitrate MCL; one showed wells exceeding 50% of the nitrate MCL; and one showed wells with pesticide contamination. Not one of those maps reflected a single well in the Upper Feather River watershed, including Plumas, Sierra, and Lassen Counties. This general picture is confirmed by the Plumas County Division of Environmental Health, which monitors water quality in public water supply wells and sees no such wells with nitrate levels that exceed or even come close to the MCL. 47-13

Where existing water quality data does not indicate any significant problems related to irrigated lands, and where acreage-based program fees already impose disproportionate burdens, it does not seem reasonable or equitable to require extensive monitoring programs in order to "prove a negative."

Conclusion

Thank you again for the opportunity to comment further on the development of the ILRP and for advancing the framework of a tiered approach to implementation. We look forward to seeing the details of the next steps of the program and to engaging in the stakeholder and CEQA processes that will accompany them.

Sincerely,

Brian L. Morris
General Manager

4

3.2.12.1 Responses to Letter 47

47-1

The support for Alternative 2 will be considered in development of the Long-term ILRP.

47-2

Alternatives 2, 4, and 6 all include mechanisms for prioritizing requirements for areas and/or operations. These alternatives provide the general programmatic-level framework for prioritization (e.g., Alternative 6's Priority Factors, page 150, Draft PEIR, Appendix A). Site-specific and other waste specific information have not been considered in detail. It would be premature to establish priority level (tier), specific monitoring frequencies (groundwater/ surface water), locations, and constituents at this stage without first considering the types of waste discharge (pesticides used, pathways of waste movement, etc.), local conditions, existing water quality, existing monitoring programs, existing wells, and other local factors. Depending on the alternative chosen by the Central Valley Water Board, these site-specific considerations will be made during development of ILRP WDRs and waivers and subsequent water quality monitoring and management plans.

47-3

See Comment Letter 47, Response 2. The Central Valley Water Board is cognizant of the present regional economic climate. Development of implementation timelines and priorities for the Long-term ILRP will include consideration of this comment.

Within the Draft PEIR, only Alternative 6 includes a specific implementation timeline of 3 years (Draft PEIR, Appendix A pages 143–144). Under Alternative 6, implementation priorities would be established using the factors in Table 22.

47-4

See Comment Letter 47, Response 2 and Comment Letter 1, Response 45.

47-5

See Comment Letter 47, Response 2.

The Draft ILRP Economics Report considers effects of Long-term ILRP alternatives on the value of agricultural production. The results of the Draft ILRP Economics Report have been considered in developing the tiering system of Alternative 6. The Central Valley Water Board will further consider requirements that are suitable to low-value/ low-risk operations in the development of the Long-term ILRP.

47-6

The standard for "no irrigated agriculture problems" as stated in Figure 23 (Draft PEIR, Appendix A, page 161) is a general characterization. Under Alternative 6, the Priority Factors (Draft PEIR, Appendix A, pages 150–151) would be used to establish tier levels for geographic areas. These factors are designed to establish priorities to address exceedances (protect beneficial uses); address degradation of high quality waters (Antidegradation Policy); and prevent future exceedances (vulnerability). Also see Comment Letter 1, Response 23.

The Draft PEIR, Appendix A (page 151) provides an example of how the priority system would work that is consistent with the suggestion that Tier 1 areas should be those not under management plans/303(d) listings. However, the suggestion that degradation should only be considered where the trend will actually lead to "degradation of beneficial uses" is not consistent with the Antidegradation Policy, which generally requires that operations implement BPTC in the event that the waste discharge may cause degradation of a high quality water.

47-7

The Central Valley Water Board has attempted to balance all considerations (health, environment, economic) involved by proposing Alternative 6's tiered program, which would focus most resources on areas where higher priority water quality impacts have been identified. The Board will continue to consider these recommendations in the development of the Long-term ILRP.

47-8

This suggestion will be considered by the Central Valley Water Board in continued development of the Long-term ILRP.

47-9

See Draft PEIR, Appendix A pages 122–129 and 170–171 for an evaluation of each alternative with respect to meeting Goal 3, *"Maintain the economic viability of agriculture in California's Central Valley."*

47-10

This recommendation will be considered in the development of the Long-term ILRP.

47-11

The recommended Long-term ILRP will be instituted through the development of WDRs and waivers (orders) for geographic areas and commodity groups throughout the Central Valley. These orders would not be developed until the Central Valley Water Board considers and certifies the Final PEIR. The Final PEIR will be considered, and may be certified, at the April 6/7/8 2011 Board hearing. ILRP implementation orders would be developed following the Board's certification of the Final PEIR (at the earliest in 2011/2012).

As described in the comment, planning funds (Proposition 84/50), are anticipated to be available in 2011, at the earliest. This timing would be expected to coincide with the implementation of ILRP orders in 2011/2012 and would allow coordination and consideration of funding when monitoring and management plans are developed.

47-12

See Master Response 17.

47-13

The priority systems described in Alternatives 2, 4, and 6 are intended to help reduce ILRP costs for areas and operations that do not have water quality problems, including lesser requirements for

monitoring and management. High priority areas and operations—areas with water quality problems where agriculture is a contributing factor—would have additional monitoring and management requirements intended to address and monitor progress towards solving the water quality concern.