

June 8, 2011

**Via Email and U.S. Mail**

Ms. Pamela Creedon, Executive Officer  
Adam Laputz  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670  
AWLaputz@waterboards.ca.gov

Re: Comments on Short-Term Renewal of the Coalition Group Conditional Waiver of  
Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Ms. Creedon and Members of the Central Valley Regional Water Quality Control  
Board:

This office represents the San Joaquin County Resource Conservation District, which serves as the lead agency for the San Joaquin County and Delta Water Quality Coalition ("Coalition"). The Coalition has been implementing the current Irrigated Lands Regulatory Program ("ILRP") on behalf of its members.

Our client previously objected to the Program Environmental Impact Report ("PEIR") the Regional Board prepared for the proposed long term regulatory program. See e.g., Final PEIR, Comment Letter 109 dated September 27, 2010. Among other things, our client objected that the staff proposed alternative, compiled from various elements of the PEIR's five proposed alternatives, and which belatedly became the "proposed project" under consideration was never disclosed or analyzed in the PEIR itself. Because the PEIR never evaluated the environmental impacts of the belated staff recommended sixth alternative, the PEIR is inadequate as an informational document.

Indeed, on a more fundamental level, we believe the Regional Board failed to proceed in the manner required by law in preparing the PEIR before defining the long-term program to be reviewed under CEQA. Instead, the Regional Board improperly used the PEIR to come up with the "program." That procedure, however, turns CEQA on its head. CEQA is intended to provide the decisionmakers and the public with information about a proposed project *before* an agency approves the project. Pub.Res.Code §21002.1(a) ("the purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to

the project, and to indicate the manner in which those significant effects can be mitigated or avoided."'). The statutory scheme was not intended to be used to "develop" a project as the Regional Board did here.

Requiring an agency to have a fully defined project or program before commencing CEQA review makes sense. Indeed, an accurate, stable, and "finite project description is indispensable to an informative, legally adequate EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; see also *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 ("an accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity."). An inadequate project description contaminates every aspect of the EIR process.

For example, without a well-defined project or program at the beginning of the EIR process, an agency cannot compare the proposed project to a range of reasonable alternatives in order to determine the environmentally superior alternative as required by CEQA Guideline §15126.6. That Guideline requires an EIR to "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

For these reasons, as well as the other objections contained in our previous letter and those of numerous other commenters, we believe the PEIR is legally defective for purposes of approving a long-term regulatory program at this time.

The Regional Board, however, is now considering whether to approve a two-year extension of the current ILRP. See June 9/10, 2011 Staff Report, Items 9 and 10. In part, the Regional Board is relying on the PEIR to approve the extension. Staff Report for Agenda Item 10 at 1; Proposed Resolution No. R5-2011 at 4-5. Because approving the extension merely maintains the status quo, or as the Staff Report acknowledges is the "No Project" alternative in the PEIR, it does not appear that the PEIR is actually necessary to extend the current program. See e.g., *Simons v. City of Los Angeles* (1976) 63 Cal.App.3d 455, 465 (amendment to City charter which continued existing use without an environmental change not a project subject to CEQA).

Our client does not object to the proposed project – the two-year extension of the current ILRP. Furthermore, our client does not object to the Regional Board relying on the PEIR for the *limited purpose* of approving the two-year extension, even though it appears unnecessary to approve the extension. Our client does, however, reiterate its objections to certain identified mitigation measures, which are discussed in more detail in the June 6, 2011 letter submitted by Theresa Dunham on behalf of several agricultural organizations and coalitions, including the San Joaquin County-Delta Water Quality Coalition.

Our client, moreover, expressly reserves any and all rights to challenge all aspects and deficiencies of the PEIR under CEQA if the Regional Board subsequently attempts to rely on the document for purposes of approving the still undefined long term program. Furthermore, to the extent the Regional Board's action of certifying the legally deficient PEIR is subject to challenge now, rather than when the Board actually considers a long-term project, our client reserves any and all right to challenge the PEIR as inadequate under CEQA on any grounds, or to intervene in any such challenges.

Thank you for considering these comments. We respectfully request that this comment letter be included in the record of proceedings on this matter, as well as in the record of proceedings on the proposed long-term regulatory program. See Pub.Res.Code §§21177(a) (comments may be presented to agency either orally or in writing up to close of public hearing on a project before the issuance of the notice of determination); 21167.6(e)(3), (6), (7), (10) (defining record of proceedings).

Very truly yours,



JENNIFER L. SPALETTA  
Attorney-at-Law

cc: Client