

Draft – July 2012
Responses to Comments Received on the Proposed State Water Board Approval of 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 Funding for a Long-Term Irrigated Lands Program

This document contains written responses to comments submitted by the Southern San Joaquin Valley Water Quality Coalition. The letter was received by the 12:00 Noon December 2, 2011 deadline for written comments. Responses are provided following each comment.

Southern San Joaquin Valley Water Quality Coalition

William J. Thomas, Best, Best & Krieger
Letter Date: December 2, 2011

General Response:

The December 2011 comments submitted by the Southern San Joaquin Valley Water Quality Coalition (Coalition) are nearly identical to those that it submitted at the time the draft version of the Basin Plan Amendment was under Central Valley Water Board consideration. While some of the text has been changed, the comments and ideas are similar. In the October 2011 Responses to Comments, the Central Valley Water Board responded to each of the Coalition's comments expressed in its August 2011 letter.

During its consideration, the Central Valley Water Board received and provided written responses to all significant comments. The Central Valley Water Board's responses either indicated that changes would be made to the Basin Plan Amendment or related documentation in view of the comment, or indicated why changes would not be made. The Coalition's December 2011 letter does not refer to the Central Valley Water Board's October 2011 responses and does not provide an explanation for why the Coalition considers the Central Valley Water Board's responses to be inadequate. This explanation was requested in the notice of opportunity for public comment. The State Water Board cannot ascertain what the commenter believes has been adequately satisfied by the Central Valley Water Board, nor can it determine the reason for any remaining dissatisfaction. Without that information, the State Water Board does not have a fair opportunity to understand what, if any, remaining concerns exist.

The Coalition's December 2011 comments are provided in the following pages. New responses are provided for new comments, and where appropriate, responses are provided that reference, and summarize the Central Valley Water Board's October 2011 responses. The Central Valley Water Board's October 2011 responses are available at http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/amends_sacsitulare_noreg_basinplans.

Comment #1

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.

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.

Response: The Coalition's concerns regarding the accuracy of the economic evaluation¹ (hereafter referred to as the "Economics Report") are discussed in response to comment #3.

In regards to the referenced water quality petition, the commenter is correct in stating that Central Valley Water Board certification of the Irrigated Lands Regulatory Program Final Program Environmental Impact Report² (PEIR) and subsequent reliance on the document to temporarily renew the current irrigated lands program were subjects of petitions filed with the State Water Board in July 2011.³ Through the petition process, the State Water Board had the opportunity to determine whether the Central Valley Water Board's waiver renewal and PEIR Certification were inappropriate. The State Water Board's Executive Director dismissed these petitions in April 2012. In the dismissal letter, the Executive Director wrote that the petitions "fail to raise substantial issues that are appropriate for review by the State Water Board." Now that the administrative review of the petitions is complete, the comment about the State Water Board's impartiality with respect to the proposed Basin Plan amendments is moot.

To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Central Valley Water Board in April 2011, the comment is outside the scope of the proposed

¹ ICF International. 2010. *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. July. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA.

² ICF International. 2011. *Irrigated Lands Regulatory Program Final Program Environmental Impact Report*. Final. March. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA.

³ Water Quality Petitions A-2173(a) and A-2173(b) on the Short-Term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. These petitions may be found online at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/petitions.shtml

Basin Plan amendments (although the sufficiency of the PEIR is within the scope of the water quality petition). The sufficiency of the PEIR is therefore not addressed in this response to comments document.

Comment #2

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. 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.

Response: These comments are similar to those previously received during the Central Valley Water Board hearing process and were addressed in the October 2011 Response to Comments, comment number C3. As summarized below, the State Water Board concurs with the relevant portions of that response.

The sufficiency of the PEIR is outside the scope of the proposed basin plan amendments and is

not addressed in this response. Regarding the reference to six alternatives analyzed in the Economics Report, Central Valley Water Board staff corrected that statement in the final Staff Report by including a statement that staff used the Economics Report to estimate costs of the recommended program alternative since the recommended program alternative fell within the range of the five alternatives analyzed by the Economics Report. See also response to comment #3.

Comment #3

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.

Response: These comments are similar to those previously received during the Central Valley Water Board hearing process and addressed in the October 2011 Response to Comments, comment C4. To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Central Valley Water Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendments. As to the remaining issue, the State Water Board concurs with the relevant portions of the response, as summarized below.

The commenter claims that the Basin Plan Amendment Staff Report's characterization of the Economics Report was inaccurate. As described in the response to comment #2 above, the State Water Board disagrees. Section 3.2, titled "Estimated Total Costs", of the July 2011 Staff Report erroneously stated that the Economics Report contains cost estimates for the recommended program alternative. The statement should have indicated that a cost estimate for the recommended program alternative was prepared based on the analysis contained in the Economics Report. This error was corrected by the Central Valley Water Board in the final Staff Report.

Comment #4

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.

Response: These comments are similar to those previously received during the Central Valley Water Board hearing process and addressed in the October 2011 Response to Comments, comment C5. As summarized below, the State Water Board concurs with the relevant portions of the response.

To the extent that the comment addresses the adequacy of the environmental review of the staff recommended alternative found in Appendix A of the Program EIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendment.

The commenter's concern that the Central Valley Water Board adopted a "staff alternative" is in error. The Central Valley Water Board has not adopted a single recommended alternative; therefore, the range of costs for the long-term program have been estimated from the range of alternatives evaluated in the PEIR. Contrary to the commenter's suggestion, an estimate of costs for the long-term program can be constructed from components of the different alternatives. Estimates of costs were categorized based on expected management practices implementation; expected monitoring efforts; and expected administrative requirements. The costs associated with those categories were constructed as independent estimates; therefore, it is possible to construct a reasonably accurate picture of costs by assembling components of different alternatives. The estimated range of costs is based on a program similar to Alternative 2 being successful (low-end cost range) versus a program similar to Alternative 5 being required (high-end cost range).

Comment #5

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.

Response: These comments are similar to those previously received during the Central Valley Water Board hearing process and addressed in the October 2011 Response to Comments, comment C6. As summarized below, the State Water Board concurs with the relevant portions of that response.

See response to comment #4 in regards to whether the Economics Report (commenter refers to this as the "Economic Analysis") can be relied upon for this proposed amendment.

The commenter makes various statements about a "Framework." The commenter incorrectly describes the staff-developed Long-term Irrigated Lands Regulatory Program Framework (Central Valley Water Board, March 2011, Recommended Irrigated Lands Regulatory Program Framework Staff Report) (Framework). The Framework was not a regulation or a Board order, but rather, described a proposed approach for developing the orders that would collectively comprise the irrigated lands regulatory program. The Framework was considered for adoption at an April 2011 hearing, but ultimately was not adopted.

During the April 2011 hearing on the Framework, the Board indicated that staff should develop for Board consideration waste discharge requirements (orders) that will implement

the long-term program. The Board also indicated that the Framework should be considered a starting point for drafting the orders. These orders are expected to fall within the range of programmatic alternatives considered in the PEIR and Economics Report.

In regards to adequacy of environmental review of the non-adopted Framework, the Central Valley Water Board did not adopt staff's proposed Framework. As such, the non-adopted Framework is not a "project" within the meaning of the CEQA,⁴ and was not required to undergo environmental review by the Central Valley Water Board.

In regards to the sufficiency of the economic analysis of the non-adopted Framework, the commenter has also erred in stating that there has been no consideration of cost associated with the Framework. The Framework Staff Report describes the estimated costs and potential sources of financing associated with adoption of the orders described in the Framework (see pp. 31-32 of the Framework Staff Report). As described in the Framework Staff Report, the estimated cost range was based on the Economics Report. The higher end of the cost range described in the Framework Staff Report was identical to the high end cost estimate provided in the Economics Report (Alternative 5). The lower end of the cost range identified in the Framework Staff Report was based on an adjustment to the cost estimate for Alternative 2 based on comments received.

A member of the consulting team that authored the Economics Report provided a revised cost estimate based on assumptions that "... (1) the third-party framework will be successful in addressing identified water quality problems; (2) existing groundwater monitoring networks will be adequate; (3) irrigated pasture will not require 'hardware' management practices (e.g., tailwater recovery systems) to address any pasture-related issues; (4) the existing use of improved management practices on field crops in areas with constituents of concern is greater than assumed in the PEIR; and (5) for constituents identified as Tier 2, with an unknown contribution by irrigated lands, irrigated lands will be found not to cause or contribute to the identified water quality problem" (Framework Staff Report, pp. 31-32).

The Commenter's specific assertions regarding "major impacts" of the Framework that have not been previously analyzed are either incorrect, are not attributable to any alternative contained in the PEIR or staff proposal, or have no clear cost impact. The Commenter also provides no analysis of how the alleged impacts of the purported unexamined costs would lead to a doubling of the high end estimate. The Commenter's statements regarding potential unconsidered costs are discussed below:

- "...a new system for imposing a mix of general order waste discharge requirements and conditional waivers..." The Commenter is referred to Alternative 2 in the program EIR, which states that "Implementation mechanisms for this alternative could include conditional waivers of waste discharge requirements, waste discharge requirements, or conditional prohibitions of discharge," as well as the staff recommended program alternative. Alternative 2 was analyzed in the Economics Report and there

⁴ See Public Resources Code section 21065.

was no identified cost impact from having a mix of general WDRs and conditional waivers. Also, there were no comments provided at the time suggesting that Alternative 2 would have a higher cost based on having multiple implementation mechanisms.

- “...a new process for public input on surface quality management plans and groundwater quality management plans...” Staff agrees that a process for public input on water quality management plans is not described in the PEIR alternatives. However, it is not anticipated that gathering public comments on these plans will move program costs outside the current range of cost estimates.
- “...nutrient management plans in nitrate impact areas...” This element has been analyzed as part of Alternative 4 (see page 3-23 of the Draft PEIR) and as a general requirement for Alternative 5.
- “...possible fertilizer application limits...” None of the alternatives have provisions that would directly impose limits on fertilizer application. Growers might choose to reduce their application of fertilizers to comply with requirements to protect groundwater quality.
- “...drilling new groundwater monitoring wells...” This element has been analyzed as part of Alternative 5 (see page 3-28 of the Draft PEIR).
- “...hiring thousands of certified crop specialists to qualify and develop farm plans...” This element has been analyzed as part of Alternative 3 as development and approval/certification of individual farm plans (see page 3-15 of the Draft PEIR).
- “...newly regulating millions of acres under a new Tier 2, which were not previously regulated...” The additional program acreage has been considered as part of Alternatives 2-5 (see pages 2-4 and 2-5 of the Economics Report) and was considered in the estimate of costs for Alternative 6 (the recommended staff alternative). The additional acreage is not attributable to tiering or prioritization; rather it is the result of the inclusion of groundwater protection in the program. In the Framework document, “Tier 2” was used to describe areas where further investigation was needed to determine whether irrigated agriculture was contributing to water quality problems. In the Economic Analysis, those areas had been assumed to require implementation of management practices due to identified water quality problems attributable to irrigated agriculture. Therefore, the Economic Analysis cost estimates were conservative (i.e., high) for areas that were subsequently classified as “Tier 2” in the Framework document.

Comment #6

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).

Response: This comment provides the concern that the September 2011 Staff Report⁵ for the Basin Plan amendments included a higher estimate of total program cost than has been previously presented. Table 1 of the Staff Report provides the total estimated annualized cost of the long-term irrigated lands program and defines the total annualized cost as "the constant annual equivalent payment needed to cover all Long-Term Program costs, including interest." In order to develop the total annualized cost given in Table 1, costs of potential capital improvements, e.g., construction, equipment, have been annualized using an interest rate of 4 percent and added to ongoing costs such as maintenance and monitoring. The costs shown in Table 2 of the Staff Report are estimated initial (not annualized) capital costs that had already been included in the total annualized cost estimate shown in Table 1. The commenter's adding together of estimated total annualized costs and initial capital costs is not appropriate when considering that the total annualized costs include annualized capital costs. In summary, Table 2 does not provide any new costs; it only provides a different way of expressing the capital costs (i.e., as an "initial" or one-time cost versus an annual cost).

⁵ Central Valley Water Board. 2011. *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 Funding for a Long-Term Irrigated Lands Program Staff Report*. September. Sacramento, CA.

Comment #7

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.

Response: These comments are identical to those previously received during the Central Valley Water Board hearing process and have been addressed in the October 2011 Response to Comments, comment C7. As summarized below, the State Water Board concurs with the relevant portions of that response.

See response to comment #4 regarding whether the Economics Report may be relied upon for this proposed amendment.

The commenter describes the Framework as "implementation" of the long-term program. This description is incorrect. The Framework was not a regulation or a Board order, but rather, described a proposed approach for developing the orders that would collectively comprise the irrigated lands regulatory program. The Framework was considered for adoption at the April 2011 hearing, but ultimately was not adopted. See also response to comment #5.

To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendment.

The commenter provides that the Framework and the recommended staff alternative, combined, contain costs not evaluated in the Economics Report. Specifically, the comment references the following:

- "...all irrigated agricultural operations in all tiered areas complete a farm-specific

evaluation and identification of management practices for Regional Board inspection.” While Alternatives 1-5 do not specifically require a “farm-specific evaluation,” the requirement for a farm-specific evaluation is covered by the analysis of farm water quality management plan (FWQMP) requirements of Alternatives 3, 4, and 5. While, full-fledged FWQMPs would likely cost more than farm-evaluations, the estimated cost provides a high-end estimate.

Comment #8

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.
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.

Response: These comments are similar to those previously received during the Central

Valley Water Board hearing process and have been fully addressed in the October 2011 Response to Comments, comment C8. As summarized below, the State Water Board concurs with the relevant portions of that response.

It must be reiterated here that the commenter's concern that the Central Valley Water Board adopted a "staff proposal" for a long-term program is in error, as the Board has taken no such action.

Consistent with the provisions of section 13141 of the Water Code (should they apply to Long-Term Program), potential sources of financing have been identified in the Staff Report and this Basin Plan amendment. The plain language of the Water Code does not specify the level of detail for identification of financing sources and, in fact, the details provided are greater than has been provided previously in the Basin Plan. The proposed Basin Plan Amendment is consistent with the provisions of section 13141 even without additional analysis and discussion suggested by the Commenter. In addition, it would not have been reasonable for the Board to evaluate the capability of acquiring financing for each of the over 30,000 individual farmers.

Program costs will be the responsibility of individual operators. Individuals will have the responsibility for applying for any available grants and loans to try to offset any increased costs associated with program requirements. Text was added to the Staff Report that indicates that program costs will generally be borne by Central Valley agricultural operators, who are discharging wastes that could affect the quality of waters of the State. The commenter also asserts that financing costs have not been considered. This assertion is in error, as Table 1 costs are annualized total costs that include real costs associated with financing capital improvements (e.g., management practices, monitoring wells, etc.). Clarifying text was added to the Staff Report to address this concern. In summary, the Central Valley Water Board had sufficient information in the Staff Report and supporting documents to consider whether the cost estimates are reasonable and sources of financing reasonably described.

The Commenter's statement regarding funding outside of financing by individuals is inaccurate. There are currently, and have been, both State and federal programs that have either provided outright grants or loans for growers to implement improved management practices. The Commenter provides no basis for the assertion that actual program costs will amount to two to three times the estimated costs provided in the proposed Basin Plan Amendment.

Comment #9

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.

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.”

~~4. The Federal Farm Bill, which authorizes funding for conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program:~~

~~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)."~~

Response: Except for the Commenter's proposed changes to the Basin Plan amendment regarding capital costs, these comments are similar to those previously received during the Central Valley Water Board hearing process and addressed in the October 2011 Response to Comments, comment C9. As summarized below, the State Water Board concurs with the relevant portions of that response.

Board staff agrees that Porter-Cologne does not necessarily require an estimate of cost and identification of sources of financing as a precondition to the issuance of waivers or waste discharge requirements to regulate discharges from irrigated agriculture. However, there are such estimates in the Sacramento River and San Joaquin River Basins Water Quality Control Plan. Although those estimates were prepared as part of Basin Plan Amendments, inclusion of these estimates will provide a more complete and updated description of potential costs of agricultural water quality control programs.

Staff cannot recommend the Commenter's proposed changes to the Basin Plan Amendment. In general, the proposed changes are not supported by any information provided for in the record or are not accurate. It is not accurate to state that the program will be based on a "staff alternative adopted by the Board," since the Central Valley Water Board

did not adopt a specific alternative. There is no evidence to support the statement that the costs will be substantially greater than described. Finally, it would be inaccurate to state that the only sources of financing are “fees” imposed on farmers, since there are other sources of financing besides fees.

In regards to the Commenter’s proposed language regarding capital costs, the proposed insertion is inaccurate and leads one to the conclusion that the total estimated annualized cost and estimated capital costs should be added together to obtain total costs. As described in response to comment #6 above, the total estimated annual cost range of \$216 million to \$1,321 million represents the total program cost, including estimated amortized costs for capital improvements.