California Rice Commission
East San Joaquin Water Quality Coalition
Sacramento Valley Water Quality Coalition
Westside San Joaquin River Watershed Coalition

August 15, 2011

Via Electronic Mail Only

Mr. Brett Stevens
Central Valley Regional Water Quality Control Board
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SUBJECT: Non-Regulatory Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins, and the Tulare Lake Basin, to Provide a Cost Estimate and Potential Sources of Financing for the Long-Term Irrigated Lands Regulatory Program (Draft Basin Plan Amendments)

Dear Mr. Stevens:

The California Rice Commission, East San Joaquin Water Quality Coalition, Sacramento Valley Water Quality Coalition and Westside San Joaquin River Watershed Coalition appreciate the opportunity to provide comments on the Draft Basin Plan Amendments. We have been active participants in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) process for the development of a Long-Term Irrigated Lands Program (LTILP) and recognize that this action represents one part in the development of that program. Our comments below are specific to the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Technical Memorandum), the Staff Report for the Draft Basin Plan Amendments, and the proposed amendments.

As a preliminary matter, the Central Valley Water Board members must understand the significance of the action being proposed. Specifically, Water Code section 13141 requires the Central Valley Water Board to estimate the cost of the LTILP and identify potential sources of funding prior to adopting and implementing the program in part or whole. When Water Code section 13141 was adopted, the State Water Resources Control Board (State Water Board) clearly indicated the information would be a material consideration for any regional board. More specifically, the State Water Board stated in its Enrolled Bill Report to the Governor's office that "[t]his bill will not prevent implementation and enforcement of agricultural water quality control programs. It will require, however, that the State and Regional Boards consider, and include in the basin plans, an economic study of an agricultural water quality control program in terms of total cost estimate and potential sources of financing *before* implementing such a program." (See Attachment 1, Enrolled Bill Report to SB 904 from State Water Board at p. 1, emphasis added.) The purpose of this provision,

and the State Water Board's reason for encouraging signature of the legislation, was further expressed as follows:

> This bill is consistent with existing SWRCB policy regarding regulation of agricultural wastewater discharges.
>
> Agriculture is presently the largest user of the State's freshwater resources. The Board recognizes that in many instances discharges of agricultural wastewaters create water quality problems. However, the Board also recognizes that there are inadequate institutional, financial, and technological means at this time for the development and management of a comprehensive and effective agricultural water quality control program. While, in specific instances, agricultural discharges can and should be dealt with under existing law, long-term water quality problems, such as nonpoint source control and salinity control programs, represent more difficult problems and the costs associated with implementation of these programs can be enormous. *Therefore, it is the Board's policy that any agricultural water quality control program must be carefully examined and formulated before it is implemented, and the costs and sources of financing would be a material consideration before any decision is made.* (Attachment 1, Enrolled Bill Report to SB 904 from State Water Board at p. 2, emphasis added.)

Accordingly, the Central Valley Water Board is required to materially consider the estimated cost of this program before adopting or implementing the LTILP, or any of its individual elements.

Unfortunately, this has not occurred. Instead, the Central Valley Water Board was asked to evaluate and comment on the LTILP framework in advance of their consideration of these Draft Basin Plan Amendments. We contend that the Central Valley Water Board and its members improperly considered the LTILP framework because it did not properly consider costs prior to, or at the time of, consideration of the LTILP framework. Thus, any reliance that Central Valley Water Board staff place on the staff's LTILP framework is misplaced, including the use of the LTILP framework to estimate costs in the Draft Basin Plan Amendments.

I. Technical Memorandum

As we, and many others, indicated in our September 27, 2010 comments on the Draft Program Environmental Impact Report, we are concerned that the economic analysis in the Technical Memorandum is inadequate and excludes substantial costs associated with practices compelled or prohibited by the various alternatives. Specifically, we are concerned that the Technical Memorandum underestimates the acreage for which new or additional management practices may be required once the general waste discharge requirements are adopted.

Accordingly, the management practice costs in the Technical Memorandum, and therefore the Staff Report, are underestimated.

Further, and contrary to comments in the Staff Report, the Technical Memorandum does not include a cost estimate for staff's alternative 6. The Technical Memorandum evaluates alternatives 1 through 5 that were included in the Draft PEIR. Attached to the Draft PEIR was an appendix that included staff's preferred project alternative. Subsequent to circulation of the Draft PEIR and staff's preferred project alternative, the now referred to LTILP framework was released. The LTILP framework is significantly different from the five (5) alternatives contained in the Draft PEIR as well as staff's preferred project alternative, which was in the appendix of the Draft PEIR. In other words, the Technical Memorandum used to prepare the cost estimate for these Draft Basin Plan Amendments did not include or estimate costs associated with the LTILP framework, which will be the basis for future Central Valley Water Board actions. (See Staff Report, p. 8 ["Staff indicated that it would develop an approach modeled after a *Recommended Irrigated Lands Regulatory Program Framework Staff Report* (ILRP Framework Report), *March 2011* . . . . While the staff's approach is subject to change, and is modeled after a staff report that was not adopted by the Board, it provides additional information upon which to estimate future costs of the Long-Term Program."].) Because the LTILP framework is actually a conglomeration of other project alternatives subject to change, the Technical Memorandum does not truly analyze the cost estimates or economic impacts of the proposed agricultural water quality control program. There is no indication that the cost estimates and economic analysis for the individual alternatives in the Technical Memorandum are applicable to the LTILP framework. 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 with the LTILP framework. 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. Before relying the Technical Memorandum from the Draft PEIR, it should be revised to contain a full economic impact analysis of the LTILP framework not based exclusively on the estimated costs of pieces assembled from the other alternatives.

Moreover, by staff's own admission in the Staff Report, staff's approach may change after adoption and approval of the Draft Basin Plan Amendments. Thus, any reliance on the Technical Memorandum is useless considering the fact that none of us know exactly what will be proposed in the future. Accordingly, it is inappropriate for the Central Valley Water Board to use it and its information to estimate costs for the Draft Basin Plan Amendments.

II. Staff Report

The Staff Report implies that six (6) alternatives were properly analyzed as part of the Central Valley Water Board's California Environmental Quality Act (CEQA) process. As explained previously, that is not the case. The Staff Report, which becomes part of the

administrative record for the Basin Plan Amendments, must be modified to accurately reflect what alternatives were actually analyzed, and what were not.

More importantly, the Staff Report fails to include any discussion of economic impacts. The Staff Report provides only estimated costs of the program and does not provide the Central Valley Water Board members with material and relevant information with respect to the economic impacts that the five alternatives (and staff's subsequent amalgamation of these alternatives) may have on Central Valley agriculture and the Central Valley economy. Economic impacts are clearly part of the "total cost" of a program and should not be excluded here.

Moreover, the broad range of estimated costs presented in the Staff Report fails to provide the Central Valley Water Board members with any meaningful information in order to materially consider the costs of the proposed agricultural water quality control program (i.e., the LTILP framework), assuming that the agricultural water quality control program does not change substantially from what has been presented to date. The range goes from $216 million to $1.321 billion. The Staff Report does not articulate estimated costs associated with each alternative, or staff's LTILP framework. Instead, the Staff Report just states that the LTILP framework is likely to fall somewhere within this range. (See Staff Report, p. 10 ["Accordingly, the range of costs for staff's current approach are included in Table 1's range of Long-Term Program alternatives."].) Information this vague fails to provide the Central Valley Water Board members with useful information that they could use and consider in their decisions with respect to the LTILP framework as a whole, or for its individual parts. Further, by staff's own admission, the program may change further as it is implemented.

The Staff Report also fails to include a comprehensive discussion on the potential sources of financing. The information provided in the Staff Report is fairly generic and broad. It does not clearly explain how the agricultural community will actually pay for the increased costs of this program. Nor does it explain that the potential sources of financing are limited and that most, if not all, of the costs will be placed on individual growers with no public assistance. It does not provide any assessment at all of the availability or cost to private growers of financing for purposes of complying with the additional regulation nor of the incremental and cumulative effect on growers' ability to remain economically viable with the added regulatory burden. The potential sources of financing discussion also fails to explain how farmers are "price-takers," in that they are unable to pass on increased costs to consumers. By not including this type of information, Central Valley Water Board members cannot properly and materially consider the Draft Basin Plan Amendments.

III. Draft Basin Plan Amendments

Like with the information contained in the Staff Report, the Draft Basin Plan Amendments inadequately address or explain the costs and economic impacts of the LTILP, and fail to provide a clear discussion with respect to potential sources of funding. The cost estimate language merely parrots the range of costs, which varies to such a degree as to be meaningless. And the language for potential sources of funding is only a list of grant and loan

programs. There is no meaningful analysis with respect to the economic implications of the Central Valley Water Board's potential actions. There is also no meaningful analysis as to how much financing or funding is available from other sources as compared to what individual growers may be required to spend to implement the LTILP framework. Clearly, based on the material presented in the Staff Report and the Draft Basin Plan Amendments, Central Valley Water Board staff are merely putting forward language in an effort to state that the Central Valley Water Board complied with Water Code section 13141. However, the Staff Report and the Draft Basin Plan Amendments collectively fail to satisfy the requirements of Water Code section 13141, which requires the development of meaningful information so that it can be part of the Central Valley Water Board's material considerations. Due to the lack of clear and material information, the Central Valley Water Board should reject the Draft Basin Plan Amendments.

Overall, the Staff Report, the Draft Basin Plan Amendments, and their reliance on the Technical Memorandum are insufficient to comply with the mandates of Water Code section 13141. As explained, the information is vague and nebulous. To be meaningful, the Staff Report and the Draft Basin Plan Amendments need to collectively explain the costs for implementing the LTILP framework as the chosen regulatory program, and staff's intended implementation of that framework. Without this information, the Central Valley Water Board members cannot properly and materially consider costs and economics in their future actions for implementing the LTILP.

Sincerely,

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Attachment
TAD:cr

ENROLLED BILL REPORT

AGENCY: ENVIRONMENTAL QUALITY AGENCY	BILL NUMBER: SB 904
DEPARTMENT, BOARD OR COMMISSION: STATE WATER RESOURCES CONTROL BOARD	AUTHOR: Way

BILL SUMMARY

This bill requires, prior to implementation of any agricultural water quality control program, that there must be identified in a regional water quality control plan (basin plan) an estimate of the total costs and potential sources of financing for such programs.

ANALYSIS

A. Specific Findings:

1. Existing law requires that each of California's nine Regional Water Quality Control Boards formulate and adopt, in conformance with the State Water Resources Control Board's (SWRCB) policies, water quality control plans for all areas within their regions. These basin plans are effective when approved by the SWRCB. Before approval, the SWRCB is required to consider various factors, including economic considerations.

2. Existing law also provides that basin plans become part of the California Water Plan when they are reported to the Legislature.

3. This bill requires that, prior to any implementation of an agricultural water quality control program, there must be indicated in the appropriate basin plan:

   (a) An estimate of the total cost; and

   (b) An identification of potential sources of financing for agricultural water quality control programs.

4 This bill will not prevent implementation and enforcement of agricultural water quality control programs. It will require, however, that the State and Regional Boards consider, and include in the basin plans, an economic study of an agricultural water quality control program in terms of a total cost estimate and potential sources of financing before implementing such a program. It will not prevent inclusion of revised basin plans into the California Water Plan.

B. Fiscal Analysis:

There may be a small increase in administrative costs imposed by this bill. This can be absorbed within the existing budget by existing staff.

(Cont'd on page 2)

RECOMMENDATION: 5/7/76 SIGN.

DEPARTMENT HEAD	DATE	AGENCY HEAD	DATE
[signature]	5/6/76	Lawrence H. Haas, Legislative Representative Office: 322-2896 Res.: 966-1737	5/6/76

For Information Call: Tim Yaryan, Attorney--Work: 2-3580; Home: 392-0800.

LEGISLATIVE HISTORY

This is an original bill by the author. It was introduced because of the author's concern for the economic impact that implementation of basin plan objectives would have on agriculture. As introduced, this bill was opposed by the SWRCB both on policy and fiscal grounds. However, after considerable discussion, the SWRCB and author reached an agreement and this bill was amended accordingly. The SWRCB's position on the amended bill was neutral.

REASONS FOR RECOMMENDED POSITION

This bill is consistent with existing SWRCB policy regarding regulation of agricultural wastewater discharges.

Agriculture is presently the largest user of the State's freshwater resources. The Board recognizes that in many instances discharges of agricultural wastewaters create water quality problems. However, the Board also recognizes that there are inadequate institutional, financial, and technological means at this time for the development and management of a comprehensive and effective agricultural water quality control program. While, in specific instances, agricultural discharges can and should be dealt with under existing law, long-term water quality problems, such as nonpoint source control and salinity control programs, represent more difficult problems and the costs associated with implementation of these programs can be enormous. Therefore, it is the Board's policy that any agricultural water quality control program must be carefully examined and formulated before it is implemented, and the costs and sources of financing would be a material consideration before any decision was made. This, in our opinion, is the problem that the author is addressing in his bill. Accordingly, the Board recommends that the bill be signed.

VOTE

Senate	: Ayes, 30; Noes, 0.	(6/18/75)
Assembly	: Ayes, 73; Noes, 0.	(4/8/76)
Senate Concurrence	: Ayes, 27; Noes, 0.	(4/29/76)