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December 2, 2011

VIA EMAIL

Charlie Hoppin, Board Chair
Fran Spivy-Weber, Vice Chair
Tam Doduc, Board Member
c/o Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street
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commentletters@waterboards.ca.gov

**Re: COMMENT LETTER – COSTS AND POTENTIAL SOURCES OF FINANCING
FOR A LONG-TERM IRRIGATED LANDS PROGRAM**

Dear Board Chair and Members of the Board:

The Southern San Joaquin Valley Water Quality Coalition (SSJWQC) comments on the Central Valley Regional Board's proposed amendments to the Tulare Lake Basin Plan concerning economic impact of the newly adopted EIR. This proposal is untimely and advances an unreviewed and erroneous estimate of costs associated with the newly certified EIR and adopted ILRP. It further makes misleading representations relative to the source of funds which will pay for these program costs. As explained below, we also suggest remedial language should the agency feel it necessary to amend the Tulare Lake Basin Plan.

I. PROCEDURAL ISSUES.

A. THE PROPOSAL IS UNTIMELY DUE TO THE APPEAL TO STATE BOARD

The economic evaluation engaged for the adoption of the ILRP was defective and inaccurate. The economic evaluation did not evaluate the belated staff alternative which was adopted by the Board. This staff alternative and the associated Economic Analysis has been the target of appeals filed with and presently before the State Board by each the environmental community and the agricultural coalitions. The State Board has until spring to act on those appeals. Unless the State Board overturns the ILRP EIR and sends it back for reconsideration, the ILRP, EIR and Economic Analysis will subsequently likely be the target of a legal challenge.



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Consequently, it is clearly improper for the State Board to take action which aligns the agency with a faulty Economic Analysis which is presently under direct appeal, and requires an impartial judicial decision by the Board. The State Board cannot sacrifice its appellate impartiality in that case, which it would do if it embraces the Regional Board's arguments on adoption of the staff alternative, CEQA review thereof, and economic analysis; all points presently under appeal.

At the very least, the State Board must defer actions until acting on the appeal.

II. SUBSTANTIVE PROBLEMS WITH THE JULY STAFF REPORT AND PROPOSED BASIN PLAN AMENDMENTS

A. THE STAFF REPORT ERRONEOUSLY (P. 3) IDENTIFIES THE EIR AS HAVING CONTAINED SIX ALTERNATIVES

The Regional Board staff continues to misrepresent the EIR as having a "sixth alternative." However, this is completely false and is merely an attempt to camouflage the fact that the staff alternative, which was subsequently adopted by the Board, did not undergo any environmental review or economic analysis. The staff alternative was merely attached to the EIR when it was publically issued. It was not a sixth alternative, and was never subject to review or analysis. The same staff that promulgated the staff alternative and did not subject that alternative to the Economic Analysis, now advances this proposed basin plan amendment seeking the State Board to repeat this mistake.

The Regional Board staff states in their July Staff Report:

"3. Irrigated Lands Long-Term Program Development

... This report evaluated six program alternatives for the long-term regulation of irrigated lands, including an Alternative 6 that was the Board staff recommended alternative when the Final PEIR was released to the public."

* * *

"3.1 Final Program EIR Long-Term Program Alternatives

The six Long-Term Program alternatives are evaluated and presented in detail in the Final PEIR..."

These statements are completely false, and those contentions were directly refuted by the Economic Analysis itself as it states throughout the document that the Economic Analysis reviewed only five alternatives, not six, as staff now alleges. (See, e.g., Economic Analysis, pp.



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1-2.) Pages 7 and 8 of the Region's staff report also falsely references a phantom sixth alternative. That false misrepresentation should not be embraced by the State Board, but instead should be stricken from these documents in its entirety.

B. THE ECONOMIC ANALYSIS COULD NOT HAVE POSSIBLY EVALUATED THE STAFF ALTERNATIVE, WHICH HAD NOT BEEN PUBLICALLY PRODUCED UNTIL AFTER THE ECONOMIC ANALYSIS WAS RELEASED

The Economic Analysis evolved over many months. In addition to the research completed by the independent contractors which had prepared the EIR and economic analysis, there were numerous meetings with stakeholders. Throughout this process, only the five alternatives were available and were the specific target of the Economic Analysis.

The staff alternative was a completely new and novel alternative that was attached as Appendix A to the Draft EIR when released and which was labeled as the "Recommended Long-Term Irrigated Lands Program." The staff alternative significantly differed from the five other alternatives and did not undergo the multiple years of review that the five other alternatives had previously undergone. Only concurrently with the release of the Draft EIR, including the Economic Analysis, was the staff alternative first made publically available. The staff alternative was never mentioned in either the body of the Draft EIR or the Economic Analysis.

Although, the staff alternative desperately asserts that it was developed from some of the elements of the five alternatives included in the EIR, the staff alternative was not evaluated to determine if it has significant environmental impacts. Moreover, the staff alternative was not evaluated to assess its economic impacts. Even if the staff alternative was only a conglomeration of requirements and select elements of many other project alternatives, neither the EIR nor the Economic Analysis would be applicable. The staff alternative now alleges that parts of it traces back to select relevant pieces of Alternatives 2 and 4 which should allow them to extrapolate an estimate of economic impact and cost. However, there is no indication that the independent economic analysis on which those estimates are based can be supported by using pieces of other alternatives. Taking isolated figures from an economic analysis that was designed to summarize the ramifications of different alternatives in their entirety will not accurately reflect the true economic impacts of a completely different staff alternative. To be adequate, the Draft EIR should, but failed to, contain a full economic impact analysis of the actual staff alternative adopted, not based only on the estimated costs of pieces assembled from the other five alternatives. Due to its failure, there is no basis on which to accurately calculate the economic impacts or costs of the staff alternative. As discussed below, the staff alternative actually had many additional components, which were not from other alternatives, and were not analyzed whatsoever.



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C. THE ECONOMIC ANALYSIS CANNOT BE RELIED UPON AS HAVING ANALYZED THE ADOPTED STAFF ALTERNATIVE WHICH IS NOW BEING CRAFTED AS GUIDED BY THE NEW "FRAMEWORK DOCUMENT"

The Region's Staff Report erroneously identifies the EIR as having a sixth alternative, which was not even drafted or available when the environmental or Economic Analysis were being finalized. (July Staff Report, p. 3.) The staff alternative, which was adopted by the Regional Board, is presently being further amended and guided by a new document referred to as the "Framework document." Like the staff alternative, the Framework was not environmentally or economically reviewed. Further, the Framework does not even resemble any of the alternatives analyzed as part of the Draft EIR. The Framework document advances many new provisions and extends the staff alternative well beyond any alternative that was included and reviewed in the Draft EIR or Economic Analysis.

Specifically, major impacts, such as, but not limited to, a new system for imposing a mix of general order waste discharge requirements and conditional waivers, a new process for public input on surface quality management plans and groundwater quality management plans, nutrient management plans in nitrate impact areas, possible fertilizer application limits, drilling new groundwater monitoring wells, hiring thousands of certified crop specialists to qualify and develop farm plans, newly regulating millions of acres under a new Tier 2, which were not previously regulated, and are all totally new regulatory elements in the adopted staff alternative and in the guiding Framework, and were never analyzed in either the EIR or the Economic Analysis. These impacts may annually cost the agricultural community more than double the \$1.32 billion which was projected by the Economic Analysis, and appears to be defective in underestimating the costs of the alternatives which it did analyze.

D. RECENT INCREASE IN THE PROJECTED ECONOMIC IMPACT

Throughout the many months of analyzing the five alternatives which were actually economically evaluated, the range of cost impact topped at \$1.32 billion annually. As stated above, that was always believed to be an inappropriately low figure.

Only at the most recent review of this matter at the Regional Board, and as reflected in the September 2011 Staff Report, was it clearly revealed that the \$1.32 billion was actually not the correct estimate of the actual impact on the Region's farm community. The Staff Report on page 1, Table 1, repeats the familiar \$1.321 billion high cost estimate, but it is labeled "Total Annualized Costs." Below that appears Table 2, entitled "Capital Costs", which would add an additional \$2 billion in costs which would add to the \$1.32 billion annual costs.

Therefore, over a 3-year period, this new regulatory program would draw out of the Central Valley farms nearly \$6 billion dollars (three years' annual costs of \$1.32 billion, and \$2 billion in capital costs).



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E. THE ECONOMIC ANALYSIS WAS DEFECTIVE AND IS UNDER CHALLENGE BY BOTH THE ENVIRONMENTAL AND AGRICULTURAL STAKEHOLDERS

The Regional Board's Economic Analysis is substantially deficient and fails to comply with the law. The Economic Analysis fails to satisfy either CEQA or the Porter-Cologne Water Quality Control Act, both of which require the Regional Board to present and identify the economic impacts of the EIR, the Framework and the staff alternative. Water Code section 13141 requires that "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. The Framework document represents the beginning of the actual implementation of the adopted agricultural water quality control program, and the Regional Board has not yet provided an estimate of the total cost of the program or identified potential sources of funding for the program.

Secondly, the staff alternative combined with the Framework contains potentially costly and time-consuming additional requirements, such as the requirement that all irrigated agricultural operations in all tiered areas complete a farm-specific evaluation and identification of management practices for Regional Board inspection. The costs of such requirements and those additional new provisions addressed above in point C. were not analyzed in the EIR or accompanying Economic Analysis.

F. THE SECTION ON "POTENTIAL SOURCES OF FINANCING" IS NAÏVE/UNREALISTIC/AND DEPARTS FROM REALITY

The report indicates that there are seven potential sources of funding to pay the program costs which the analysis anticipated (although inaccurate when reported) and as indicated above, most of the program elements which are now driving the real costs were not even available when the economics were analyzed.

Those reported seven funding sources are:

1. Private financing by individual sources.
2. Bonded indebtedness or loans from government institutions.
3. Surcharge on water deliveries to lands contributing to the water quality problem.
4. Ad valorem tax on lands contributing to the water quality problem.
5. Taxes and fees levied by a district created for the purpose of drainage management.



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6. State and federal grants or low-interest loan programs.

7. Single purpose appropriations from federal or state legislative bodies (including land retirement programs).

This representation of funding sources is widely inaccurate and therefore insults the farmers and coalitions that are actually paying for the ILRP, and will continue to be the primary funding sources for this runaway new regulatory program. The only viable funding is Option 1, "Private Financing by Individuals", however, it is a deceptive title. That title should truthfully state "additional fees will be paid by the landowners and farmers".

There will be no bonds, taxes, grants, loans, or general fund appropriation. The Economic Analysis of \$1.32 billion of new costs to the agricultural community seriously underestimated the true costs of the alternatives available at that time. The belated staff program proposal, which was actually adopted by the Regional Board and was subsequently enhanced by the Framework document, will impose perhaps two to three times the costs of the program. Whatever that total cost turns out to be, it will be imposed on Central Valley agriculture.

III. AMENDMENT OF TULARE LAKE BASIN PLAN LANGUAGE

Section 4.2 specifically addresses the Tulare Lake Basin Plan and clarifies that there is presently no similar section in this basin plan. The Tulare Lake Basin Plan does not presently have a section on estimated costs as does the more northern basin plan, therefore, there is no compelling reason to make any such amendment at this time.

Our basin has functioned adequately since 2004 in administering the ILRP without any basin plan section addressing costs. Therefore, it is apparent that we can continue to operate under the ILRP without any reference to funding in the basin plan.

It is far more prudent to remain silent than it would be to include in the basin plan any language which is clearly incorrect, and therefore invite additional appeals and challenges. It should also be clear that nothing should be advanced in the basin plan which is presently under appeal and therefore likely to be amended.

4.2-1. As addressed above, the first proposed paragraph must be amended to omit any false reference to a sixth alternative.

4.2-2. Also as mentioned above, the section on "potential funding sources" also needs fundamental amendments.

4.2-3. Lastly, the reference to the San Joaquin River programs are not applicable to the Tulare Lake Basin and therefore should be stricken.



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If the Board is compelled to place any amendment in the Tulare Lake Basin, Basin Plan, it should be amended as follows:

“4.2 Amendments to the Water Quality Control Plan for the Tulare Lake Basin

Long-Term Irrigated Lands Regulatory Program

... While the Central Valley Water Board has not established the individual orders under the Long-Term Program yet, it will not be based in whole or in part, on six alternatives described on any of the five alternatives evaluated in the EIR or economically analyzed in the Irrigated Lands Regulatory Program Final Environmental Impact Report (Final PEIR; ICF International 2011) certified by resolution R5-2011-0017. It will instead be based on a staff alternative subsequently developed and adopted by the Board. The cost estimate below was based upon and encompasses the five full range of those alternatives which were evaluated.

“The cost estimate for the Long-Term Program accounts for program administration (e.g., Board oversight and third-party activities), monitoring for groundwater and surface water quality, and implementation of management practices throughout the Central Valley. The estimated cost for the annual operational costs to comply with the Long-Term Program range from \$216 million to \$1,321 million (2007 dollars) and estimated capital costs of up to \$2,000 million based on the five alternatives analyzed. This cost estimate was a cumulative total that includes costs from the Sacramento River and San Joaquin River Basin, and the Tulare Lake Basin. The ILRP which was adopted from the staff alternative may result in substantially greater, but as now, yet undetermined costs.

Potential funding sources include: for the ILRP are principally from costs and fees imposed on the Region’s farmers.”

1. The Federal Farm Bill, which authorizes funding for conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program.



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~~2. Grant and loan programs administered by the State Water Resources Control Board and Department of Water Resources, which are targeted for agricultural drainage management, water use efficiency, and water quality improvement. These programs include:~~

~~——— a. Agricultural Drainage Management Program (State Water Resources Control Board)~~

~~——— b. Agricultural Drainage Loan Program (State Water Resources Control Board)~~

~~——— c. Clean Water Act funds (State Water Resources Control Board)~~

~~——— d. Agricultural Water Quality Grant Program (State Water Resources Control Board)~~

~~——— e. Clean Water State Revolving Fund (State Water Resources Control Board)~~

~~——— f. Integrated Regional Water Management grants (State Water Resources Control Board, Department of Water Resources)~~

~~3. Those identified in the San Joaquin River Subsurface Agricultural Drainage Control Program (see Water Quality Control Plan for the Sacramento River and San Joaquin River Basins)."~~

Thanks for considering these remarks.

Sincerely,

William J. Thomas
for BEST BEST & KRIEGER LLP
for the Southern San Joaquin Valley Water
Quality Coalition

WJT:lmg