3.3 Non-Governmental Organization Comments and Responses

This section contains comment letters received from non-governmental organizations and responses to those comments.

Table 3-4. List of Comment Letters from Non-Governmental Organizations

Letter	Organization	Comment Letter Signatory
4	Butte County Farm Bureau	Colleen M. Cecil, Executive Director
36	Butte County Farm Bureau	Colleen M. Cecil, Executive Director
90	California Cattlemen's Association	Tom Talbot, DVM, President
92	California Farm Bureau Federation	Kari E. Fisher, Associate Counsel
96	California Farm Bureau Federation et al.	Theresa "Tess" A. Dunham, Attorney, Somach Simmons & Dunn
137	California Farm Bureau Federation et al.	Theresa "Tess" A. Dunham, Attorney, Somach Simmons & Dunn
94	California Grape and Tree Fruit League	Christopher Valadez, Director of Environmental and Regulatory Affairs
42	California Land Stewardship Institute	Laurel Marcus, Executive Director
49	California Rice Commission	Tim Johnson, President and CEO, and Roberta L. Firoved, Industry Affairs Manager
104	California Sportfishing Protection Alliance and California Water Impact Network	Michael R. Lozeau, Lozeau Drury LLP and Bill Jennings, CSPA
105	California Sportfishing Protection Alliance and California Water Impact Network	Michael R. Lozeau, Lozeau Drury LLP and Bill Jennings, CSPA
110	California Urban Water Agencies	Ernesto A. Avila P.E., Executive Director
123	Community Water Center	Laurel Firestone, Co-Director and Attorney at Law; Clean Water Action, Jennifer Clay, Water Policy Analyst; California Rural Legal Assistance Foundation, Martha Guzman, Legislative Advocate; Food and Water Watch, Elanor Starmer, Western Region Director; Pacific Institute, Eli Moore, Senior Research Associate; Environmental Justice Coalition for Water, Debbie Davis, Legislative Analyst; and California Rural Legal Assistance, Inc., Phoebe Seaton, Attorney at Law
100	El Dorado County Agricultural Water Quality Management Corporation	Carolyn Mansfield, President
78	El Dorado County Farm Bureau	Merv de Haas, President
126	Glenn County Farm Bureau	Jim Jones, President
125	Kings County Farm Bureau	Tyler Bennett, Director
44	North Eastern California Water Association	Roderick McArthur, Vice President
97	Northern California Water Association/ Sacramento Valley Water Quality Coalition	Bruce Houdesheldt, Director, Regulatory Affairs

Letter	Organization	Comment Letter Signatory
115	Pacific Institute	Eli Moore, Senior Research Associate, Eyal Matalon, and Matt Heberger
43	Pesticide Watch	Dana Perls, Community Organizer
113	Sacramento Amador Water Quality Alliance	Rebecca Waegell, Coordinator
106	San Joaquin County and Delta Water Quality Coalition	Mike Wackman
124	San Joaquin County and Delta Water Quality Coalition	Mike Wackman
109	San Joaquin County Resource Conservation District	Molly Watkins, President
88	San Joaquin River Exchange Contractors Water Authority	Steve Chedester, Executive Director
117	Shasta County Cattlemen's Association	Steve Moller, President
89	South Delta Water Agency	John Herrick
111	Southern San Joaquin Valley Water Quality Coalition	David Orth, Steering Committee Coordinator
112	Southern San Joaquin Valley Water Quality Coalition	David Orth, Steering Committee Coordinator
136	Southern San Joaquin Valley Water Quality Coalition	David Orth, Steering Committee Coordinator
12	Tulare County Farm Bureau	Patricia Stever, Executive Director
145	Upper Feather River Watershed Group	Carol Dobbas, Executive Director and Russell Reid, Chairman
33	Yolo County Farm Bureau Education Corporation	Chuck Dudley, President

3.3.1 Letter 4—Butte County Farm Bureau, Colleen M. Cecil, Executive Director

Comment Letter IL4

From: Colleen Cecil [buttecfb@sbcglobal.net]
Sent: Thursday, 05 August 2010 15:24
To: ILRP Comments; awlaputz@waterboards.ca.gov
Cc: 'Ned Coe'; tcfb@sbcglobal.net; 'Glenn County Farm Bureau'; 'Danielle Coleman'; ccfb1 @frontier.com; 'Gosselin, Paul'; slambert@buttecounty.net; Richard Price; 'Ryan Scholhr'; Rocky Donati; Stacy Gore
Subject: ILRP Public Comment Workshop

Dear Central Valley Water Board –

The Butte County Farm Bureau has opposition and concern with the Public Meeting being held to take comments on the Irrigated Lands Regulatory Program Draft PEIR scheduled to take place on Friday, September 10 from 5pm-8pm. It is unfortunate that each of these four meetings are scheduled to directly conflict with the ongoing agricultural harvests that will be taking place throughout the Central Valley in September. However, we are quite frustrated with the meeting, scheduled to take place in Chico, be held on a Friday night. This decision seems out of character for traditional business practices and as previously mentioned, will also interfere with ongoing agricultural harvests, those being rice, almond and walnut harvests to name a few, in Butte and surrounding counties. 4-1

We kindly ask that the Chico meeting date and time be changed so as to not be hosted on a Friday evening. We realize that the timing will continue to conflict with harvest but feel there is a greater chance for attendance if the meeting is not held on a Friday night.

Thank you in advance for your attention and consideration of the above request.
Best Regards,
Colleen Cecil

Colleen M. Cecil
Executive Director
Butte County Farm Bureau
2580 Feather River Blvd • Oroville, CA 95965
(530) 533-1473 (phone) • (530) 370-3879 (mobile)
(530) 533-6508 (fax)
www.buttefarmbureau.com

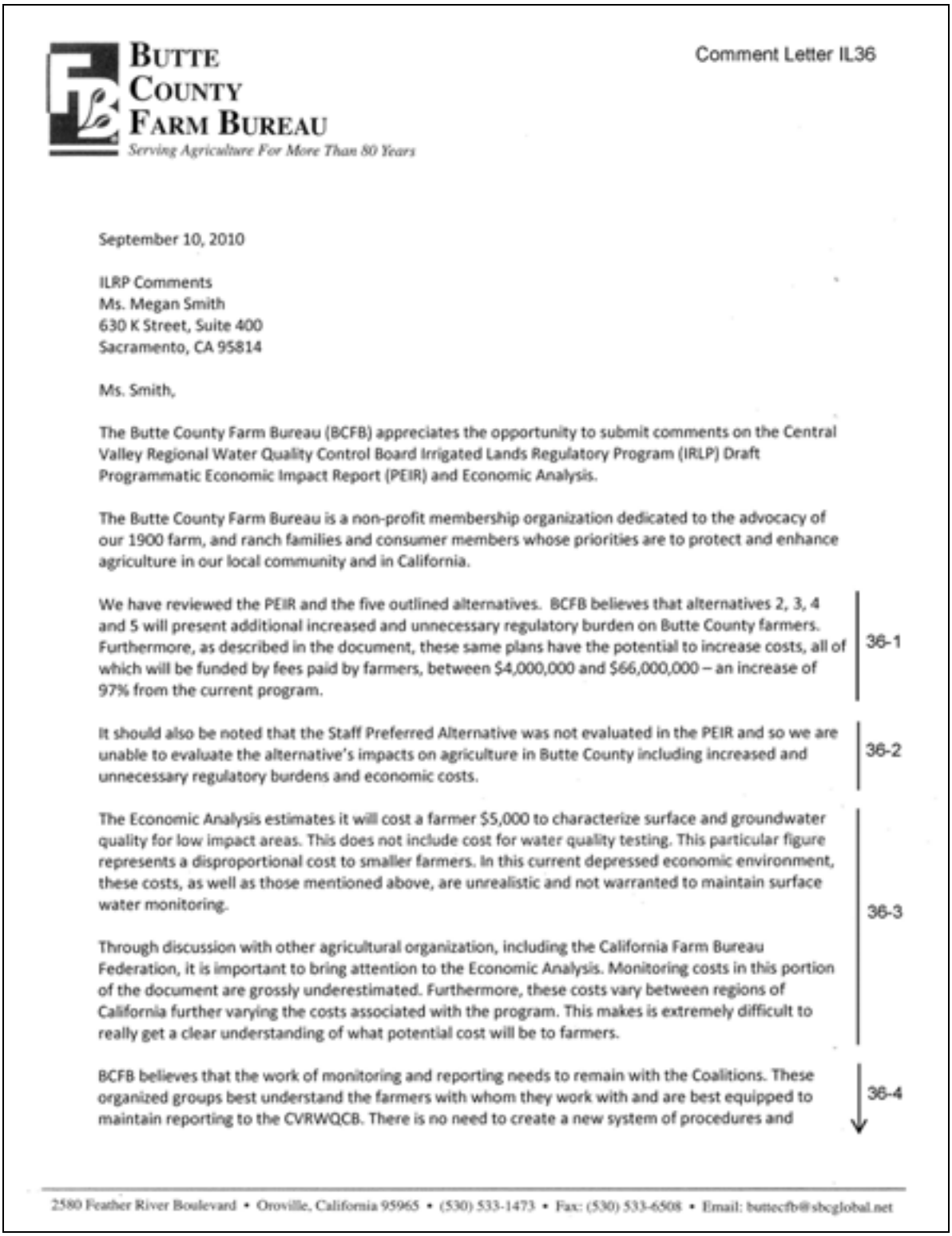
1

3.3.1.1 Responses to Letter 4

4-1

The Central Valley Water Board will consider this concern in scheduling any future ILRP public meetings.

3.3.2 Letter 36—Butte County Farm Bureau, Colleen Cecil, Executive Director



BUTTE COUNTY FARM BUREAU
Serving Agriculture For More Than 80 Years

Comment Letter IL36

September 10, 2010

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

Ms. Smith,

The Butte County Farm Bureau (BCFB) appreciates the opportunity to submit comments on the Central Valley Regional Water Quality Control Board Irrigated Lands Regulatory Program (IRLP) Draft Programmatic Economic Impact Report (PEIR) and Economic Analysis.

The Butte County Farm Bureau is a non-profit membership organization dedicated to the advocacy of our 1900 farm, and ranch families and consumer members whose priorities are to protect and enhance agriculture in our local community and in California.

We have reviewed the PEIR and the five outlined alternatives. BCFB believes that alternatives 2, 3, 4 and 5 will present additional increased and unnecessary regulatory burden on Butte County farmers. Furthermore, as described in the document, these same plans have the potential to increase costs, all of which will be funded by fees paid by farmers, between $4,000,000 and $66,000,000 – an increase of 97% from the current program. 36-1

It should also be noted that the Staff Preferred Alternative was not evaluated in the PEIR and so we are unable to evaluate the alternative's impacts on agriculture in Butte County including increased and unnecessary regulatory burdens and economic costs. 36-2

The Economic Analysis estimates it will cost a farmer $5,000 to characterize surface and groundwater quality for low impact areas. This does not include cost for water quality testing. This particular figure represents a disproportional cost to smaller farmers. In this current depressed economic environment, these costs, as well as those mentioned above, are unrealistic and not warranted to maintain surface water monitoring. 36-3

Through discussion with other agricultural organization, including the California Farm Bureau Federation, it is important to bring attention to the Economic Analysis. Monitoring costs in this portion of the document are grossly underestimated. Furthermore, these costs vary between regions of California further varying the costs associated with the program. This makes is extremely difficult to really get a clear understanding of what potential cost will be to farmers.

BCFB believes that the work of monitoring and reporting needs to remain with the Coalitions. These organized groups best understand the farmers with whom they work with and are best equipped to maintain reporting to the CVRWQCB. There is no need to create a new system of procedures and 36-4

2580 Feather River Boulevard • Oroville, California 95965 • (530) 533-1473 • Fax: (530) 533-6508 • Email: buttecfb@sbcglobal.net

policies for reporting and organization when the current system in place works and has proven effective. It would be financially prudent to make the current system of coalitions work to accomplish the Goals and Objectives of the ILRP. It is our opinion that is recommendation can best be accomplished by adopting alternative number 2 as presented in the PEIR. 36-4 cont'd

Again, we appreciate the opportunity to submit our comments on the IRLP. Should you have additional questions, please do not hesitate to contact us at (530) 533-1473 or at colleen@buttefarmbureau.com.

Sincerely,

Colleen Cecil
Executive Director

3.3.2.1 Responses to Letter 36

36-1

Support for the current ILRP will be considered in the development of the Long-term ILRP.

36-2

See Master Response 3.

36-3

See Master Response 17.

36-4

The comment's support for Alternative 2 and maintaining the coalition-run regional monitoring program will be considered in the development of the Long-term ILRP.

3.3.3 Letter 90—California Cattlemen's Association, Tom Talbot, DVM, President

CALIFORNIA CATTLEMEN'S ASSOCIATION
1221 H STREET • SACRAMENTO, CALIFORNIA • 95814-1910
SERVING THE CATTLE INDUSTRY SINCE 1917
PHONE: (916) 444-0845
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www.calcattlemen.org

Comment Letter IL90

September 27, 2010

Mrs. Katherine Hart
Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Sent via email: ilrpcomments@icfi.com

RE: Draft Program Environmental Impact Report for the Irrigated Lands Regulatory Program Long-Term Program Development

Dear Madam Chair,

The California Cattlemen's Association (CCA) appreciates the opportunity to comment on the Draft Program Environmental Impact Report for the Irrigated Lands Regulatory Program Long-Term Program Development. CCA represents ranchers and beef producers who own or manage over 34 million acres of California rangelands, including many ranchers operating in the Central Valley region who participate in the current Irrigated Lands Regulatory Program, and are ardent stewards of the water and natural resources in their care.

Water and other resources are scarce and the ability to economically graze livestock becomes ever more challenging with new regulations adopted by local authorities, the state and federal government. As such, the renewal of the Irrigated Lands Regulatory Program greatly impacts ranchers operating on irrigated pasture within the Central Valley region. 90-1

Independent of the regulation put in place in 2005, ranchers already employ range and grazing practices to protect water quality and manage rangelands to ensure riparian areas remain ecologically healthy. Management of grassland as irrigated pasture, based on the best available science and on-going research developed by the University of California Cooperative Extension and Natural Resources Conservation Service, effectively filters irrigation water and stormwater and reduces nutrient loading. 90-2

These management practices embody what ranchers consider good range management and are heavily utilized by beef producers throughout California. Ranchers depend on land and water resources to raise livestock year after year, and subsequently work to sustain these resources to ensure adequate forage and water is available for continued livestock production.

BEEF USA

California Cattlemen's Association Comments
Page 2

Ranchers are faced with an economic burden to comply with the Irrigated Lands Regulatory Program even though sampling to date has demonstrated that their operations have had no significant effect on water quality. Despite these results, actions taken by Regional Board staff in the past have presumed that the presence of cattle and grazing on irrigated pasture results in a discharge of waste that affects water quality. Additionally, CCA opposes the idea that the natural flow of stormwater from un-irrigated land is presumed to constitute a discharge of waste to the waters of the state and has concerns that irrigation of any portion of a parcel has rendered entire parcels – including un-irrigated sections - subject to the program's authority and presumptions. 90-3

Future actions and subsequent policy development should avoid the presumption that water running off of irrigated pasture inherently constitutes a discharge of pathogens or other constituents of concern. As stipulated by Porter-Cologne, only activities that discharge or propose to discharge wastes that affect water quality must be covered by regulatory mechanisms authorized by the California Water Code.

Pursuing enforcement actions or sending 13267 letters based on the broad assertion that, by irrigating, a landowner is also discharging and therefore subject to restrictions and compliance under the program is inconsistent with law. Section 13267 of the Water Code specifically states that "in requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports." 90-4

Requiring all irrigators to comply with the program without the Regional Board providing sufficient evidence inappropriately shifts the burden of proof to the farmer or rancher where state law indisputable requires the Regional Board to present evidence of a discharge prior to requiring compliance under the program. This is an incorrect interpretation of the law and the Regional Board should take action, under the administration of program and in current and future enforcement activities, to recognize that not all irrigators within the program area discharge and thus not all are subject to the regulation.

Ranchers work to ensure the efficient use of irrigation water and seek to ensure that irrigation runoff does not occur for ecological reasons and because the inefficient use of water results in higher input costs. In instances that runoff does occur, monitoring has demonstrated that grazing livestock on irrigated pasture is not likely to cause exceedances of water quality standards. 90-5

In light of the concerns expressed above, CCA is interested in working with the Regional Board to explore the possible establishment of a reduced threshold, based on the minimal discharge risk posed by grazing, that would be available to irrigated grazers who believe activities on their operation are resulting in a discharge and choose to enroll. Such a category for lower risk enrollees would reduce monitoring frequencies and reduce compliance and other overhead costs that should then result in lower fees charged by coalitions or the Regional Board. 90-6

While this potential option will not alleviate all regulatory burdens placed on ranchers to comply with the Irrigated Lands Program, it might be a step in the right direction that would recognize the minimal discharge risk of livestock grazing on irrigated pasture. Consideration of such a request is further warranted because ranchers are not significant users of pesticides, fertilizers and other constituents of concern on non-cropland used for irrigated pasture.

Ranchers and CCA members have also expressed serious concerns that increasing coalition fees to meet current program requirements has created an economic burden that is increasingly reducing the ability for ranchers to balance profitability margins. Because economic return per-acre from beef production on 90-7

rangeland and irrigated pasture is typically much lower than other irrigated agricultural uses, ranchers are more significantly impacted by these per-acre fee adjustments.

Many coalitions and the state have commenced discussions about increase fees under the current program, notwithstanding the additional fees that might arise from including groundwater in the long-term program, which will also likely drive coalitions to raise fees to cover new monitoring and reporting costs for study of unknown water quality impacts. CCA opposes fee changes that would result in higher costs to landowners under the program. 90-7 cont'd

CCA is concerned with any policy asserting that all agricultural lands or agricultural operations operating on irrigated lands discharge to groundwater. This a general and open-ended assertion by the Regional Board made with no plausible justification. Measuring and seeking to improve groundwater quality throughout the region is an extremely complex issue in its own right, let alone identifying the source of groundwater impairment. The potential for irrigated pasture to discharge to groundwater is even less likely than to surface water and it should not be targeted as a source of groundwater degradation. 90-8

The Regional Board's intention to require all operations of irrigated lands to comply with the regulation, whether it is surface or groundwater, expands regulatory authority beyond that authorized by law. For these reasons, CCA would strongly encourage the Regional Board to not include groundwater as part of the Long-Term Irrigated Lands Program at this time. 90-9

Once again, CCA appreciates the opportunity to comment on the draft Environmental Impact Report for the Long-Term Irrigated Lands Regulatory Program and would request that the Regional Board consider our comments in the development of the final report. We also strongly encourage staff to thoroughly review comments submitted by individual ranchers and take their concerns and suggestions into account when crafting the final regulatory package that will be submitted to the governing board for approval.

Should you have any questions or CCA can be of any assistance please don't hesitate to contact Justin Oldfield in the CCA office.

Sincerely,

Thomas D. Talbot

Tom Talbot, DVM
President

cc: Members of the Central Valley Regional Water Quality Control Board

3.3.3.1 Responses to Letter 90

90-1

The Central Valley Water Board agrees that those irrigated pasture lands that are managed to minimize or eliminate irrigation runoff should have minimal or no impact on water quality. The Board will consider this in the development of the Long-term ILRP.

Waste discharges from unirrigated agricultural lands are not within the scope of the Long-term ILRP.

90-2

See Comment Letter 90, Response 1.

90-3

See Comment Letter 90, Response 1.

90-4

See Comment Letter 1, Response 5. Also see Master Response 12.

90-5

See Comment Letter 90, Response 1.

90-6

The suggestion of a reduced threshold for grazing operations will be considered in the development of the Long-term ILRP, especially in situations where ranchers use minimal or no pesticides, fertilizers, or other constituents of concern and effectively prevent their cattle from impacting waters of the state.

90-7

See Master Response 17.

90-8

See Master Response 12 and Comment Letter 37, Response 1.

90-9

See Master Response 12 and Comment Letter 50, Response 14.

3.3.4 Letter 92—California Farm Bureau Federation, Kari E. Fisher, Associate Counsel

Comment Letter IL92

CALIFORNIA FARM BUREAU FEDERATION
NATURAL RESOURCES AND ENVIRONMENTAL DIVISION
2300 River Plaza Drive, Sacramento, CA 95833-3293 • Phone (916) 561-5665 • Fax (916) 561-5691

Sent Via USPS & E-Mail
ILRPcomments@icfi.com

September 27, 2010

ILRP Comments
Ms. Megan Smith
630 K St., Ste. 400
Sacramento, CA 95814

Re: Irrigated Lands Regulatory Program Comments on the Draft PEIR

Dear Ms. Smith:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 81,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity provided by the Central Valley Regional Water Quality Control Board ("Regional Board") to participate in the Stakeholder Advisory Workgroup process to develop alternatives and partake in discussions regarding the development of the Long Term Irrigated Lands Regulatory Program ("LT-ILRP"). Farm Bureau further appreciates the opportunity to submit comments on the Regional Board's LT-ILRP Draft Program Environmental Impact Report ("Draft PEIR"), the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program ("Economic Analysis"), and the Recommended Program Alternative ("RPA") contained within Appendix A. Farm Bureau has numerous reservations and comments about the PEIR, Economic Analysis, and Staff Recommended Program Alternative as currently drafted and offers the following specific comments contained

herein. These comments are in addition to the comments contained in a joint agricultural coalition letter submitted on September 27, 2010.[1]

I. Draft Program Environmental Impact Report

A. Failure to Analyze the Recommended Program Alternative Under CEQA

The California Environmental Quality Act ("CEQA") was enacted to address concerns about environmental quality in the State of California. CEQA establishes processes and procedures to ensure that California agencies complete an environmental analysis and consider and disclose to the public the environmental impacts of a proposed project. (Pub. Resources Code, §§ 21000 et seq; Cal. Code Regs., tit. 14, § 15000 et seq.) CEQA's statutory framework sets forth a series of analytical steps intended to promote the fundamental goals and purposes of environmental review—information, public participation, mitigation, and governmental agency accountability. (Cal. Code Regs., tit. 14, § 15002.) Specifically, the basic purposes of CEQA review include: informing governmental decision makers and the public about the potential significant environmental effects of proposed activities; identifying ways that environmental damage can be avoided or significantly reduced; requiring changes in projects through the use of alternatives or mitigation measures when feasible; and disclosing to the public the reasons why a project was approved if significant environmental effects are involved. (See Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.)

The analysis of a project required by CEQA usually takes the form of an Environmental Impact Report which describes and evaluates the significant environmental effects of a proposed project, identifies alternatives, and discusses ways to reduce or avoid the possible environmental impacts. Unfortunately, the Draft PEIR contains numerous substantive and procedural CEQA flaws and fails to specifically and properly analyze the environmental impacts associated with the five alternatives as well as the RPA.[2]

92-1

Although an EIR need not consider all potential alternatives to the project and instead need only to consider a reasonable range of alternatives, the alternative preferred and recommended by the agency must be considered and examined within the EIR. (See Cal. Code Regs., tit. 14, § 15226.6(a).) Further, the EIR must contain sufficient information about *each alternative* to permit an evaluation of the relative merits of the alternatives and the project. (*Ibid.*) Here, the Draft PEIR analyzes five program alternatives. Within Appendix A, a separate document apart from the Draft PEIR, the

92-2

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[1] Various agricultural organizations, including Farm Bureau, coalitions, and water districts submitted a joint agricultural coalition letter expressing significant comments and concerns on the Draft Program Environmental Impact, Economic Analysis, and Staff RPA.

[2] Please see the joint agricultural coalition letter for further in-depth review of CEQA compliance concerns.

92-1 cont'd

Staff Report contains a section describing the Staff Recommended Program Alternative.[3] This RPA is not one of the five alternatives analyzed within the Draft PEIR. Rather, it is a separate alternative. Although it contains a conglomeration of some elements presented in the five alternatives that are analyzed in the Draft PEIR, it also contains entirely new program elements and new combinations of existing elements. These new elements and new combinations have yet to receive CEQA review. Without proper evaluation of what would result when those elements are combined with each other, as they would be if "Alternative 6" or the Staff RPA alternative were to be selected for implementation, the Draft PEIR is substantively and procedurally flawed and the fundamental goals of CEQA are not met.

92-2 cont'd

B. The Draft PEIR May Conflict with CEQA Functional Equivalency of the State's Pesticide Regulatory Program

The Draft PEIR fails to analyze the interplay with and the duplicity between the State's pesticide regulatory program and its proposed requirements. Prior to a pesticide being registered for agricultural use, a CEQA functional equivalent EIR must be performed. (See Cal. Code Regs., tit. 14, § 15251(i), "the pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of (1) The registration, evaluation, and classification of pesticides" has been certified as a review process functionally equivalent to a CEQA EIR.) The Department of Pesticide Regulations' ("DPR") actions in reviewing pesticides do not constitute a project in the classical CEQA context – there is not a one time environmental review of a specific action or activity that has a specific geographical location or temporal limit. Rather, DPR's regulatory scheme ensures continuous evaluation of the environmental impacts of registered pesticide products. Additionally, in completing the CEQA functional equivalency document, DPR is required to consider the full and reasonably foreseeable environmental context of its actions. The regulatory scheme also provides for re-registration and re-evaluation to ensure that the continued use of the pesticide is not going to have a significant effect on the environment.

92-3

Within the Central Valley region, farmers and ranchers use various products when growing food and fiber. Farmers and ranchers must comply with all applicable laws, regulations, and specific pesticide use requirements, complete pesticide use reporting, and fulfill educational and training requirements. Further requirements are mandated if a restricted material is used and/or the land is located within a groundwater management area. Since CEQA functional equivalency has occurred to allow those pesticides to be

[3] The California Supreme Court has stated that essential elements of CEQA analyses cannot be buried within the appendices. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.) Not only should the Staff RPA be placed within the Draft PEIR, the Staff RPA should also undergo full CEQA analysis as a sixth alternative and be fully compared to the five alternatives currently within the PEIR.

used in those areas, the growers should not be now held liable under the LT-ILRP if those pesticides are detected in groundwater. 92-3 cont'd

C. Use of the Draft PEIR as a "Program" EIR is Limited and Cannot be Used for Future Waste Discharge Requirements

Under the CEQA Guidelines, a program EIR is an EIR prepared for a series of actions that can be characterized as one large project and are related in a specific manner. (Cal. Code Regs., tit. 14, § 15168(a).) An agency may use a program EIR when it needs to consider broad environmental issues for a series of actions at an early state of the planning process. (Id., § 15168(b)(4).) However, when conducting a series of actions at a later date, an agency may only rely on the program EIR if it contains a thorough analysis of the relevant environmental issues and evaluates the effects of the entire program in a specific and comprehensive manner. (Id., § 15168(c)(5).) As stated above, the Draft PEIR does not evaluate the Staff RPA at all. 92-4

Additionally, the Draft PEIR does not evaluate the actual waste discharge requirements ("WDRs") that will be developed in the future. The adoption of the eight to twelve WDRs, as discussed in Staff's RPA, is a "project," as defined in CEQA. (Pub. Resources Code, § 21065.) CEQA and its requirements apply to discretionary projects proposed by public agencies. (*Id.*, § 21080(a).) The Regional Board's approval of WDRs is a discretionary decision, and therefore it is subject to CEQA. Thus, when the Regional Board develops and adopts the eight to twelve individual WDRs, it will be required to again consider the environmental impacts associated with the individual WDRs. If the Regional Board intends to rely on the Draft PEIR for its determination of environmental impacts associated with the WDRs, such reliance will be improper since the Draft PEIR provides insufficient analysis of the entire program as a whole and its environmental impacts.

D. CEQA Limits the Scope of Mitigation Measures That Can Be Required

Section 5.7.6 of the Draft PEIR, "Mitigation and Improvement Measures," proposes mitigation measures for various vegetation and wildlife resources that could be affected by normal farming practices. These mitigation measures that would require avoidance of sensitive biological resources, riparian areas, and wetlands, require additional CEQA review if such resources cannot be avoided, and would compel agricultural landowners to conduct a U.S. Army Corps of Engineers' approved delineation of affected wetlands "prior to implementing any management practice that will result in the permanent loss of wetlands." Such mitigation measures are overreaching. 92-5

"A lead agency for a project has authority to require *feasible changes* in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as

the "nexus" and "rough proportionality" standards established by case law (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard*, (1994) 512 U.S. 374, *Ehrlich v. City of Culver City*, (1996) 12 Cal. 4th 854.)." (See Cal. Code Regs., tit. 14, § 15041(a), emphasis added.) However, CEQA confers no independent grant of authority to impose mitigation measures on a project. Mitigation measures, such as the ones described above, go beyond the powers conferred by law to the Regional Board and are legally infeasible. (Pub. Resources Code, § 21004; Cal. Code Reg., tit. 14, § 15040.)

92-5 cont'd

II. Draft Staff Report

A. The Draft Staff Report Inappropriately Categorizes All Irrigated Agriculture as Waste Dischargers to Surface Water and Groundwater

The Draft Staff Report inappropriately presumes that all irrigated agriculture creates a discharge of waste to both surface and groundwater. The Draft Staff Report states that "[b]ecause all irrigated agricultural operations could affect groundwater quality, they have been considered in the scope of the long-term ILRP." (Draft Staff Report at p. 143.) The Staff Report further presumes that all "operations associated with irrigated agriculture ... may leach waste into groundwater, potentially causing degradation, or causing or contributing to exceedances of water quality objectives." (*Ibid.*) This broad assumption is neither supported by evidence or any written documentation and unnecessarily burdens many growers who do not create a discharge of waste to various extensive reporting requirements.

92-6

It is recommended that within the LT-ILRP, agriculture should be presumed to be in compliance with water quality standards and water quality objectives if a grower is implementing management practices and other applicable requirements.

III. Recommended Program Alternative

A. A Groundwater Program Should Rely Upon Existing Groundwater Monitoring and Protection Programs

Farm Bureau has numerous concerns with the RPA's regulatory requirements for groundwater. A groundwater program taken on by the Regional Board should first utilize existing monitoring programs before developing yet another costly program, particularly during these tough economic times when everyone is cutting back. The Regional Board should expand on partnership opportunities that rely upon the appropriate local entities and state agencies involved in groundwater monitoring and protection, including but not limited to the Department of Water Resources, Department of Pesticide Regulation, Department of Public Health, etc., to compile, analyze, and utilize existing groundwater data and protection programs, and identify gaps, prior to proceeding with the adoption, regulation, and enforcement upon potential dischargers of groundwater monitoring programs within the LT-ILRP. The appropriate local entities will vary throughout the

92-7

Central Valley and may include the coalitions, local public agencies, and integrated regional water management planning agencies.

Given the various agencies involved in current groundwater monitoring, reasonable time frames (no less than three years) must be established to develop local programs through the LT-ILRP that address prioritized groundwater quality problems. Additionally, sources of existing groundwater data should be fully utilized and include, but are not limited to: Groundwater Ambient Monitoring & Assessment Program (GAMA), Department of Pesticide Regulation, CV-SALTS, Department of Public Health, Department of Toxic Substances Control, and data compiled by local groundwater management agencies and the Integrated Regional Water Management Plan (IRWMP). 92-7 cont'd

Proceeding in such a manner will allow for targeted identification, proposed determinations, and prioritization regarding and appropriate actions to take to address groundwater quality problems at the local level. Without such foundational steps, requirements within the LT-ILRP may be duplicative and conflict with other local and state programs managing groundwater.

B. The RPA Should Avoid Duplicative Regulation With Other Groundwater Programs

The California Water Code Section 10750, et seq., requires groundwater to be generally controlled at the local level, and many such programs are presently in place (see above). To further this directive, various codified Senate and Assembly bills authorize local agencies within groundwater basins to prepare and adopt groundwater management plans with numerous required components directed to preserve water quality. Within many areas of the Central Valley, local agencies have developed local groundwater management plans including AB 3030 plans, SB 1938 plans, and Integrated Regional Water Management plans. These programs require stakeholder involvement and groundwater monitoring and management in order to assess the basin management objectives established in the plan. In addition to these local groundwater management plans, the California Department of Pesticide Regulation ("DPR") regulates the use of pesticides that may be found in or constitute risk to groundwater (Groundwater Protection Program). DPR's Groundwater Protection Program requires that growers implement management measures to prevent pesticides from moving to groundwater. 92-8

If a grower in a groundwater management area has signed up with the agricultural commissioner, follows all applicable pesticide labels, and completes the necessary educational requirements, there should not be a de facto requirement that the grower has to join the applicable area coalition. Rather, the grower should be deemed to be in compliance and should not be subjected to an additional duplicative layer of regulation.

C. The Tiering Requirements Inappropriately Place All Growers Into Tier 2

Farm Bureau has some reservations and concerns regarding the Tier 1 (low priority) and the Tier 2 (high priority) approach as currently drafted within the Staff RPA. Upon review, an automatic default exists in which all growers will be placed in Tier 2 unless and until they can prove they meet the requirements of Tier 1 and are not a "high priority." This tiering structure within Staff's RPA creates confusion and alarm. Farm Bureau respectfully asks for further clarification of and revision to the tiering structure and recommends a de minimus exception for those with little to no groundwater discharge. 92-9

IV. Economic Analysis

The Economic Analysis within the Draft Staff Report cursorily projects the associated costs of the five alternatives within the Draft PEIR. Although this analysis is very disconcerting and flawed, a larger concern is the Draft Staff Report's failure to analyze the economic impact of RPA. Notwithstanding the flaws in analysis of the five alternatives, the Economic Analysis fails to analyze any of the costs associated with the Staff Recommended Program Alternative. Without analyzing the actual proposed project, within the Draft PEIR, it is impossible for any economic analysis to be conducted on the project, thus making the true economic impact of the RPA an unknown. 92-10

Further, the Porter-Cologne Water Quality Control Act ("Porter-Cologne") requires that both costs and economic impacts be considered when developing a new regulatory program for agriculture and such a requirement is absolute. (See Wat. Code, § 13141.) Water Code, section 13141 explicitly mandates:

> State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof.
> However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

92-11

(Wat. Code, § 13141.) Before a Regional Board can impose waste discharge requirements or conditioned water quality certification for discharges from irrigated lands, Porter-Cologne requires that it "shall take into consideration" the following factors: "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." (Wat. Code, § 13263.) Section 13241 in turn lists six "factors to be considered," including "economic considerations" and "water quality

conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." (Wat. Code, § 13241.)

Anticipated program implementation costs to the agricultural community include increases in potential fees, management practice implementation, monitoring costs, report preparation, and cost for education, as well as other costs. Given that the impacts of water quality regulations frequently take years to materialize, the Regional Board should analyze the economic costs and impacts within a dynamic framework taking into account the projected changes in the economic situation *over time*.

92-11 cont'd

In addition to direct costs imposed on the agricultural community, the Regional Board should evaluate indirect costs, including the economic consequences that are transmitted via market interactions to other groups, such as consumers. Water quality regulation, such as Staff's RPA, increases the average cost of production and has a direct negative effect on the producer and the consumer through the resulting increase in variable costs and the output price. The propagation of the impacts of a regulation through the economy is well documented and can be quantified by economic analysis.

CONCLUSION

Farm Bureau appreciates the opportunity to submit comments on the Irrigated Lands Regulatory Program Draft PEIR. Farm Bureau urges the Regional Board to reassess the adequacy of the PEIR and the Recommended Project Alternative. Additionally, as evidenced in the Draft PEIR, Alternative 2 is clearly identified as the superior alternative.

92-12

Farm Bureau respectfully urges the Regional Board to support Alternative 2.

Sincerely,

KARI E. FISHER
Associate Counsel

KEF:pkh

cc: Adam Laputz at awlaputz@waterboards.ca.gov
Joe Karkoski at jkarkoski@waterboards.ca.gov

3.3.4.1 Responses to Letter 92

92-1

Comment noted.

92-2

See Master Responses 3 and 4.

92-3

The Central Valley Water Board does not agree with the opinion expressed in the comment. Absent express language of supersession or an actual conflict between two sets of state laws, laws must be interpreted to be in harmony with one another. Because the informational objectives of CEQA can be achieved while preserving Porter Cologne's substantive requirements upon the discharge of waste to waters of the state, there is no actual conflict between CEQA and Porter Cologne. There are likewise no express provisions in CEQA overriding Porter Cologne. Because the existence of a certified regulatory program for DPR has no legal bearing upon the regulatory program contemplated by the Draft PEIR, the Draft PEIR need not discuss DPR's program in detail.

See Comment Letter 99, Response 1.

92-4

See Master Responses 4 and 7.

92-5

See Master Response 6.

92-6

See Master Response 12. Also see Comment Letter 46, Response 4 and Comment Letter 87, Response 4.

92-7

See Comment Letter 114, Response 10; Comment Letter 96, Response 11; and Comment Letter 111, Response 31.

92-8

See Comment Letter 45, Response 20.

92-9

See Comment Letter 47, Response 2 and Comment Letter 97, Response 6.

The suggestion for a *de minimus* exception for those with little to no groundwater discharge will be considered in the development of the Long-term ILRP.

92-10

See Comment Letter 111, Response 46.

92-11

See Master Responses 8, 17, and 8.

92-12

See Comment Letter 1, Response 59.

3.3.5 Letter 96 and 137—California Farm Bureau Federation et al., Theresa Dunham, Attorney, Somach Simmons & Dunn

Comment Letter IL96

September 27, 2010

Via email only - ILRPcomments@icfi.com

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

SUBJECT: Comments on the Draft Program Environmental Impact Report for the Central Valley Long-Term Irrigated Lands Regulatory Program (LTILRP)

Dear Ms. Smith:

The agricultural organizations, coalitions, and water districts identified below provide the following significant comments and concerns on the Draft Program Environmental Impact Report for the Central Valley Irrigated Lands Regulatory Program (Draft PEIR), the Draft Staff Report, the Recommended Program Alternative (RPA), and the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Draft Economic Analysis). As requested, our comments are primarily organized by document and include recommended changes where appropriate.

I. Draft PEIR

Overall, we find the analysis in the Draft PEIR to be superficial, and inadequate to analyze the environmental impacts associated with the five alternatives as well as the RPA. 96-1

Our comments on the major areas of concern in the Draft PEIR are as follows.

A. The Draft PEIR Does Not Accurately Describe or Analyze the Proposed Project

The Draft PEIR analyzes five proposed alternatives. Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff has combined elements of many of these alternatives to develop a sixth alternative, which staff is now recommending for approval, the RPA. De facto, the RPA has become the proposed project. However, the Draft PEIR does not analyze this project *at all*. While the elements of the RPA have been cherry-picked from the other alternatives, the Draft PEIR does not make any attempt to analyze the environmental impacts that would result if these elements were combined with each other, which is how they would be implemented if the RPA were selected as recommended by staff. 96-2

A draft environmental impact report (EIR) must include a general description of the proposed project's technical, economic, and environmental characteristics. (Guidelines for the Implementation of the California Environmental Quality Act[1] (Cal. Code Regs., tit. 14, § 15000 et seq.), hereafter State CEQA Guidelines, at § 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. 192-193.)

The Draft PEIR follows a National Environmental Policy Act (NEPA)-like approach. It does not identify any preferred alternative. Instead, it analyzes each of the alternatives in detail, and it claims that any one of them could be adopted as the proposed project at the conclusion of the environmental review process. Even if it is assumed that this approach fully complies with CEQA, the Draft PEIR fails because it makes no attempt whatsoever to analyze the environmental impacts associated with the RPA. Although individual elements of the RPA have been analyzed in the Draft PEIR, there is no evaluation of what would result when those elements are combined with each other, as they would be if the alternative were to be selected for implementation.

96-2 cont'd

Indeed, the Draft PEIR does not even include the RPA in its text. Rather, the RPA is presented only in the appendices. In *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the Supreme Court reaffirmed that key pieces of the CEQA analyses cannot be buried in the appendices. Here, the *proposed project itself*—the RPA that staff is recommending that the Central Valley Water 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.

Thus, the Draft PEIR suffers from both substantive and procedural flaws that are fatal.

B. The Cumulative Impacts of the Preferred Alternative Are Not Accurately Analyzed

As noted above, the RPA represents "a conglomeration of elements presented" in the five alternatives that are analyzed in the Draft PEIR, but the RPA was not itself analyzed in the Draft PEIR, and no attempt has been made to analyze the components of this program (as they would be applied) in conjunction with each other. Compounding this error, the Draft PEIR 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

96-3

[1] California Environmental Quality Act, Public Resources Code section 21000 et seq. (hereafter CEQA).

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, § 15130(a)(1), emphasis added.)

In contravention of State CEQA Guidelines section 15130, the Draft PEIR employs neither a list nor a summary of plans and projections approach to the cumulative impacts analysis. In fact, the Draft PEIR 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 Draft PEIR blithely concludes that there are no other projects—and purports to analyze 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, numerous pending National Pollutant Discharge Elimination System (NPDES) permits and other permit actions, and the Central Valley Water Board's own Groundwater Protection Strategy, which has been in development for several years. All of these similar pending programs and projects have the potential to create cumulative impacts on agricultural and other environmental resources, and, thus, require analysis along with the current project. 96-3 cont'd

Moreover, even if it were deemed appropriate to disregard all the programs and projects that have the potential to contribute to cumulative impacts and consider the "cumulative impacts" of the program standing alone, *the Draft PEIR has not done this*. As explained above, the Draft PEIR does not analyze the impacts associated with the RPA; it makes no attempt to evaluate what effects will result if those program components are implemented in conjunction with each other. Thus, even if it were sufficient to limit the scope of the cumulative impacts analysis to the program alone, the Draft PEIR's approach leads to a failure to analyze—and a deliberate understating of—the project's cumulative impacts.

C. Alternative 1 Does Not Accurately Represent the "No Project" Scenario; Continuation of the Existing Irrigated Lands Program Would Be a Project Subject to CEQA, Not the "No Project" Condition

The Draft PEIR claims that Alternative 1 constitutes the "No Project" Alternative, which the Draft PEIR defines as "full implementation of the present program." This description of Alternative 1 is misleading and incorrect. In actuality, the Draft PEIR does not include a true "No Project" Alternative that represents what would happen absent any Central Valley Water Board action. 96-4

"The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, . . . as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." (State CEQA Guidelines, § 15126.6(e)(2).) When the existing conditions include implementation of a program or rule that will expire

unless some affirmative action is taken, the "No Project" scenario must consider the expiration of that program or rule and its associated ramifications. (See, e.g., *Sherwin-Williams Co. v. S. Coast Air Quality Management Dist.* (2001) 86 Cal.App.4th 1258, 1280 [SCAQMD properly defined the "No Project" scenario as "not adopting the proposed amendments to Rule 1113, but instead allowing the expiration of the current product variances for some of the coating categories, and maintaining the current version of Rule 1113 as amended by a 1990 court order"].) In contrast, when an agency must act affirmatively to extend an existing program or rule, that itself is a project that must be analyzed under CEQA. (*Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 909 [county's decision not to renew a conditional use permit that was expiring is not a project under CEQA, but the renewal of the permit would be].)

Here, the "No Project" Alternative should reflect the expiration of the existing waiver program on June 30, 2011. (See *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, Order No. R5-2006-0053, at p. 17 (2006 Conditional Waiver). Pursuant to Water Code section 13269, the 2006 Conditional Waiver remains in place only if it is affirmatively renewed by the Central Valley Water Board. (Wat. Code, § 13269(b)(1).)

The lack of an accurate "No Project" Alternative constitutes a fatal flaw for the Draft PEIR. The "No Project" Alternative is a mandatory component of an EIR. The purpose of this requirement is "to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." (State CEQA Guidelines, § 15126.6(e)(1).) In this case, no such comparison is possible because the "No Project" Alternative is fundamentally inaccurate.

96-4 cont'd

D. The Draft PEIR Misrepresents the Baseline Conditions, So the Entire Environmental Analysis Is Tainted

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 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 Draft PEIR "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).)

96-5

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 Program. 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.

The Draft PEIR 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, in the Vegetation and Wildlife Section (section 5.7), the agricultural lands environmental setting consists of three paragraphs for over 7 million acres of agricultural land in the Central Valley. Considering the diversity and value of varying vegetation and wildlife throughout the Central Valley, a three paragraph summary in no way can establish the existing environmental setting. 96-5 cont'd

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

E. The Draft PEIR Fails to Evaluate the Program's Reasonably Foreseeable Direct and Indirect Effects on the Environment

"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." (*Id.* at § 15064(d)(2).) 96-6

The Draft PEIR fails to achieve this charge. For example, the Draft PEIR 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 Draft PEIR'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. In many groundwater basins within the Central Valley, flood

irrigation is responsible for a significant portion of the groundwater recharge to those basins. Numerous entities rely on that recharged groundwater to meet their water supply needs, including urban agencies, private domestic users, industry and agriculture. Less irrigation could result in significant environmental impacts, and a discussion of those potential impacts is completely absent from the Draft PEIR. In addition to direct groundwater impacts, discharge to waterways from the groundwater basin could also decrease, potentially resulting in reduced flows that may constitute a direct change in the environment. This possibility is also not analyzed by the Draft PEIR. Finally, it is reasonably foreseeable that reduced irrigation could have other indirect environmental impacts. Reduced groundwater availability may require the installation of dedicated recharge basins or injection wells, or force third parties who rely on groundwater recharge to procure alternative supplies in the absence of the previously available groundwater. Such reasonably foreseeable consequences are not considered in the Draft PEIR, rendering the analysis wholly deficient.

In addition to the potential reduction in irrigated acreage, changes in irrigation practices, and specifically the use of pressurized systems, can have a whole host of environmental impacts that were not considered in the Draft PEIR. For example, the Draft PEIR indicates that field preparation activities would not substantially increase as a result of changes in management practices. (See Table 5-5-1.) In reality, the installation of pressurized systems would result in a significant increase in fieldwork which includes but is not limited to the construction of pumping facilities, filtering equipment, and trenching and laying of pipes. These changes could have direct impacts on air quality and other environmental impacts not discussed in the Draft PEIR. In addition, pressurized systems require additional energy to operate, which would similarly result in potential impacts to air quality and energy resources. The failure of the Draft PEIR to include these foreseeable direct and indirect environmental impacts renders it fatally flawed.

96-6 cont'd

Similarly, the Draft PEIR 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 Draft PEIR.

F. The Draft PEIR Grossly Understates the Program's Potential Impacts on Land Use

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 Draft PEIR 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

96-7

undertaking the required environmental analysis. The Draft PEIR 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 Draft PEIR 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.

Even more egregiously, the Draft PEIR utterly fails to analyze the program's land use impacts. The Draft PEIR 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 Draft PEIR 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 Draft PEIR'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 Draft PEIR.

96-7 cont'd

G. The Draft PEIR's Conclusions Regarding Global Warming Are Not Supported by Substantial Evidence

The conclusions drawn in an EIR must be supported by substantial evidence. The Draft PEIR's climate change analysis fails to meet this standard, as it relies on argument and speculation rather than the best available evidence. While this is an evolving area of science, and there may not be much evidence available, the lead agency must use the best evidence available to it to inform its analysis. If there is any substantial evidence to support the Draft PEIR's conclusion that irrigating agricultural lands causes climate change—which seems doubtful—the Draft PEIR does not contain or cite it.

Here, the best available evidence is a 2007 study, which indicates that agricultural irrigation practices in the Sacramento/San Joaquin Valley cause the mean temperature in summer months to drop, even as greenhouse gas emissions drive temperatures upward. (Irrigation cooling effect: Regional climate forcing by land-use change, Geophysical Research Letters, Vol. 34, L03703 (Feb. 7, 2007) (Enclosure 1).) As noted by Professor Lara Kueppers, one of the authors of the study, "activities related to agriculture, forestry and development do matter to the climate." As Professor Kueppers states, "If we don't consider what we're doing to the area by urbanizing, which removes farmland that has a cooling effect, we could very well end up with a much hotter Central Valley." (See http://www.ucmerced.edu/news_articles/02082007_professor_s_research_shows.asp.) This evidence suggests that any program such as the LTILRP, which the Draft PEIR concedes will have the effect of removing some land from irrigation, will cause increased climate change impacts in the Central Valley. While it may not be possible to precisely quantify those impacts at this time, they must be disclosed, at least at a qualitative level.

96-8

In addition, the Draft PEIR fails to account for the effects of new management practices on energy demand, which would in turn affect air quality, greenhouse gas emissions and ultimately climate change. As noted in our comments regarding the Draft PEIR's failure to adequately assess the true impact of the LTILRP on the environment, the installation of pressurized systems would result in a significant increase in construction activities in the short term and increased energy consumption in the long term, both of which could contribute to an increase in greenhouse gas emissions. This increase could have a direct impact on climate change, yet it was not discussed or analyzed in the Draft PEIR, even in a qualitative fashion.

96-8 cont'd

H. The Draft PEIR Arbitrarily Imposes Mitigation Measures That May Not Be Legally Imposed

Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (State CEQA Guidelines, § 15126.4(a)(5).) The "Mitigation and Improvement Measures" for vegetation and wildlife resources identified in section 5.7.6 (p. 5.7-50) propose mitigation measures that would require avoidance of sensitive biological resources, additional CEQA review if such resources cannot be avoided, and would force agricultural landowners to conduct a delineation of affected wetlands "prior to implementing any management practice that will result in the permanent loss of wetlands." In delineating wetlands, the mitigation requires it to be conducted in accordance with current U.S. Army Corps of Engineer (Corps) methods. The mitigation measures proposed here cannot be legally imposed in all cases.

First, we question the requirement to undertake additional CEQA review when an adverse effect on a sensitive biological resource cannot be avoided. While we agree that impacts to such sensitive areas should be avoided, we are concerned that, as proposed, the mitigation measure imposes a new CEQA requirement on agricultural landowners and operators when no discretionary project may actually be triggered by the action. For example, in some jurisdictions, and depending on the construction activity, grading permits may be required for installation of certain management practices (e.g., detention basins). However, in many jurisdictions, the act of constructing a management practice may not rise to the level of activity subject to a grading permit. Further, the implementation of management practices at the farm level, which would be encouraged in area-wide waste discharge requirements (WDRs), is not subject to a discretionary approval by the Central Valley Water Board. Thus, there is no universal trigger for additional CEQA review. At most, such review may be necessary if the construction activity constitutes a discretionary project under the local jurisdiction's authority. To avoid confusion, we suggest that this mitigation measure be revised to clarify that additional CEQA review is only necessary if a discretionary project for approval has been triggered by the construction activity.

96-9

Next, we are concerned that the mitigation measure for wetland loss is too broad and fails to recognize that implementation of management practices is most likely to occur on irrigated agricultural land currently in production. The Central Valley Water Board does not have the authority to order the delineation of affected wetland areas identified as converted

croplands because such agricultural areas do not fall within the jurisdiction of the Corps. The Clean Water Act (CWA) and the authority of the Corps to perform operations under the CWA apply only to "waters of the United States." The regulatory definition of waters of the United States specifically states that, "Waters of the United States do not include prior converted cropland . . . ." (33 C.F.R. § 328.3(a)(8).) Furthermore, guidance issued by the U.S. EPA in 2008 clarifying CWA jurisdiction following the Supreme Court case of *Rapanos v. United States* (2006) 547 U.S. 715, made no mention of and had no effect on this exemption for ongoing agricultural operations. As such, cropland continues to be exempt from the Corps' CWA jurisdiction. If it is not within the authority of the Corps to conduct a delineation because the area to be examined is not a water of the United States as defined by federal law or -regulation, then it follows that it is not within the authority of the Central Valley Water Board to order individual agricultural operations to undertake such an action as a mitigation measure.

96-9 cont'd

II. Draft Staff Report

A. Application of State's Anti-Degradation Policy

The Draft Staff Report incorrectly characterizes application of the state's anti-degradation policy. Specifically, the Draft Staff Report implies that application of the anti-degradation policy is triggered merely because the LTILRP will authorize agricultural discharges to surface and groundwaters to continue. (See Draft Staff Report at p. 63 ["From a programmatic standpoint, irrigated land waste discharges have the potential to cause degradation of surface and groundwater, and the requirements of the anti-degradation policies must be followed."].) However, this characterization and application of the anti-degradation policy to the proposed LTILRP is inappropriate. As indicated in State Water Resources Control Board (State Water Board) orders and guidance documents, the anti-degradation policy is triggered when the Central Valley Water Board is taking an action that may cause degradation to high quality waters. It is not applicable if the Central Valley Water Board's action will not cause degradation.

96-10

For example, State Water Board Order No. WQ 86-17 clearly states, "[b]efore approving any *reduction* in water quality, or any activity that would result in *reduction* in water quality, the Regional Board must first determine that the change in water quality would not be in violation of State Board Resolution No. 68-16 or the federal antidegradation policy." (*In the Matter of the Petition of Rimmon C. Fay* (Nov. 20, 1986) Order No. WQ 86-17 at p. 17, emphasis added.) More recently, the State Water Board opined that, "[t]he federal antidegradation policy and State Water Board Resolution 68-16 *apply to reductions in water quality*." (*In the Matter of Petitions for Reconsideration of Water Quality Certification for the Re-operation of Pyramid Dam for the California Aqueduct Hydroelectric Project Federal Energy Regulatory Commission Project No. 2426* (Aug. 4, 2009) Order WQ 2009-0007 (*Pyramid Dam*) at p. 12, emphasis added.) By its own admissions in the Draft PEIR, the Central Valley Water Board anticipates that implementation of any of the alternatives

analyzed, except for perhaps Alternative 1 as it applies to groundwater, will *improve* water quality. Thus, because adoption of the LTILRP will not result in a reduction in water quality, the federal and state anti-degradation policies are not applicable.

Furthermore, even though application of the anti-degradation policies may be triggered for changes that have already occurred, such an application only occurs when the changes have not already been reviewed for consistency with those policies. (See *Pyramid Dam* at p. 12.) That is not the case here. The Draft Staff Report incorrectly states that "unpermitted degradation has occurred since 1968." (Draft Staff Report at p. 61.) In fact, irrigated agricultural has been subject to Central Valley Water Board regulation since adoption of the original waivers in 1982 when the Central Valley Water Board adopted Resolution No. 82-036. To adopt waivers pursuant to Water Code section 13269, the Central Valley Water Board was required to find that the waivers were consistent with any applicable regional water quality control plan (i.e., Basin Plan). The water quality control plans for the Central Valley region (for both the Tulare Lake Basin and the Sacramento and San Joaquin River Basins) have included and contained State Water Board Resolution No. 68-16 since the plans were adopted in 1975. Thus, to adopt the waivers, the Central Valley Water Board needed to find that adoption of the waivers was consistent with Resolution No. 68-16. In other words, discharges from irrigated agriculture were found to be consistent with Resolution No. 68-16 in 1982, and therefore only a Central Valley Water Board action that would degrade water quality is subject to the state and federal anti-degradation policies. As already indicated, the proposed action would not degrade water quality but would improve water quality.

96-10 cont'd

Even if implementation of the LTILRP does trigger application of anti-degradation policies, staff's recommendation that all operations subject to the program be subject to the best practicable treatment or control (BPTC) standard is entirely inappropriate. The BPTC standard only applies where there is potential degradation of high quality waters of the state. As articulated by the State Water Board, "[i]n order to determine whether the allowance of limited degradation is consistent with [the 68-16] provisions, we must *first* see if existing water quality is better than water quality established in policies." (*In the Matter of the Petitions of the County of Santa Clara, Santa Clara Water District, City of San Jose, Citizens for a Better Environment and Silicon Valley Toxics Coalition To Review Issuance of Waste Discharge Requirements of Hazardous Materials Cleanup to International Business Machines Corporation (May 5, 1986)* WQ Order No. 1986-8, at p. 29, emphasis added.) This is a fact specific determination that the Central Valley Water Board must make, and cannot be broadly applied to all waters governed by the LTILRP in the absence of any inquiry into whether the affected water is considered high quality.

In spite of this threshold requirement, the Draft Staff Report concludes that because of the large number of water bodies within the scope of the LTILRP, "determination of a baseline water quality is a near impossible task." (Draft Staff Report at p. 60.) Based on the "complexity" of determining the quality of waters covered by the program and the

"significant variation in conditions over the broad areas covered by the program," staff's solution is to forego an individual assessment and simply apply BPTC to all irrigated lands. Essentially, the "long-term ILRP *assumes* that at least *some* of the waters into which agricultural discharges will occur are high quality waters" (*id.* at p. 63) and therefore BPTC should apply to all discharges. This assumption is contrary to the plain language and intent of the anti-degradation policy and the BPTC requirement.

Staff's own conclusions do not indicate that all or even most of the waters affected by the program are high quality waters that would be subject to the BPTC standard. By its own admission in the Draft PEIR, the Central Valley Water Board acknowledges that, ". . . *many* water bodies in the Central Valley Region are already impaired for various constituents associated with irrigated agricultural activities . . ." and that under the LTILRP ". . . multiple water bodies are affected by various discharges, *some* of which may be high quality waters and some of which may by contrast have constituents at levels that already exceed water quality objectives." (Draft Staff Report at pp. 61, 63, emphasis added.) The potential complexity of a more individualized assessment does not abrogate the Central Valley Water Board's responsibility for making determinations as to the status of a water body as high quality or not. Applying a blanket rule for all waters covered by the program, simply because it would be too time consuming or difficult to make individualized determinations to ascertain which waters would fall under the BPTC standard, is entirely inappropriate. 96-10 cont'd

B. Coordination of Groundwater Programs (pp. 79-80)

In its discussion with respect to other regulatory programs, the Draft Staff Report indicates that staff intends to coordinate its efforts with the Department of Pesticide Regulation's (DPR) groundwater protection program. First, this essential coordination effort is buried in a Draft Staff Report's general description of other regulatory programs. To the extent that the Central Valley Water Board intends to truly coordinate with DPR, the coordination element should be clearly identified as part of the RPA. That currently is not the case. 96-11

Second, the Central Valley Water Board's proposed method for coordination is not appropriate. The Draft Staff Report proposes that where there is a reported detection of pesticides in groundwater, the LTILRP (i.e., the Central Valley Water Board) would immediately review data and inform growers of the need to implement management practices. We disagree with the implication that any "reported detection of pesticides in groundwater" calls for immediate notification and action by growers. Instead, the LTILRP should evaluate if the reported level of the pesticide in question exceeds applicable groundwater quality objectives, and if future uses of the pesticide will potentially cause the level of pesticide to exceed applicable objectives. Once it has been determined that growers are discharging pesticides to groundwater cause the groundwater to exceed applicable water quality objectives, then it is appropriate to determine if new or additional management practices are necessary. 96-12

On another note, we encourage the Central Valley Water Board to coordinate its efforts with existing groundwater programs and not just DPR's. The Central Valley Water Board should expand on partnership opportunities that rely upon the appropriate local entities and state agencies involved in groundwater monitoring and protection (Department of Water Resources, Department of Public Health, etc.) to compile, analyze, and utilize existing groundwater data and protection programs, and identify gaps, prior to proceeding with the adoption, regulation, and enforcement upon potential dischargers of groundwater monitoring programs within the LTILRP. The appropriate local entities will vary throughout the Central Valley and may include agricultural coalitions, local public agencies, and integrated regional water management planning agencies. By coordinating efforts, the Central Valley Water Board can avoid duplicating and conflicting with other local and state programs that are already being implemented by others. 96-13

C. Consistency With Non-Point Source Policy (pp. 107-114)

The Draft Staff Report identifies five key elements from the State's Non-Point Source Policy to determine if the five alternatives are consistent with the five key elements. With respect to Key Element 4, we disagree with the Central Valley Water Board's assessment that Alternative 2 is only partially consistent. Key Element 4 states that, "[a]n NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs [management practices] or other actions are required." Alternative 2 does provide and include sufficient feedback mechanisms. As indicated, Alternative 2 includes monitoring provisions for both groundwater and surface water monitoring, as well as tracking of management practices. (Draft PEIR at pp. 3-12 - 3-13.) The monitoring provisions for Alternative 2 clearly provide for a sufficient feedback mechanism. 96-14

D. Economic Impacts and Draft Technical Memorandum Concerning the Economic Analysis of the LTILRP

After examining the full economic analysis of the LTILRP, we are concerned that it fails to address a number of the costs, which will be incurred as a result of implementation of the RPA, or any of the alternatives. The economic analysis is woefully inadequate in that it clearly does not evaluate the potentially substantial costs which may be associated with practices compelled or prohibited by the various alternatives, including but not limited to nutrient management, irrigation practices, and the installation and operation of monitoring wells. The costs of these actions could be in the hundreds of millions of dollars, yet they are not substantially addressed by the economic analysis. Furthermore, the economic analysis contains several generalities and understated assumptions that prevent the reader from attaining a genuine picture of the actual costs and economic impacts of the various alternatives. For example, there is an assumption that growers will simply "find less expensive ways to modify their production practices" and therefore the analysis assumes 96-15

economic impacts would be somewhat reduced. (Draft Economic Analysis at pp. I-3.) The economic analysis also fails to estimate the admittedly understated economic impacts as a result of forward-linked effects, and contains an erroneous estimate of the number of enrolled growers. These generalizations and faulty assumptions severely reduce our confidence in the overall reliability of the economic analysis.

96-15 cont'd

In addition, we are very concerned with the Draft Staff Report's failure to analyze the economic impact of staff's RPA. The Porter-Cologne Water Quality Control Act (Porter-Cologne) requires that both costs and economic impacts be considered when developing a new regulatory program for agriculture. (See Wat. Code, § 13141.) The Draft Staff Report acknowledges this requirement, and the Draft PEIR does make an attempt to analyze the economic impact and cost of the LTILRP. Unfortunately, it does so in the context of the individual alternatives, none of which represent the actual staff proposed alternative that has been recommended for implementation.

Just as the cumulative impacts of the preferred alternative are not analyzed in staff's RPA, the economic impacts of the RPA are not analyzed either. As noted earlier in our comments, because the RPA is actually a conglomeration of other project alternatives, the Draft PEIR does not truly analyze the proposed project. In the same vein, without analyzing the RPA, it is impossible for the Draft Staff Report to analyze the true economic impact of that project. The Draft Staff Report does attempt to assemble relevant pieces from Alternatives 2 and 4 to produce an estimated economic impact and cost. However, there is no indication that the independent economic analysis on which those estimates are based is supported by using pieces of other alternatives. Assumptions contained in the actual independent economic analysis may not remain true if variant pieces of each alternative are selectively taken out and subsequently reassembled, as is the case in the RPA. Taking isolated figures from an economic analysis that was designed to summarize the ramifications of different alternatives in their entirety may not accurately reflect the true economic impacts of the RPA. The Draft PEIR should have contained a full economic impact analysis of the RPA not based exclusively on the estimated costs of pieces assembled from the other alternatives. The Draft PEIR fails to do so, and therefore there is no basis on which to accurately calculate the economic impact or costs of the RPA.

96-16

In addition, the failure of the Central Valley Water Board to adequately describe and analyze a no project alternative is simultaneously a failure to represent the economic impacts of that no project alternative. As noted in our earlier concerns, Alternative 1 does not adequately represent the no project scenario because continuation of the existing waiver program would additionally be a project subject to CEQA. The economic impact analysis notes that "full implementation of Alternative 1 is considered the continuation of the existing program" yet this does not take into account the fact that the current waiver program would expire absent Central Valley Water Board action. Consequently there is no consideration of the economic impact of the true no project alternative, the analysis of which would provide a more adequate baseline for comparison purposes.

96-17

Aside from the more general deficiencies in the economic impact analysis contained in the Draft Staff Report, there are specific economic impacts that did not receive a thorough analysis. Specifically, the recommended shift to pressurized systems would require significant infrastructure changes for irrigation districts, including the construction of new pipelines and modification or construction of flow regulating structures and turnouts. This would require significant capital investment from growers and irrigation districts, and increased costs to the irrigation districts could ultimately be passed on to growers in the form of increased water rates. In addition, the Draft PEIR places the burden on growers and third party groups to prove that best management practices for groundwater quality protection and cleanup are effective through monitoring and assessment without taking into account the impact and cost of such efforts. Without taking these costs into account, the Draft Staff Report fails to analyze the actual costs and economic impact of the proposed project as it is required to do. Finally, the staff alternative indicates that the Tier 2 groundwater monitoring would have to both establish a baseline and trend and identify management practices. (Draft Staff Report at p. 158.) However, the potentially significant costs of undertaking this activity are also not contained in the economic analysis. 96-18

III. Recommended Program Alternative

A. Adoption of Individual WDRs Will Require Compliance With CEQA

The adoption of the eight to twelve WDRs discussed in the staff's recommended program alternative is a "project," as defined in CEQA. (Pub. Resources Code, § 21065.) CEQA and its requirements apply to discretionary projects proposed by public agencies. (*Id.*, § 21080(a).) The Central Valley Water Board's approval of WDRs is a discretionary decision, and therefore it is subject to CEQA. Thus, when the Central Valley Water Board goes to adopt the eight to twelve individual WDRs, it will be required again to consider the environmental impacts associated with adoption of the individual WDRs. To the extent the Central Valley Water Board intends to rely on the Draft PEIR for its determination of environmental impacts, the Draft PEIR provides insufficient analysis and is only applicable on a limited basis. 96-19

B. Timeframe for Implementation is Aggressive

We are concerned that the timeframe for implementation outlined in the RPA is far too aggressive and operations subject to the LTILRP may be unable to meet the recommended deadlines. (RPA at p. 144.) First, the expansion from regulation of surface water only to surface and groundwater will be a struggle for each coalition to achieve, and it will certainly take more than three months for coalitions and growers to analyze whether compliance is feasible. Furthermore, the Draft Implementation Timeframe allots a mere 30 months before new participants are enrolled in the program. Thirty months is an extremely optimistic estimate for the coalitions and the Central Valley Water Board to be able to convince growers who have never been part of the waiver that they need to enroll in the program, if they are in fact subject to its requirements. Finally, an anticipated full implementation deadline of three 96-20

years is simply too aggressive. (See section G.2.b below [three years is needed to allow for the development of groundwater quality management plans].) Since fall of 2008, the Stakeholder Advisory Workgroup has been meeting and providing feedback on issues pertaining to the development of a LTILRP. Even now, the EIR process is ongoing and a full hearing before the Central Valley Water Board on the LTILRP is tentatively scheduled for the summer of 2011. It is worrisome that a program requiring three years of stakeholder input, comments, and review is recommended for full implementation in such a short timeframe. Furthermore, the existing conditional waivers have been the controlling standard for such an extended period, a full transition to a new program in just three years may prove to be unworkable. It is overly aggressive to expect that the coalitions and the Central Valley Water Board can fully implement a new long-term program that includes groundwater in a three year time period.

96-20 cont'd

C. Adoption of Conditional Prohibition of Discharge Inappropriate

As we have indicated throughout this process, we are concerned with the Central Valley Water Board's intent to adopt a conditional prohibition into both Basin Plans (i.e., Sacramento and San Joaquin Rivers, and Tulare Lake). According to Central Valley Water Board staff, the intent is to provide the Central Valley Water Board with more direct enforcement authority over individuals that are not participating in the LTILRP. While the agricultural organizations are supportive of Central Valley Water Board efforts to utilize its enforcement authority appropriately to ensure equal and fair application of the LTILRP over all persons subject to its requirements, we are concerned with the use of a Basin Plan prohibition in this manner. The prohibition provisions in Porter-Cologne were included to authorize regional water quality control board's to determine that the discharge of certain types of waste or certain areas should be prohibited to protect water quality. (See Wat. Code, § 13243.) It was not included to circumvent notification requirements for bringing enforcement actions against non-compliant individuals. Furthermore, all persons should be afforded appropriate due process rights, including notification regarding non-compliance before being subject to administrative civil penalties. Also, adequate enforcement tools appear to be in place without invoking prohibitions of discharge. Lastly, we observe that (1) a stated objective of the LTILRP is to avoid economic impact on agricultural operations, and that (2) a prohibition of discharge would severely impair the ability of most farms to function. This unnecessary provision therefore is out of keeping with the objectives of the LTILRP, as stated in this same document. As such, we continue to be opposed to this provision.

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D. Presumption That All Irrigated Agriculture Creates a Discharge of Waste Is Inappropriate

The Draft Staff Report inappropriately presumes that all irrigated agriculture creates a discharge of waste. The Draft Staff Report states that, "[b]ecause all irrigated agricultural operations could affect groundwater quality, they have been considered in the scope of the long-term ILRP." (Draft Staff Report at p. 143.) The Draft Staff Report makes this

96-22

presumption in spite of the fact that staff acknowledges there is only a possibility that individual irrigated lands actually create a discharge of waste. (See Draft Staff Report at p. 143 ["Operations associated with irrigated agriculture . . . *may* leach waste into groundwater, *potentially* causing degradation, or causing or contributing to exceedances of water quality objectives." (Emphasis added.)].) While the Central Valley Water Board may have the authority to regulate irrigated agriculture that creates a discharge of waste under the LTILRP, the Central Valley Water Board does not have unfettered regulatory authority to regulate agricultural practices that do not create such a discharge. One fundamental limitation on the Central Valley Water Board's authority to regulate irrigation practices is that the activity must result in a "discharge of waste" that impacts water quality. Simply because it would be "difficult to determine" whether individual irrigated lands are creating a discharge of waste does not eliminate the Central Valley Water Board's statutory obligation to only regulate activities that actually create a discharge of waste. While a blanket determination that all irrigated agriculture creates a discharge of waste may be convenient for regulatory authority purposes, it is an inaccurate presumption with no evidentiary support. Presuming all irrigated agriculture creates a discharge of waste simply because some irrigated agriculture may potentially or could possibly affect water quality is entirely inappropriate and does not fall within the Central Valley Water Board's authority to regulate only those irrigation practices that result in a "discharge of waste." 96-22 cont'd

In addition, this improper presumption is coupled with an improper shift in the burden to the landowner or operator to disprove that presumption. Water Code section 13267 authorizes the Central Valley Water Board to require reports from those who discharge waste, but requires that the Central Valley Water Board "provide the person with a written explanation with regard to the need for the reports" and "identify the evidence that supports requiring that person to provide the reports." In contrast, the Draft Staff Report makes a broad assumption that all irrigated agriculture creates a discharge of waste, subjecting operations to various reporting requirements without providing a written explanation or supporting evidence, even while acknowledging that some of those operations do not create a discharge of waste.

Thus, the Draft Staff Report needs to be revised to remove the presumption that agricultural irrigation constitutes a discharge of waste to groundwater.

E. Third-Party Organizations Not Appropriate Entities to Identify Potential Impacts to Sensitive Areas

We are concerned that the Draft Staff Report places an impractical burden of identifying potential impacts to sensitive resources on third party organizations. The Draft Staff Report states, "Where an irrigated agricultural operation/third-party group determines that a proposed management practice/monitoring well may impact a sensitive resource, the ILRP will require . . . ." the individual or third party to mitigate the effects or come up with an alternative course of action. (Draft Staff Report at p. 172.) With this language, the RPA 96-23

implies that the third-party organizations will be reviewing and approving all management practices, and their environmental settings for every covered coalition member. Such a requirement and expectation of the third-party groups is unrealistic and therefore the language should be modified. 96-23 cont'd

F. Determination of Impact to Sensitive Resources is Cost Prohibitive

The RPA includes a number of regulatory requirements for individual agricultural operations. One of the requirements would require individual agricultural operations to determine if a proposed management practice will impact a sensitive resource. This requirement is directly linked to the mitigation measures described in the Draft PEIR and discussed previously. As indicated above, the mitigation measures, which would require agricultural operations to hire consultants to conduct wetlands and habitat delineations, are costly and impractical. As a result, the mitigation measures are infeasible and not appropriate for application to agriculture. Further, ongoing agricultural operations on already converted cropland are exempt from Corps requirements and, therefore, requiring such delineations are outside the Central Valley Water Board's authority. While we support and encourage avoidance of sensitive resources, we cannot support the extreme costs that would be placed on individual growers for delineating sensitive resources, except as already required by other environmental statutes and regulations. 96-24

G. As Described, No Areas Would be Eligible to be Classified as Tier 1

As a preliminary matter, we encourage the Central Valley Water Board to revise the Tier 1 and Tier 2 classifications to clearly indicate that the designation of water bodies between Tier 1 and Tier 2 must be limited based on the use of scientific, quality-controlled data. Further, the designations between Tier 1 and Tier 2 should be clearly defined within the RPA. We recommend that the primary designation for Tier 2 surface water should be management plan triggers, excluding natural and non-agricultural sources of dissolved oxygen (DO), pH, and pathogens. Tier 2 groundwater designations should be initially limited to DPR groundwater management zones and areas where nitrates or other constituents are known to affect drinking water quality. All other waters should remain in Tier 1 until quality data indicates otherwise. 96-25

1. Tier 1

According to the RPA, a major factor in determining if an area is classified as Tier 1 (*i.e.*, low priority) or Tier 2 (high priority) depends on if irrigated agricultural operations are identified as causing or contributing to a water quality problem to surface and/or groundwater. Based on this priority factor, it appears that the Central Valley Water Board would need to assess all individual agricultural operations in an area to determine if each individual operation is eligible to be classified as Tier 1. Such an approach is infeasible, which will mean that all areas will be classified as Tier 2. 96-26

Further, in determining what is classified as Tier 1 or Tier 2, the RPA provides no specificity with respect to situations where most water quality standards are met, except for one or two. For example, in some areas, water quality standards are met for almost all parameters except for pH, dissolved oxygen, and/or bacteria. When dealing with these types of constituents of concern, it is very difficult to ascertain the actual cause of exceedances, and even more difficult to show that the exceedances are caused by irrigated agricultural operations. In many cases, exceedances for these constituents of concern are caused by natural and other non-agricultural sources. However, based on the language in the RPA, it is possible that areas with no other water quality exceedances will be classified as Tier 2 areas and therefore be subject to more stringent reporting and monitoring requirements as compared to those in Tier 1. To avoid such consequences, we encourage that the RPA be amended to recognize that exceedances of these types of constituents will not trigger significant monitoring and regulatory compliance burdens as is required in Tier 2.

96-26 cont'd

2. Tier 2 (i.e., high priority areas)

a. Surface Water

The RPA would require the development of a surface water quality management plan[2] (SQMP) for any parameter that exceeds water quality objectives two or more times in a three-year period. The exceedance trigger for the development of SQMPs, as expressed here, is not an appropriate trigger for many parameters. This requirement fails to take into account the purpose of the water quality objective at issue and the beneficial use for which it is designed to protect. More specifically, the two or more exceedances in three years is a standard derived from U.S. EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses* (1985 Guidelines). Thus, at most, this standard should be applied where there are two or more exceedances of water quality objectives designed to protect aquatic life beneficial uses. It is inappropriate to use this standard to trigger implementation of SQMPs where there are exceedances of water quality objectives designed to protect non-aquatic life beneficial uses. For example, many water quality objectives are for the protection of human health over a long-term period of exposure. Thus, two exceedances in three years do not necessarily mean that the beneficial use in question is being impaired. Another example is salts. Salt objectives are usually set to protect agricultural beneficial uses. Crop impacts from salt are based on salt build-up over time—not acute impacts. Thus, the requirement for a SQMP based on just two exceedances is unreasonable. This arbitrary requirement results in the unnecessary expenditure of time and resources on constituents that are not of concern considering the purpose of the objective. (RPA at p. 153.)

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[2] The SQMP would need to be developed for the watershed represented by the monitoring site.

Further, the RPA states that under the SQMP, irrigated agricultural operations are required to implement management practices to achieve BPTC. This requirement is inconsistent with the state's anti-degradation policy. As stated previously, Resolution No. 68-16 applies only to high quality waters (i.e., those achieving water quality objectives). BPTC, which is part of Resolution No. 68-16, applies only when there is a discharge to a high quality water. By virtue of the fact that a SQMP is required, the Central Valley Water Board has already determined that the water body is not a high quality water for the parameter in question, and therefore BPTC is not required. 96-28

b. Groundwater

In general, we are concerned with the requirement for third-party groups to develop and submit groundwater quality management plans (GQMPs) within 18 months of adoption of the individual area/coalition WDR. Considering the need to collect and analyze available information to identify constituents of concern and areas of concern, 18 months is not a sufficient timeframe to collect and evaluate the available information. Instead, we recommend that the RPA allow three years for the development of GQMPs in order to allow for the development of local programs to address prioritized groundwater quality problems. Further, and as discussed previously, the RPA must allow for the use of existing groundwater data to prioritize necessary and appropriate actions for addressing groundwater quality problems at the local level. Without these foundational steps, the requirements within the LTILRP may be duplicative and conflict with other local and state programs managing groundwater. 96-29

More importantly, we are concerned that the Central Valley Water Board's assessment and definition of groundwater is the first encountered groundwater. Although not specifically discussed in the Draft PEIR or the RPA, most beneficial uses of groundwater do not actually occur in the first encountered groundwater. For example, municipal supply wells must be at least 50 feet below surface, and not 10 feet. (Calif. Department of Water Resources, Calif. Well Standards, Bulletin 74-90 (June 1991).) However, tiers will be assigned based on the quality of water in the first encountered zone. The Draft Staff Report thereby makes an improper assumption that measuring discharge from irrigated lands covered by the LTILRP at the shallow first encountered groundwater level will provide an accurate picture of actual impact on the beneficial uses in that area. We do not believe this determination to be appropriate or supportable under Porter-Cologne. 96-30

In addition, the proposed measurement of groundwater in the first encountered zone fails to take into account the assimilative capacity of soil in irrigated lands governed by the LTILRP. There is considerable treatment that occurs as water makes its way through the soil profile, and in many areas it can be reasonably expected that there will be significant dilution and attenuation of constituents prior to reaching any groundwater extraction point. Furthermore, because the lands covered by the LTILRP are so varied in soil composition, the assimilative capacities of those lands also vary, and indiscriminately using first encountered 96-31

zone measurements may produce inconsistent and inaccurate results. The Draft Staff Report fails to consider this possibility. Because there is a significant possibility that a dilution of constituents will occur before discharge reaches the level at which it is put to beneficial use, and a substantial likelihood that groundwater data collected at the first encountered zone will bear little relationship to the actual impact on beneficial uses in that area, determining compliance with water quality objectives in the first encountered zone is inappropriate. The Draft Staff Report's failure to consider the potential variances in assimilative capacity of irrigated agricultural lands, the blanket use of a first encountered zone measurement to determine groundwater quality, and the Report's failure to include the possibility of measuring at mixing zones is inappropriate and potentially unsupportable under Porter-Cologne. (Wat. Code, § 13000 ["The Legislature further finds and declares that activities and factors which may affect the quality of waters of the state shall be regulated to attain the highest water quality which is reasonable . . . ."].)

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c. Periodic Review of Approved SQMPs/GQMPs

The RPA would require review of SQMPs at least every two years and GQMPs every five years. Review of the SQMPs/GQMPs would include third-party groups as well as other interested parties. In general, we do not oppose periodic review of SQMPs/GQMPs with Central Valley Water Board staff. However, we believe it is unnecessary for this review process to include "other interested parties." (Draft Staff Report at p. 154.) The Central Valley Water Board represents the public interest and therefore it is unnecessary for other stakeholders to participate in reviews at this level. Further, such a requirement is unprecedented and has no legal basis. SQMPs/GQMPs are designed to identify management practices that would be appropriate and applicable for the constituent of concern and the watershed in question. Thus, Central Valley Water Board review on the sufficiency of SQMPs/GQMPs is appropriate. While the SQMPs/GQMPs are public documents once submitted to the Central Valley Water Board, they are not the type of documents that require Central Valley Water Board approval and therefore they are not subject to formal public review and comment.

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Although not specified in the RPA, we anticipate the development of SQMPs/GQMPs would be required pursuant to the Central Valley Water Board's authority under Water Code section 13267. Section 13267 allows the Central Valley Water Board to require the submittal of technical and monitoring reports as long as the burden of preparing the report bears a reasonable relationship to the need for the report and the benefits to be obtained. Nothing in section 13267 requires that such reports be subject to public review or comment, or be open for discussion with other interested parties.

In all of the Central Valley Water Board's other programs, individual dischargers are not required to have management plans reviewed periodically by other interested parties. Typically, when dischargers are required to submit special studies or management plans, the plan is submitted to the Central Valley Water Board staff for review and comment, revised

based on Central Valley Water Board staff comments, and then implemented. At most, the municipal stormwater program requires that stormwater management plans be subject to public review, comment, and adoption by the Central Valley Water Board. However, this requirement for municipal stormwater management plans stems from federal NPDES permit requirements and is not applicable here. (See *Environmental Defense Center v. EPA* (9th Cir. 2003) 344 F.3d 832, 856.)

96-32 cont'd

Further, by allowing other interested parties to evaluate the sufficiency of SQMPs/GQMPs, the process may be stalled with protracted negotiations between all of the parties to determine what is sufficient. If other interested parties have concerns with the sufficiency of SQMPs/GQMPs, they may express their concerns to the Central Valley Water Board at any time without being a required entity in the periodic review process.

d. Individual Farm Water Quality Management Plans (FWQMPs)

The RPA proposes to require individual FWQMPs if objectives are not met, improvements do not occur within the approved time schedule for implementation, ***or*** where irrigated agricultural operations are not implementing requirements in SQMPs/GQMPs. In other words, FWQMPs could be required for any and/or all agricultural operations in high-priority areas. By stating that such plans could be required in any of these situations, the RPA provides no time for SQMPs/GQMPs to be developed and implemented. Further, it undermines the compliance schedule provisions in the RPA because it allows for the Central Valley Water Board to require FWQMPs even if the compliance period for the constituent of concern has not yet expired.

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e. SQMP/GQMP Requirements (Appendix D)

We are also concerned with some of the language and recommendations contained in Appendix D for the ILRP Surface and Groundwater Quality Management Plan Requirements. With respect to Key Element 3, as we have stated previously, BPTC applies only to high quality waters. (See Resolution No. 68-16.) However, the SQMP/GQMP requirements would have coalitions ensure that all growers are implementing practices that achieve BPTC. If a SQMP is required, by definition, the water body is not high quality and BPTC is not triggered.

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Similar to our earlier comments that the Draft Staff Report makes an improper presumption that all irrigated agriculture creates a discharge of waste, Key Elements 4-9 of the proposed requirements fail to account for the possibility that irrigated agriculture may not be the predominant source of the identified exceedances. As a general qualification, the requirements should state that *only* if irrigated agriculture is identified as the predominant source of the pollutant discharge should the Surface and Groundwater Quality Management Plan be required to (4) identify practices to address the constituents of concern, (5) evaluate the effectiveness of management practices, (6) describe the grower outreach strategies,

(7) track management practice implementation, (8) prepare a monitoring plan to track water quality, and (9) describe a schedule and milestones for the action taken. There is a real possibility that inputs from other point and non-point sources are contributing to the exceedances identified at monitoring sites, and identification of irrigated agriculture as the predominant source of the exceedances should be a prerequisite to taking the steps identified above.

In addition, Key Element 5 notes that acceptable approaches to the evaluation of management practice effectiveness include field studies at representative sites. (Draft Staff Report at p. D-1.) We are concerned that this language could be interpreted to mean that only field studies are acceptable, or that field studies represent the preferred approach by the Central Valley Water Board. To the extent that this section is susceptible to such an interpretation, we oppose the inclusion of that language in the Draft Staff Report. We are also concerned that Key Element 8 of the proposed GWQMP requirements could have serious cost implications. Specifically, a requirement that the GWQMP include ". . . other sites or a different depth to groundwater (e.g., monitor first encountered groundwater versus supply wells) or frequency of sample collection . . ." could result in significant expense. Finally, we are concerned that there is no requirement or limiting language that states schedules and milestones described in Key Element 9 of the GWQMP must be reasonable. Management practices may be difficult to adopt and in some cases are highly dependant on funding. As such, schedules and milestones created as a result of this proposed element must be reasonable, and the language of Appendix D should be changed to reflect this reasonableness requirement.

96-34 cont'd

f. FWQMP Requirements (Appendix D)

As a preliminary matter, we must express concern with the standard established for approval of the FWQMP. Appendix D states, "At a minimum, plans would describe those practices needed or currently in use to achieve ground and surface water quality protection." The language "to achieve water quality protection" implies that FWQMPs need to include practices that guarantee compliance with water quality objectives. As indicated previously, we do not believe this to be the appropriate standard. Instead, the goal and purpose of FWQMPs should be to control discharges of pollutants to the maximum extent practicable. This is consistent with requirements and standards imposed on municipal stormwater discharges.

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The FWQMP would require information regarding irrigation methods, acreages, and crop types. While such requirements appear to be reasonable, they fail to take into consideration the dynamic nature of farming. At best, growers can provide general information with respect to acreages farmed and the types of crops generally grown each year; however, it is not possible to account for all potential cropping patterns the grower may utilize over the next five years in an FWQMP. Further, it would not be practical or feasible to require growers to submit new FWQMPs or amendments to FWQMPs whenever farming

operations change. Likewise, it would be unreasonable and out of keeping with LTILRP goals to constrain farmers in their ability to respond to changing market conditions by altering, for example, crop choices in response to commodity price outlook.

To account for the variability and uncertainty associated with farming operations, we recommend that Appendix D be revised to require submittal of typical crop information for that agricultural operation. For example, where Appendix D would require "description of operations including, number of irrigated acres, crop types, and chemical/fertilizer application rates and practices," we recommend instead that it require similar information as follows: description of typical farming operations for the farming entity, including an estimate of irrigated acres, typical crop types, typical crop rotations, and identification of typical chemicals and/or fertilizers used for the crops identified.

96-35 cont'd

If FWQMPs are required, growers should only be required to identify potential conduits of which they have knowledge or are aware. Further, as currently proposed, the requirement is extremely broad. It suggests, for example, that growers can implement actions that will prevent any contamination from entering groundwater. While we agree that management practices should be implemented to control the discharge of pollutants to the maximum extent practicable, growers cannot provide absolute certainty that the implementation of certain practices will ensure that all potential conduits do not carry contamination to groundwater. Thus, the requirement in Appendix D should be revised to state as follows: (6) identification of any potential conduits to groundwater aquifers on the property known (e.g., active, inactive, or abandoned wells; dry wells; recharge basins; or ponds) and steps taken, or to be taken, to ensure all identified potential conduits do not carry contamination to the maximum extent practicable.

Other concerns with respect to Appendix D are as follows:

- Appendix D would require the FWQMP to include maps showing the location of irrigated production areas, discharge points, and named water bodies. Similar to comments expressed previously on the informational requirements, growers can provide maps that depict typical operations. However, it is not possible to provide maps that are not subject to change due to normal operational considerations. Also, growers can identify known discharge locations, if any exist, but may not be able to depict all potential locations due to the diffuse nature of non-point source pollution. Like the informational requirements for crop types, this provision should be revised to only require maps that depict typical farming operations at the time the FWQMP is developed and submitted to the Central Valley Water Board.

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- Appendix D would also require FWQMPs to include, "information on water quality management practices used to achieve general ranch/farm management objectives and reduce or eliminate discharge of waste to ground and surface waters." To better clarify the use of management practices, we recommend that the sentence be revised as follows: "applicable information on water quality

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management practices used to help control the discharge of pollutants to the maximum extent practicable, achieve general ranch/farm management objectives, and reduce or eliminate discharge of waste to ground and surface waters."

96-37 cont'd

- As proposed, FWQMPs would also be required to include, "measures instituted to comply with California Code of Regulations, Title 3, Section 6609 requirements for wellhead protection (from pesticide contamination) along with methods for wellhead protection from fertilizer use[]." The wellhead protection requirements from pesticide contamination are adopted, authorized, and administered by DPR. The Central Valley Water Board has no authority to determine if growers are complying with these requirements. As such, it is inappropriate for the Central Valley Water Board to require this information as part of the FWQMP. With respect to wellhead protection from fertilizer use, there currently exists no regulatory program that requires measures for such activities. Further, it would appear that such practices and/or measures would be general farm management practices to control the discharge of pollutants to the maximum extent practicable. Thus, there is no need for the FWQMP to include specific requirements for wellhead protection.

96-38

- Finally, buried in Appendix D is the following statement: "In addition to the minimum elements described above, the Executive Officer may require ground or surface water quality monitoring to evaluate the effectiveness of the practices implemented by the grower." We find it highly inappropriate to bury this important element in the appendix. By placing the information here, the Draft PEIR fails to account for and analyze potential environmental and economic impacts associated with such monitoring requirements. As a result, the economics impact assessment greatly underestimates the RPA and its potential impact to agriculture.

96-39

H. Monitoring Provisions

It is difficult to assess the monitoring provisions in the RPA because it defers establishment of monitoring requirements until such time that individual waivers or WDRs are developed. By not providing specificity with respect to monitoring requirements, the Draft PEIR is unable to adequately assess environmental and economic impacts that may be associated with such monitoring requirements. Specifically, the monitoring provisions in the RPA state that areas with insufficient information would be required to complete "assessment monitoring or studies within 5 years of long-term program adoption." However, based on such a statement, it is impossible to ascertain the extent of monitoring that may be required—especially with respect to groundwater monitoring.

96-40

In general, we are concerned with the groundwater monitoring requirements that appear to occur at the out-set of the program. As specified in Alternative 2, it is more appropriate to first rely on information from other programs and data that already exist (e.g., GAMA, DPR, CV-Salts, Department of Public Health, Department of Toxic Substances Control) to identify and prioritize the groundwater areas of concern prior to requiring expensive and unnecessary additional groundwater monitoring. Thus, it is unnecessary for agricultural coalitions and entities to conduct groundwater monitoring to identify areas of concern. Although the RPA provides for "regional groundwater monitoring," even on a regional basis, groundwater monitoring is expensive and all efforts should be made to avoid duplicative groundwater monitoring requirements.

96-40 cont'd

I. Proposed Time Schedules for Compliance are Unreasonable

The RPA proposes time schedules for compliance with water quality objectives that are unreasonable. In general, the RPA states that time schedules should be set for a period of five to ten years but cannot exceed ten years. There is nothing in any statute or regulation that requires time schedules for non-point sources of pollution to be set at no more than ten years. In fact, for several of the parameters, it may be decades before compliance with water quality objectives can be achieved. Thus, it is unrealistic for the RPA to set an arbitrary time limit of ten years for compliance with water quality objectives.

More importantly, we believe it impractical to include time schedules as part of the LTILRP. While we agree that we should be implementing management practices to protect water quality and to work towards meeting water quality standards, it is not possible to ensure compliance with standards in the timeframes provided, if at all. At most, agriculture can implement management practices that are designed to protect and improve water quality. There is no guarantee or certainty that compliance with objectives will be achieved by implementing management practices, particularly as it relates to groundwater. As we indicated in our previous communications, it is essential for agriculture that a presumption of compliance be part of any LTILRP. In other words, where an operator is implementing management practices, there must be a presumption of compliance with water quality standards in general, and water quality objectives specifically.

96-41

Additionally, the time schedule language currently proposed conflicts internally. For example, in one paragraph it states that the Executive Officer or the Central Valley Water Board may modify the time schedules, while in another it states that all objectives must be achieved as soon as technically and economically possible but no later than the timeframes identified. However, as we indicated above, we do not support the inclusion of time schedules for meeting water quality standards as part of the LTILRP at this time. Thus, instead of clarifying the language, it should be deleted altogether.

J. RPA Continues to Ignore Issues Regarding Point of Compliance and Interpretation of Narrative Water Quality Objectives

At the beginning of the stakeholder process for the LTILRP, the agricultural representatives on the stakeholder committee expressed concerns with respect to the Central Valley Water Board's continued refusal to address issues regarding points of compliance in both surface and groundwater, the application of beneficial use designations through the tributary rule and the Sources of Drinking Water Policy, as well as issues surrounding the interpretation of narrative water quality objectives. The RPA continues to ignore these fundamental issues, which must be addressed. Our ability to comply with the terms of any LTILRP is contingent on the Central Valley Water Board reasonably designating beneficial uses and interpreting narrative water quality objectives. Otherwise, we are forced to protect water bodies for uses that do not exist and have no potential for existing, as well as complying with stringent and unreasonable numeric criteria that apply to beneficial uses not present in agricultural drains. Until the Central Valley Water Board is willing to openly discuss the designation of beneficial uses, appropriate points of compliance, and interpretation of narrative water quality objectives, the agricultural industry cannot fairly assess the RPA, or any future proposal for that matter. 96-42

IV. Conclusion

The agricultural coalitions, commodity groups, organizations, and water districts identified below appreciate the opportunity to comment on the Draft PEIR, RPA, and associated documents. As indicated above, we have significant concerns with the Draft PEIR and the RPA. However, we continue to believe that Alternative 2 provides the necessary protection for water quality, while allowing the various agricultural entities the ability to assist growers and the Central Valley Water Board in developing reasonable programs for the protection of surface and ground water in the Central Valley. Further, unlike the RPA, Alternative 2 has been analyzed in the Draft PEIR and therefore is less vulnerable to CEQA challenges than the RPA. Thus, we encourage the Central Valley Water Board to consider the comments provided above, and recommend Alternative 2 as the preferred alternative for Central Valley Water Board consideration.

If you have any specific questions with respect to these comments, please contact Theresa "Tess" A. Dunham at (916) 446-7979. Thank you.

Ms. Megan Smith
RE: Comments on the Draft PEIR for Central Valley ILRP
September 27, 2010
Page 27

Sincerely,

California Farm Bureau Federation
California Rice Commission
East San Joaquin Water Quality Coalition
Merced Irrigation District
Modesto Irrigation District
Oakdale Irrigation District
Sacramento Valley Water Quality Coalition
San Joaquin County Resource Conservation District / Delta Water Quality Coalition
South San Joaquin Irrigation District
South San Joaquin Water Quality Coalition
Turlock Irrigation District
Western Growers Association
Western Plant Health Association
Westside San Joaquin Water Quality Coalition

Enc.
cc: Pamela C. Creedon, RWQCB Executive Officer (*via email only* pcreedon@waterboards.ca.gov)
Joe Karkoski, RWQCB (*via email only* jkarkoski@waterboards.ca.gov)
Adam Laputz, RWQCB (*via email only* awlaputz@waterboards.ca.gov)
TAD:cr

3.3.5.1 Responses to Letter 96

Note: Letter 137 is a duplicate of Letter 96.

96-1

See Master Response 7.

96-2

CEQA requires that a Draft EIR include a statement of objectives; identification of the underlying purpose of the project; a general description of technical, economic, and environmental characteristics; and presentation of a reasonable range of alternatives but does not require identification of a preferred project. The various project options are discussed in detail in Chapter 3, Program Description, and are analyzed in equal detail in Chapter 5, Environmental Impacts and Mitigation Measures. The Central Valley Water Board recommended Long-term ILRP alternative is described and analyzed in the Draft PEIR, Appendix A.

Also see Master Responses 3 and 4.

96-3

See Master Responses 3, 4, 7, and 9.

96-4

See Master Response 2.

96-5

See Comment Letter 1, Response 53 and Master Response 2.

96-6

See Master Response 14; Comment Letter 45, Response 7; and Comment Letter 1, Response 54.

96-7

See Comment Letter 1, Response 54 and Master Response 11.

96-8

See Master Response 16 and Comment Letter 45, Response 7.

96-9

See Master Response 6. CEQA review would not necessarily be required in all instances of significant impact; the Central Valley Water Board would assist growers in making that determination on a case-by-case basis. Textual change made to correct ambiguity in Chapter 5.7, Vegetation and Wildlife. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-9 in this Final PEIR.

The mitigation presented in the Draft PEIR regarding compliance with Clean Water Act Section 404 (Mitigation Measure BIO-MM-2, Draft PEIR page 5.7-50) does not suggest that wetland delineations would be required on active or fallowed agricultural land. The mitigation would be applicable where the management practice would be implemented in areas having wetlands or natural vegetation communities on adjacent, relatively undisturbed property (refer to the discussion under Impact BIO-3, Draft PEIR page 5.7-46).

Also see Comment Letter 107, Response 2.

96-10

See Comment Letter 45, Response 16.

96-11

The structure of Alternative 6 has been designed to allow coordination with DPR's Groundwater Protection Program and other programs that provide monitoring and management associated with irrigated agricultural operations. The development of orders (waivers/WDRs) specific to geographic areas would allow the Central Valley Water Board and third-party groups to coordinate and consider existing practices and monitoring associated with DPR, local groundwater management programs, and other programs. The Draft PEIR, Appendix A, including Alternative 6, clearly indicates the importance of coordinating with DPR in its groundwater protection program.

96-12

The proposed coordination with DPR (Draft PEIR, Appendix A, page 80), indicates that the first step would be review of water quality data. Where data indicate that pesticide use is leading to degradation of groundwater that meets or is of higher quality than water quality objectives, the state Antidegradation Policy requires that operations implement BPTC of the waste discharge. The Draft PEIR, Appendix A has been modified to clarify that the need for management practices would be determined based on the water quality goals of the Long-term ILRP. See Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-25 in this Final PEIR.

96-13

See Comment Letter 45, Response 20.

96-14

See Comment Letter 1, Response 59.

96-15

See Master Response 17.

96-16

See Master Responses 17, 9, 4, and 7.

96-17

See Master Responses 2 and 10.

96-18

See Master Response 17.

The Program alternatives contain no requirement that growers clean up existing contamination or determine if specific groundwater quality protection practices are effective. The ILRP oversees growers' obligation to avoid further contamination.

96-19

See Comment Letter 92, Response 4.

96-20

See Comment Letter 1, Response 15.

96-21

The prohibition of discharge was included to help streamline the administration of a program that addresses tens of thousands of operations. In addition, it would be inequitable to impose regulatory requirements on growers who obtain the appropriate regulatory coverage and impose no restrictions or requirements on those who avoid complying with Central Valley Water Board requirements. Use of this authority in the manner described is discussed in the State Water Board's "Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program," so this is not an inappropriate application of this tool (State Water Resources Control Board 2004). The Board's enforcement mechanism ensures that appropriate notification and time is provided to dischargers before action is taken. At any time, the discharger can avoid the prohibition by complying with the law and obtaining the appropriate regulatory coverage for their discharge of waste.

96-22

See Master Response 12 and Comment Letter 95, Response 7.

96-23

See Comment Letter 45, Response 32.

96-24

See Comment Letter 45, Response 33.

96-25

The recommendations on prioritization (tier) systems will be considered in the development of the Long-term ILRP. Also see Comment Letter 37, Response 2.

96-26

See Comment Letter 95, Response 8.

96-27

See Comment Letter 33, Response 4.

96-28

See Comment Letter 45, Response 38.

96-29

See Comment Letter 102, Response 9 and Comment Letter 1, Response 45.

96-30

See Master Response 18.

96-31

See Master Response 18.

96-32

See Comment Letter 11, Response 2.

96-33

See Comment Letter 45, Response 43.

96-34

See Comment Letter 45, Response 38 and Comment Letter 41, Response 23 for a discussion of concerns regarding the surface and groundwater quality management requirements for Alternative 6 (Appendix D to the Draft PEIR, Appendix A).

96-35

See Comment Letter 45, Response 47.

96-36

See Comment Letter 45, Response 48.

96-37

See Comment Letter 45, Response 47.

96-38

See Comment Letter 45, Response 50.

96-39

See Comment Letter 99, Response 45.

96-40

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

See Comment Letter 114, Response 10 and Comment Letter 50, Response 8.

During the development of the monitoring requirements, additional CEQA analyses may be necessary if there is a likelihood of environmental impacts not considered with specificity in the Draft PEIR.

96-41

See Master Response 13.

96-42

See Comment Letter 45, Response 55.

3.3.6 Letter 94—California Grape and Tree Fruit League, Christopher Valadez, Director of Environmental and Regulatory Affairs

Comment Letter IL94

CALIFORNIA
GRAPE & TREE FRUIT
LEAGUE

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Fresno, California 93711-5700

September 27, 2010

Via Email: ILRPcomments@icfi.com

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

Re: Draft Programmatic Environmental Impact Report (PEIR) and Economics Report
For the Long-Term Irrigated Lands Regulatory Program

Dear Ms. Smith:

The California Grape & Tree League (League) is a non-profit public policy association representing the state's fresh grape, deciduous tree fruit, and berry communities. The League's grower/shipper membership reflects over 85 percent of the respective fresh commodities which are grown, packed, and shipped by multi-generational family farms vital to California's economy and fresh fruit supply.

The process of developing a long-term Irrigated Lands Regulatory Program was met with concern as Central Valley Regional Water Quality Control Board (CVRWQCB) staff set an end goal of creating a new program which includes the monitoring and regulation of groundwater for quality, marking a change from the present IRLP surface water regulatory program. Throughout the stakeholder process we shared concerns regarding the new shape of the regulatory program, cost of the implementation of new program, including program fee increases to support CVRWQCB staff needed to execute program enforcement. The draft Environmental Impact Report assessment of the five identified alternatives re-emphasizes the scope of the stakeholder process, in identifying alternatives, while introducing a preferred alternative upon concluding debate and analysis of the previously identified potential program changes. We anticipated the release of the preferred alternative in order to review program details, assess cost of implementation and applicability to farming conditions in the fresh grape, deciduous tree fruit and berry sectors; and with the release we believe the economic impact analysis requires additional review. Costs of adding monitoring requirements, drilling new monitoring wells, and/or changing or amending an irrigation system are costs not fully addressed in the current economic analysis.

94-1

Fundamentally, there remains the presumption that all irrigated lands drain to groundwater. We continue to ask CVRWQCB staff to support the rationale that all irrigated lands drain to groundwater. For agricultural operations employing drip irrigation it would be assumed that irrigation applied is discharged to groundwater. We recognize the interest to input a long-term program but believe further analysis is needed to present sound data supporting the presumption of discharge before instituting a new program certain to add costs to irrigated agricultural operations. 94-2

Sincerely,

Christopher Valadez
Director of Environmental
& Regulatory Affairs

3.3.6.1 Responses to Letter 94

94-1

See Master Response 17.

94-2

See Master Response 12.

3.3.7 Letter 42—California Land Stewardship Institute, Laurel Marcus, Executive Director

Comment Letter IL42

CALIFORNIA LAND STEWARDSHIP INSTITUTE
550 GATEWAY DRIVE SUITE 108
NAPA. CA. 94558
707 253 1226

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

Re: Comments on the Central Valley Water Board's Irrigated Lands Regulatory Program (ILRP) Draft Program Environmental Impact Report (PIER).

September 24, 2010

Dear Ms. Smith,

The goals and objectives of the ILRP are congruent with the goals and achievements of the incentive based Fish Friendly Farming (FFF) Environmental Certification Program, run by the California Land Stewardship Institute (CLSI). The FFF program aims to reduce non-point source pollution caused by agricultural practices, hydro-modification, roads, and stream bank erosion and improve fish and wildlife habitats. The FFF program should be considered as a possible Optional Individual Certified Farm Water Quality Management Plan (FWQMP) as a means for waste discharge compliance as projected by the ILRP program so that FFF certified farms can be considered "lower priority". It is a valid and cost effective alternative to the current suggested programmatic alternatives. 42-1

The Fish Friendly Farming Program currently operates in the San Francisco Bay (Region 2) and North Coast Regions (Region 1). It has been proposed as a means of implementing the requirements of several adopted TMDL in Napa, Solano, Sonoma, and Mendocino Counties. To date, there are over 130,000 acres enrolled in the FFF program. The program entails grower outreach and education, one-on-one site evaluations, assistance with preparation of farm plans and identification and implementation schedules for Best Management Practice (BMP) implementation, stream restoration plans, and agency farm plan certification. 42-2

The product of the FFF program is to develop a farm conservation plan for each property that addresses the unique possible contaminant sources (soil conservation, creek networks, road networks, water conservation, chemical use and new plantings) of each site and recommends Best Management Practices to mitigate each source. For example, the program addresses all possible sources and pathways for chemical contamination of surface and groundwater. Required BMPs address proper agricultural chemical storage, mix and load sites, application methods and equipment calibration, chemicals used and their toxicity for fish and wildlife and alternative cultural and non chemical methods for pest and disease control. All avenues for chemical movement off site are investigated including soil erosion, direct runoff, rainfall, drift, spillage, and basic protective measures such as berms around all wells. In addition, buffers along waterways are evaluated. BMPs include recommendations to plant native riparian vegetation

along waterways to increase the riparian corridor, and/or to plant a dense grass cover crop to intercept fine sediment delivery.

The landowner supported by FFF staff, present the farm plan to the team of agency certifiers. The team consists of representatives of the National Marine Fisheries Service, the Regional Water Quality Control Board, and the County Agricultural Commissioner. The team reviews the farm plan and implementation timeline and validates its accuracy, completeness and the proposed timing of implementation. Yearly and seasonal photo-monitoring of each site is required to ensure the BMP recommendations are being implemented. Areas of focus include winterization of the farm, including all roads, creek corridors, and the progress of all projects. This provides evidence that the farmer is managing the property in compliance with the federal Clean Water Act and, in areas where there are endangered species, the Endangered Species Act.

The certification is valid for 5 years, at which time the site can apply to be re-certified. At this point, the certifiers review the plan and check to make sure that the BMPs have been implemented. Provided the farmer has made adequate progress and additional BMP recommendations are made for the next 5 years, the site will be re-certified.

42-2 cont'd

In 2008, the El Dorado & Georgetown Divide Resource Conservation Districts (RCD) asked CLSI to work with them to establish the Fish Friendly Farming Program in El Dorado County in order to implement water quality improvements and demonstrate to the Regional Board through the certification process that farmers were compliant with regulations.. The primary environmental issue for agriculture in El Dorado County is water quality and to a lesser extent, wildlife habitat. El Dorado County agricultural lands are included in the Irrigated Lands Program of the Central Valley Regional Water Quality Control Board. Together, CLSI and the RCD applied for funding to the Sierra Nevada Conservancy and received a grant in 2008. The process of adapting the Fish Friendly Farming Program to fit the specific requirements of El Dorado County required a focus primarily on water quality and agricultural chemicals and the various pathways for contamination of surface and groundwater. This version of the FFF program also includes a broad variety of crops including apples, pears, prunes, peaches, cherries, walnuts, blueberries, Christmas trees and winegrapes.

The FFF program is a comprehensive and cost effective means to meet compliance for agricultural lands waste discharge requirements. It shares all of the same goals and objectives as the ILRP program and already has a proven track record in Water Board Regions 1 and 2. We request that the Fish Friendly Farming Environmental Certification Program be recommended for farmers to meet the requirements of the ILRP Program in the Central Valley Region 5.

Sincerely,

Laurel Marcus
Executive Director

3.3.7.1 Responses to Letter 42

42-1

See Comment Letter 42, Response 2.

42-2

See Comment Letter 52, Response 6.

The support for including a third-party certifier option will be considered in the development of the Long-term ILRP.

3.3.8 Letter 49—California Rice Commission, Tim Johnson, President and CEO, and Roberta L. Firoved, Industry Affairs Manager

Comment Letter IL49

CALIFORNIA RICE COMMISSION

September 24, 2010

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

RE: CALIFORNIA RICE COMMISSION (CRC) COMMENTS ON THE PROGRAM ENVIRONMENTAL IMPACT REPORT (PEIR) FOR THE LONG-TERM IRRIGATED LANDS REGULATORY PROGRAM (LT-ILRP)

Dear Ms. Smith:

The CRC represents the state's 2,500 family farmers and marketers who grow and mill approximately 500,000 acres of rice in California. In California, rice grows primarily north of Sacramento in an area that provides winter habitat for migrating waterfowl, shorebirds and 230 species of wildlife. In California, rice is one of the top 20 commodities and contributes one-half billion dollars annually to the state's economy.

We are greatly concerned that every alternative evaluated under the PEIR produces a significant and unavoidable impact on prime, unique and important agricultural lands. All other resource impacts, however, are mitigated. 49-1

The impact on loss of agricultural lands is estimated between 9,596 – 249,490 acres (Alternative 2 low, Alternative 5 high). Unfortunately, the Central Valley Regional Water Quality Control Board (CVRWQCB) staff preferred alternative was not scoped in the PEIR, leaving the board, public and regulated community to guess its impact on this important state resource.

Impact of this magnitude is contrary to overwhelming public opinion and developing public policy which seeks to preserve agricultural lands, the value of ecosystems services they provide, and ensure that an adequate supply of locally produced food is available to consumers.

8801 FOLSOM BLVD, SUITE 172, SACRAMENTO, CA 95826
PHONE: 916/387-2264 FAX: 916/387-2265

Finally, Mitigation and Improvement Measures outlined in **Chapter 5, Section 5.10.5**, are overly optimistic and funding is inadequate to address the level of costs that are projected to be incurred under any alternative. 49-2

Please accept the CRC **Staff Report** comments from the following:

Table 2. Top 20 crops by acreage in the Central Valley, 2007

Rice is given credit with **606,000** acres of production in **2007**. The CRC utilizes the National Agricultural Statistics Service (NASS), under the U.S. Department of Agriculture (USDA), for annual acreage reporting. In 2007, the NASS/USDA report accounted for **534,000** acres planted to rice in Butte, Colusa, Fresno, Glenn, Merced, Placer, Sacramento, San Joaquin, Stanislaus, Sutter, Tehama, Yolo and Yuba Counties. The CRC assumes that the PEIR includes wild rice acreage. Wild rice grain comes from a grass, which is different than the *Japonica*, conventional rice grain-crop the CRC represents. As a statutory organization, the CRC authority extends to mandatory membership of all conventional rice (including organic) production and the mills that handle the commodity. The CRC is a commodity specific coalition bringing continuity to 30-years of managing water quality issues for the industry. Under the LT-ILRP, the CRC membership will remain static. We will not add new members because the regulatory authority of the CRC to represent the entire rice industry remains unchanged. 49-3

Table 4. Management Plan Pesticides: Coalition and Water District Monitoring Data Summary for Sites with Two or More Samples Collected (Per Analyte) between July 2004 and June 2009

The table includes thiobencarb, a rice-specific herbicide regulated under a prohibition of discharge, the Rice Pesticides Program, through the *Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins*, by the CVRWQCB. The Rice Pesticides Program is specific to the Sacramento River Basin and includes performance goals for the herbicides thiobencarb, molinate (no longer registered), and the insecticides carbofuran (no longer registered), malathion (less than 500 treated rice acres annually) and methyl parathion (no longer used). In 2004, at the start-up of the ILRP, thiobencarb was on the list of constituents for all coalitions to monitor because the CVRWQCB staff misunderstood that the pesticide registration was exclusive to rice. The UC Davis monitoring results 49-4

depicting thiobencarb exceedances were from sample collection within a closed system. That is an irrigation system specifically established to capture and hold early field releases of thiobencarb, which is the same as sampling within a rice field under a water holding requirement. The PEIR cites thiobencarb management under the Rice Pesticides Program and outside the ILRP, so the CRC questions the relevance in including the pesticide in the LT-ILRP.

49-4 cont'd

Third-party Monitoring Group:

The CRC is inserting a comment about third-party monitoring because it relates to the previous example that describes collection of thiobencarb samples within a closed system. The example demonstrates that contracting third-party monitoring is not effective in the LT-ILRP because the coalitions have the most expertise to understand field conditions. Persons outside of production agriculture have the misperception that using the coalitions to manage the ILRP and LT-ILRP monitoring programs creates a conflict of interest. Two separate consulting firms handle the monitoring and reporting for the CRC. The consulting firm is the client to the lab so that there is no connection to the CRC, and the laboratory must perform quality control/quality assurance measures as additional safeguards. The results are transferred to the second consulting firm for recording and reporting. The CRC has no ability to collect samples, handle the samples, or the data, and the transfer of information includes communication with the CVRWQCB liaison.

49-5

Please accept the CRC **Technical Memorandum** comments from the following:

Table 2-6. Constituent of Concern Applicability by Land Type

The CRC finds it troubling that the PEIR relies on information from the Pesticide Action Network (PAN), an advocacy group, rather than the unbiased data from government agencies regulating the registration and use of pesticides. Application of this table is problematic because the constituent does not match the registered use, nor does the list coordinate with the constituents in the currently approved general order for the monitoring and reporting program (MRP) under the conditional ILRP. The list is overwhelmingly incorrect due to the use of an inaccurate advocacy group database, which is problematic because of inconsistencies with the ILRP constituents of concern where the Technical Issues Committee spent resources developing evaluation protocols and methods for analysis.

49-6

Ms. Megan Smith
September 24, 2010
Page 4

The CVRWQCB provides the CRC a resolution for a commodity specific MRP. We would hope that the inclusion of **Table 2-6** in the PEIR would not undo eight years of monitoring and reporting, and thousands of dollars of work in defining a commodity specific program with reportable improvements to water quality and the environment.

The following comments are specific to rice:

Aldrin (Group A) – Not registered on rice and not a rice pesticide
Chlordane (Group A) – Not registered on rice and not a rice pesticide
Endosulfan (Group A) – Correct: No rice; not a registered rice pesticide
Endrin (Group A) – Not registered on rice and not a rice pesticide
Heptachlor (Group A) – Not registered on rice and not a rice pesticide
Lindane (Group A) – Not registered on rice and not a rice pesticide
Toxaphene (Group A) – Not registered on rice and not a rice pesticide
Arsenic – An element monitored under the ILRP, not added to rice
Azinphos-methyl – Correct: No rice; not a registered rice pesticide
Bacteria (fecal coliform/*E. coli*) – Monitored under the ILRP
Bifenthrin (in sediment) – Correct: No rice; not a registered rice pesticide
Boron – An element monitored under the ILRP, not added to rice
Cadmium – An element monitored under the ILRP, not added to rice
Carbofuran – Not registered on rice and not a rice pesticide
Chlorpyrifos – Correct: No rice; not a registered rice pesticide
Copper – Correct: Registered for use on conventional and organic rice – and an element
Cypermethrin – Not shown on the table in the rice column; registration includes rice
DDD – Not registered on rice and not a rice pesticide
DDE – Not registered on rice and not a rice pesticide
DDT – Not registered on rice and not a rice pesticide
Demeton – Not registered on rice and not a rice pesticide
Diazinon – Correct: No rice; not a registered rice pesticide
Dieldrin – Not registered on rice and not a rice pesticide
Dimethoate – Correct: No rice; not a registered rice pesticide
Disulfoton – Correct: No rice; not a registered rice pesticide
Diuron – Correct: No rice; not a registered rice pesticide

49-6 cont'd

DO – Physical parameter monitored under the ILRP
EC – Physical parameter monitored under the ILRP
Esfenvalerate – Correct: No rice; not a registered rice pesticide
Esfenvalerate/fenvalerate, total – Correct: No rice; not a registered rice pesticide
Fenproprathin (in sediment) – Correct: No rice; not a registered rice pesticide
Group A Pesticides – Not registered on rice and not rice pesticides
Iron – An element not monitored under the ILRP, not added to rice
Lambda-cyhalothrin – Not shown on the table in the rice column; registration includes rice
Lead – An element monitored under the ILRP, not added to rice
Linuron – Not registered on rice and not a rice pesticide
Malathion – Not shown on the table in the rice column; registration includes rice; regulated under the Rice Pesticides Program
Manganese – An element not monitored under the ILRP, not added to rice
Methomyl – Correct: No rice; not a registered rice pesticide
Methyl parathion – Correct: An insecticide that includes rice; regulated under the Rice Pesticides Program
Molinate/ordram – Not registered on rice and no longer a rice pesticide
Molybdenum – An element not monitored under the ILRP, not added to rice
Nickel – An element monitored under the ILRP, not added to rice
Nutrients – Monitored under the ILRP
PCBs – Not a pesticide – a manufacture chemical banned since 1979
Permethrin – Not shown on the table in the rice column; registration includes conventional and organic rice (certified products only)
pH – Physical parameter monitored under the ILRP
Sediment – Monitored under the ILRP
Selenium – An element monitored under the ILRP, not added to rice
Simazine – Not registered on rice and not a rice pesticide
Temperature – Physical parameter monitored under the ILRP
Thiobencarb – Correct: a rice-specific herbicide; regulated under the Rice Pesticides Program
Toxicity – Monitored under the ILRP
Toxicity (algae) – Monitored under the ILRP

49-6 cont'd

Toxicity (minnow, flea, algae, sediment) – Monitored under the ILRP
Zinc – An element monitored under the ILRP, not added to rice

The list of 56 constituents shows 37 with rice land use; 17 of the 37 constituents were pesticides, but only 6 pesticides are registered for use on rice, and 3 of the 6 pesticides are regulated under the Rice Pesticides Program; 4 pesticides were not identified with rice, but registered for use on the crop; 12 elements (metals) of which 8 were monitored under the ILRP – none of the elements include rice usage except copper; physical parameters, nutrients, bacteria and toxicity were monitored under the ILRP. 49-6 cont'd

Table 2-7. Hardware Management Practice Applicability by Constituent
Under the column, Tailwater Recovery (Field, Pasture, Rice Grain), constituents in this column identified with rice include chlorpyrifos, diazinon, dimethoate, diuron, malathion, simazine, thiobencarb, toxicity and toxicity (minnow, flea, algae, sediment). The CRC understands the table summarizes management practices by constituent and land type use. Under the ILRP, the CRC manages a commodity specific coalition with monitoring specific to rice pesticides. The pesticides chlorpyrifos, diazinon, dimethoate, diuron and simazine are not used on rice. Due to the unique cultural practices of rice production, the crop has no impact on the movement of these chemicals. The list also includes thiobencarb under the columns, Pressure Irrigation (Citrus, Nuts, Trucks, Vines); Sediment Trap, Hedgerow, or Buffer; Cover-Crop or Conservation Tillage. It is unnecessary to include thiobencarb under these headings because it is a rice-specific herbicide. The CRC went to great lengths in educating the CVRWQCB staff on the rationale to remove thiobencarb from the monitoring schedule for other coalitions. The PEIR cites thiobencarb management under the Rice Pesticides Program outside the ILRP, so the CRC questions the relevance in including the pesticide in the LT-ILRP. 49-7

Please accept the CRC **PEIR** comments from the following:
Chapter 5: 5.8.4 Existing Effects of Impaired Water Quality on Fish; Sources of Information
In assessing water quality impairments on fish relevant to non-point source runoff within the program area, the assessment includes studies of the potential effects on salmonoids 49-8

because these species receive the most study. An example of pesticide use that changes over time includes the bullet, " For example, molinate (a rice pesticide) was no longer sold or distributed after June 30, 2008."

During the five-year period (1977-1982), the application of molinate more than tripled on California rice fields. The Department of Fish and Game (DFG) attributed annual carp kills in the surface drains to molinate field releases. Through assessment monitoring, University research, industry involvement, and multi-agency collaboration, management practices such as water holding requirements mitigated all negative environmental impacts of molinate. In 2003, the CRC supported cancellation of molinate with a five-year phase out due to characterization of the herbicide as a human reproductive toxicant for mixers and loaders handling the product. The cancellation took place from 2003 to 2008 with existing stocks used in 2009, and the tolerance (registration) revoked on August 31, 2009. The CRC supported the cancellation as a business decision because substantial resources were necessary to dispute the human toxicological data on an older chemistry with documented resistance to water grass (weed) control. The effects on fish were not in the assessment due to industry management practice implementation starting in 1982. Including molinate as an example in the fisheries section of the PEIR is irrelevant.

49-8 cont'd

Table 5.8.7. Effects Determinations for Pesticide Active Ingredients on Listed Central Valley Anadromous Salmonids

The United States Endangered Species Act (ESA) is administered through the Fish and Wildlife Service (FWS), in the Department of the Interior, and NOAA's National Marine Fisheries Service (NOAA Fisheries Service), in the Department of Commerce. These responsibilities include listing and delisting species, designating critical habitat, and formulating recovery plans. In 1988, the U.S. EPA established the Endangered Species Protection Program (ESPP) to promote the recovery of listed species. Under a court order, the U.S. EPA must consult with the FWS and the National Marine Fisheries Services (Services) on the effects of pesticides to endangered species. Unfortunately, the process has been plagued with lawsuits and stipulated injunctions from private interest groups.

49-9

In California, the Department of Pesticide Regulation (DPR) coordinates endangered species protection strategies with the DFG, the Department of Food and Agriculture (CDFA), and the county agricultural commissioners in accordance with a State Plan. Alternative protection strategies under this project are subject to U.S. EPA authorization and FWS approval. In 1988, DPR implemented the Endangered Species Project to provide use restrictions in specific geographic areas for protection of endangered and threatened species. Implementing a federal program through the LT-ILRP (or any CVRWQCB program) is outside the jurisdiction of the CVRWQCB.

49-9 cont'd

In addition, the CRC has concerns with the assessment of pesticides found on **Table 5.8.7**. The cited draft Biological Opinions (BiOps) are fraught with erroneous information due to the time the Services took to complete the work. For example, the BiOp for malathion is completely inadequate for rice with an overestimation of actual use. The highest malathion use was on 9,278 treated rice acres (1991), and less than 500 acres annually in recent years (DPR, Pesticide Use Report (PUR). 1989-2008).

49-10

The following comments are specific to rice:
2,4-Dichlorophenoxyacetic Acid - The herbicide is used on rice, but never reported with this specific formulation. The average rice acreage treated with 2,4-D is less than 20% of the total acres – a small amount in comparison to other crops (DPR, PUR).
Molinate – No longer registered for use.
Thiobencarb – On the list in the proposed stipulated injunction, but never connected to fish toxicity, which was evaluated by the DFG in collaboration with the CVRWQCB and CDFA from 1977-1982. In 1990, thiobencarb was adopted in the Basin Plan as the data, cited in the proposed stipulation, was developed. Water holding requirements at the field level went into effect to support the secondary maximum contaminant level (MCL) for mitigating a nuisance (taste) in drinking water.

The complainant for the proposed stipulated injunction references the US Geological Services (USGS) study for San Francisco Bay runoff from the Central Valley and local watersheds, "The USGS is studying sediment transported into the San Francisco Bay Estuary from the Sacramento and San Joaquin Rivers, which carry waters from the Central

49-11

Valley where more than 500 different pesticides are used." The citation does not specify a particular USGS report, so the CRC assumes the research was through the San Francisco Bay Estuary Priority Ecosystem Study. The USGS website cites several studies for thiobencarb sampling and monitoring during the 1990s, shortly after the adoption of the Basin Plan to implement mitigation measures for taste complaints.

49-11 cont'd

In California, thiobencarb use has decreased by 75 percent since 1997 (DPR, PUR). Thiobencarb is older chemistry with a niche herbicide for specific weed pressure, which creates a minor use on California rice. Additional thiobencarb use patterns, management practices and product re-formulations have transpired since the 1990s.

The CRC appreciates the opportunity to provide feedback and expects the CVRWQCB to accept our clarifying comments in the final version of the PEIR. We reflect on the fact that the rice industry has the only commodity specific coalition in the state. The CRC has the expertise to maintain a commodity coalition from our knowledge of pesticide regulation and many years managing water quality issues.

Sincerely,

Tim Johnson
President & CEO

Roberta L. Firoved
Industry Affairs Manager

3.3.8.1 Responses to Letter 49

49-1

See Master Response 14.

49-2

See Master Response 17.

49-3

Staff used *The 2007 USDA Cropland Data Layer* to create Table 2 of the Draft PEIR, Appendix A, which is a GIS raster image of cropland. Using this data source, the crop type 'Rice' (Crop Code #3) has a total of 606,350 acres in the Central Valley. This may include wild rice, as there does not appear to be another category called 'Wild Rice.'

The 2007 Cropland Data Layer can be obtained through the USDA NCRS Geospatial Gateway website at <http://datagateway.nrcs.usda.gov/>.

Table 2 of the Draft PEIR, Appendix A is for informational purposes only and will not be used to determine enrollment requirements for the Long-term ILRP. The comment's concern will be considered relative to utilizing this information in the future.

49-4

The purpose of the Surface Water Summary (Draft PEIR, Appendix A, pages 23–44), which includes the data in Table 4, is to summarize ILRP data collected to date. Table 4 does not include data collected by UC Davis.

As noted, thiobencarb is currently being addressed in the Sacramento Valley through the Rice Pesticide Program and no additional irrigated lands programmatic requirements are necessary to address those discharges.

49-5

The comment's support for third-party monitoring, and assertion that these programs do not create a conflict of interest as described under Comment Letter 123, Response 32, will be considered in the development of the Long-term ILRP.

49-6

See Master Responses 7 and 17.

49-7

See Master Response 17.

This comment will be considered in development of the Long-term ILRP. Table 2-7 headings for the listed pesticides chlorpyrifos, diazinon, dimethoate, diuron, malathion, simiazine, thiobencarb, and toxicity may or may not entirely apply to rice, but the Central Valley Water Board knows that thiobencarb does apply to rice.

49-8

The example is provided to illustrate that pesticide use can and does change significantly over time.

49-9

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

49-10

Table 5.8-7 addresses pesticide effects, but does not provide information concerning the amount of pesticides used over time.

49-11

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