



Matthew Rodriguez
Secretary for
Environmental
Protection Agency

California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Edmund G. Brown Jr.
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

TO: James Herink
Staff Counsel
State Water-Resources Control Board

FROM: Pamela C. Creedon
Executive Officer
Central Valley Regional Water Quality Control Board

DATE: 14 September 2011

SIGNATURE:

SUBJECT: RESPONSE TO PETITIONS, CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

SWRCB/OCC FILE A- 2173(a)

PETITION OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE AND CALIFORNIA WATER IMPACT NETWORK

SWRCB/OCC FILE A-2173(b)

PETITION OF SOUTHERN SAN JOAQUIN VALLEY WATER QUALITY COALITION, ET AL.

INTRODUCTION

By letter dated 1 August 2011, the State Water Resources Control Board (State Water Board) has provided 30 days, subsequently extended by two weeks, to submit comments on the above petitions, SWRCB/OCC Files A-2173(a) and A-2173(b) to review actions taken by the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Regional Board). By this memorandum, I am providing the Central Valley Water Board's response to the petitions regarding the Regional Board's certification of the final *Irrigated Lands Regulatory Program – Program Environmental Impact Report* by Resolution No. R5-2011-0017 and approval of the *Short-term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* by Resolution No. R5-2011-0032. The Central Valley Water Board adopted these resolutions at its 7 April 2011 meeting and 9 June 2011 meeting, respectively. The administrative record will be provided in a separate submittal.

In regulating the discharge of waste from irrigated agriculture, the Central Valley Water Board is confronted with a daunting task. The Regional Board is addressing wastewater discharges from a vast geographic area (over 7 million acres of irrigated lands) involving tens of thousands of owners and operators, widely varying local conditions (e.g., soil types, precipitation, topography), and a broad spectrum of potential pollutants. Unlike other states,

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California has hundreds of different crop types requiring farmers to use varying agricultural practices to promote crop growth and protect crops from damaging pests. Hundreds of organizations, including water districts, pesticide and fertilizer suppliers, conservation districts, and government agencies, assist growers in their efforts to grow food and fiber.

In addition, farming takes place in an outdoor system open to the surrounding environment. Fertilizer that is not taken up by the crop becomes a potentially harmful pollutant as it is transformed into nitrate and reaches the underlying aquifer or creates excessive algae growth if discharged to surface water. Pesticides protect plants from damaging insects, but can drift to the waterway to harm aquatic insects and impact the aquatic food chain. The furrow conveying water to the plant can also convey sediments and pathogens to receiving waters as it leaves the field. This open system with its numerous pollutant pathways challenges our ability to quantify, track, and remedy agricultural activities that may be harming water quality while ensuring our regulations do not unduly interfere with the production of food and fiber and maintaining a vibrant agricultural sector.

Under this backdrop, standard regulatory approaches and expectations are not always applicable or appropriate. The challenge for the Central Valley Water Board in charting the road forward is to establish a regulatory approach that is meaningful, adaptable, accountable, and effective.

The Central Valley Water Board has successfully regulated discharges from agriculture for decades – addressing pollutant specific issues, such as selenium discharges in the San Joaquin Valley and the discharge of rice pesticides in the Sacramento Valley. In response to changes to Water Code section 13269, the Central Valley Water Board began regulating irrigated agricultural discharges more broadly with the issuance of conditional waivers in 2002. Those waivers, and the ones subsequently issued in 2003 and 2006, regulated discharges to surface water only. By building on previous successes, the Board was able to focus on surface water quality problems that were more amenable to near-term assessment and correction and begin establishing the necessary infrastructure for its longer term regulatory efforts. The approach of working with a coalition of growers allows the Board to leverage a wider agricultural support network and work with a few organizations rather than tens of thousands of individuals.

Just as with more mature Water Board programs, the eight year old irrigated agriculture regulatory program still must grow and evolve. Part of that growth is to address discharge to groundwater. In addition, the program will also evolve from a waiver-based program to one implemented primarily through general waste discharge requirements. On 9 June 2011 the Central Valley Water Board adopted Resolution No. R5-2011-0032, extending the 2006 Conditional Waiver for two years to enable the development of the new requirements. Realizing that the 2006 Conditional Waiver is not the most effective long-term solution, the Board is using the renewal as a short-term regulatory bridge to the new waste discharge requirement orders (WDRs or orders) under development.

As the Central Valley Water Board looked ahead towards the evolution of the current program, it decided to prepare a Program Environmental Impact Report (PEIR) to satisfy the environmental analysis requirements of the California Environmental Quality Act (CEQA). The PEIR analyzed several alternative approaches for a new irrigated lands regulatory program and the associated potential impact to the environment. By certifying a program EIR and not

choosing a single programmatic approach, the Board has preserved its flexibility to respond to data and information over time and adapt its regulatory approach without starting the CEQA process anew for each order developed.

Since the orders issued by the Board will not direct growers to adopt specific practices, the PEIR needed to anticipate how growers would respond to new requirements. Although there are clear water quality benefits to improving management practices, there are also potential adverse environmental impacts. The PEIR analyzes a broad range of possible responses to six project alternatives, ensuring that the scope of potential adverse environmental impacts was captured. Although the degree of practice implementation was projected to vary across alternatives, the actual practices and their associated potential adverse impacts on the environment were not expected to differ.

The approaches taken with both the short-term renewal of the conditional waiver and the development and the certification of the PEIR are reasonable and consistent with the law. Although some of the Petitioners seek to set aside the current regulatory approaches until something better comes along, doing so will halt the progress in addressing surface water quality problems and unnecessarily delay action to begin addressing irrigated agricultural impacts on groundwater.

Without the short-term extension of the conditional waiver, there will be no regulatory requirements for monitoring, for identification of pollution problems, and for the correction of these problems until the General WDRs are adopted. The Central Valley Water Board requests that the State Water Board reject the petitions and affirm the short-term renewal of the conditional waiver and the Central Valley Water Board's certification of the PEIR.

BACKGROUND

Conditional Waivers

The Central Valley Water Board adopted its first general waiver applicable to irrigated agriculture in 1982. The Board conditionally waived the requirement for submittal of a report of waste discharge for irrigation return flow as long as the discharge did not cause toxicity or excess sediment discharges that would violate turbidity objectives. Subsequent to the adoption of that waiver, the Board's regulation of agricultural discharges focused its limited resources on high priority water quality issues. For example, the Board adopted a conditional prohibition of discharge on several rice pesticides that resulted in over 95% reduction in loading resolving aquatic toxicity and municipal drinking water taste and odor issues in the Sacramento River watershed. In the San Joaquin River watershed, the Central Valley Water Board adopted waste discharge requirements that have resulted in an over 75% reduction of selenium loads to the river.

In response to changes to Water Code section 13269, the Central Valley Water Board re-examined its original 1982 waiver and significantly changed the Board's regulatory strategy for irrigated agriculture in 2002/ 2003. A more pro-active approach was developed, which required receiving water monitoring of numerous parameters to begin identifying where irrigated agriculture might be contributing to water quality problems. To take advantage of local knowledge and resources, as well as minimize costs, the Board allowed growers to form discharger coalitions.

The Coalition framework was a new concept in allowing “non-discharger” entities – the Coalitions – to take a leading role in addressing water quality issues. The waiver was given a two and a half year trial period.¹ In 2006, the Board issued a modified waiver (2006 Coalition Waiver) that retained the Coalition structure, but also required identification of coalition participants and submission of management plans when water quality problems were identified.² This time, the 2006 Coalition Waiver was given a full five-year term.

In addition to the 2006 Coalition Waiver, the Board also adopted a conditional waiver for which individual dischargers (2006 Individual Waiver) could apply for regulatory coverage.³ As opposed to the 25,000 growers who enrolled under the 2006 Coalition Waiver, only five irrigation districts and one individual grower enrolled under the 2006 Individual Waiver.

Both the Regional Board's 2003 and 2006 conditional waivers were petitioned to the State Water Board. The State Water Board did not make significant modifications to the Central Valley Water Board's conditional waivers on either occasion.

Accomplishments under the Coalition Group Waivers

Results from implementation of the current program were considered as staff prepared the program EIR and the Board deliberated on whether to renew the existing Coalition Group waiver. Some of the key program accomplishments are outlined below:

Surface water quality monitoring - The Coalitions have conducted approximately 304,800 water quality analyses since program monitoring began in 2004. The analytical results include field measurements, required laboratory analyses, and lab results that were part of a general analytical scan, but not required.

Management Plans submitted - The Regional Board has received Management Plans from the Coalitions that encompass 515 water body/parameter combinations. Several coalitions (Sacramento Valley; Delta and San Joaquin County; East-side San Joaquin; West side San Joaquin) had numerous water body/parameter combinations to address and prepared general strategies (rather than multiple individual plans). These strategies were approved in late 2008/early 2009 and were generally prioritized to first address toxicity and pesticide issues. The Coalitions have provided two annual updates on progress in implementing those strategies. The annual updates described the outreach conducted; surveys of management practices completed; evaluation of monitoring data; and other coalition-related activities.

Although the management plans have only been in place for a few years, sixteen plans have been deemed “complete,” including six for the Sacramento Valley Coalition, three for the San Joaquin County and Delta Coalition, six for the California Rice Commission, and one for the Goose Lake Coalition. A management plan is deemed “complete” when the identified water quality exceedance is no longer occurring, or it is confirmed that the cause is not associated

¹ Resolution R5-2003-0105, Conditional Waiver of WDRs for Discharges from Irrigated Lands [Administrative Record (AR) Part 1, Volume 1, Index 52].

² Resolution R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 6, Index 14].

³ Resolution R5-2006-0054, Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 6, Index 15].

with irrigated agriculture. Constituents addressed by these management plans include chlorpyrifos (1), dissolved oxygen (2), E. coli (1), total dissolved solids (2), algae toxicity (6), fathead minnow toxicity (1), and Ceriodaphnia toxicity (3). The chlorpyrifos management plan was required due to irrigated agriculture operations; however, over three years of subsequent monitoring indicated no further exceedances. All other management plans concluded that the exceedances were not caused by irrigated agriculture after investigation by the Coalition. Regional Board staff approved the approach used to eliminate irrigated agriculture as a likely cause or contributor to the exceedance.

Management practices implemented - A key step for implementation of management plans by the Coalitions is conducting surveys of management practices being performed by members. Survey results are used to characterize baseline practices (prior to implementation of new practices), to evaluate what additional practices should be implemented, and to quantify new practices put in place by growers following Coalition education and outreach. Therefore, surveys may be conducted multiple times to obtain the necessary information. To date, the Coalitions have collected approximately 3,600 surveys from member growers.

Coalition outreach and education - The Coalitions utilize multiple strategies for their outreach efforts. Regular member meetings are held on an annual basis. Additional focused outreach meetings are held to address specific water quality problems in specific watershed areas. On-site individual meetings with growers are being conducted in some watershed areas where a persistent water quality problem exists.

The Coalitions also mail newsletters to their member growers on a semi-annual basis to keep them informed of water quality issues, useful management practices, water quality improvement funding opportunities, Central Valley Water Board actions and requirements, and grower responsibilities. Additionally, the Coalitions mail notifications to growers when a water quality problem has been identified in a watershed area. Management Practice Manuals developed by the Coalition for Urban and Rural Environmental Stewardship (CURES) are also distributed to growers. The Coalitions also work closely with their member growers to help them obtain grants that can pay a portion of the costs associated with installing the more costly management practices.

County Agricultural Commissioner Memorandum of Understanding (MOU) - In 2005, an MOU between the Central Valley Water Board, the State Water Board, the Department of Pesticide Regulation, and the Agricultural Commissioners of Butte County and Glenn County established a Pilot Program wherein the Agricultural Commissioners (Commissioners) were funded to provide support for the irrigated lands regulatory program. Because one of the primary duties of the Commissioners is enforcement of pesticide regulatory requirements, they regularly interact with growers on a local level. Their knowledge of the agricultural industry and practices can provide a critical link for successful implementation of the conditional waivers.

Several important tasks for implementation of the conditional waivers were accomplished by the two county Commissioners, including performing field surveys and farm inspections to document management practices in five different Sacramento valley watersheds; providing education and outreach information to agencies that work with growers, the Coalitions, and directly to ranchers and growers; creation of GIS layers and query tools for the conditional waivers; support of non-participant outreach through on-farm inspections and review of mailing lists; and support of Coalition management plan development with tools and knowledge. The Commissioners also provided timely information about pesticide use, cropping patterns and identified useful management practices.

Compliance and Outreach - The Central Valley Water Board has also had an active compliance and outreach effort. Using GIS technology and information provided by the Coalitions on their participants, the Regional Board identifies parcels that may include irrigated crop land and are not enrolled in the Coalition Group waiver. The Central Valley Water Board first mails those landowners a post card informing them of the Regional Board's regulatory requirements and encouraging them to voluntarily enroll in the irrigated lands program (ILRP). If there is no response from the post card, the Executive Officer pursues progressive enforcement. Since fiscal year 2007/2008, there have been nearly 3,400 post cards mailed; over 2,500 13267 Orders issued; 450 notices of violation sent; and six administrative liability complaints issued.

In addition, the Central Valley Water Board has responded to a number of complaints associated with irrigated agricultural discharges. Those complaints have resulted in both formal and informal enforcement action. The Regional Board has coordinated its response with the local county agricultural commissioner, when it is pesticide related, and has coordinated enforcement with the Department of Fish and Game. In its most significant enforcement action, the Central Valley Water Board issued a \$300,000 fine for sediment discharges from a nearly 1,000 acre almond orchard.

The last several years of regulating irrigated agricultural discharges under a single Coalition Group Conditional Waiver has resulted in significant progress in many areas; although much work remains to be done. The Coalition Waiver has served its purpose as an interim step in the process of developing a broad regulatory approach for irrigated agriculture. The lessons learned from that interim step informed the Central Valley Water Board in its preparation of the program EIR and will inform the Regional Board as it moves forward in adopting the orders that will constitute its long-term irrigated lands program.

Program Environmental Impact Report

The Central Valley Water Board understood that its regulatory approach for irrigated agriculture was incomplete in that the program only regulated discharges to surface water and did not address discharges to groundwater. When it issued the 2006 conditional waivers, the Regional Board directed staff to continue preparation of an Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) that would comprehensively address discharges of waste from irrigated lands to waters of the State.⁴

The 2006 conditional waivers were challenged in superior court, but resulted in a stipulated judgment between the Central Valley Water Board and the parties without any admissions of liability, requiring the Regional Board to consider certification of an Environmental Impact Report by 31 March 2011.⁵ That deadline was subsequently extended to April 8, 2011.⁶

Staff's effort to prepare a Program Environmental Impact Report (PEIR or Program EIR) was supported in part by \$5 million of State Water Board Clean-up and Abatement Account funds. The funds were used to conduct monitoring of surface waters receiving agricultural drainage to

⁴ Resolution R5-2006-0053, at findings 23 and 37.

⁵ Stipulated Judgment Between all Parties, *California Sportfishing Protection Alliance v. Central Valley Regional Water Quality Control Board* (Sac. County Court Case No. 07CS00807) [AR Part 1, Volume 30, Index 7].

⁶ See Letter from Deputy Attorney General Deborah Barnes to Mike Lozeau (Sep. 30, 2010) [AR Volume 36, Index 21].

characterize the existing conditions of those waters and enlist contractor support to prepare the PEIR documents.

In preparing the PEIR, the Central Valley Water Board engaged interested parties in an extensive stakeholder process. The Central Valley Water Board held an initial series of CEQA scoping meetings in early 2003. In 2006, a draft Existing Conditions Report (ECR) was prepared and circulated by the Central Valley Water Board's contractor for a 60-day comment period. Seven outreach meetings were held throughout the Central Valley to discuss the draft ECR.

Board staff held a second series of scoping meetings in early 2008. At those scoping meetings, many stakeholders told staff that they wanted to take an active role in the development of the program alternatives to be considered in the EIR.

In Fall 2008, staff convened a Stakeholder Advisory Workgroup to provide staff with input on the development of the long term program. Workgroup members were required to commit to a series of meetings over the course of nine months to provide Regional Board staff with input on the Program EIR. The Workgroup included over 50 stakeholders representing local, State, and federal government; industry, agricultural, and environmental justice and environmental representatives throughout the Central Valley.⁷ The Workgroup operated under a Charter document.

The Stakeholder Advisory Workgroup came to consensus on the goals and objectives of the program, with the exception of one objective, and agreed that five project alternatives represented a reasonable range of alternatives to evaluate for CEQA purposes. The Workgroup did not come to consensus on any specific project alternative.

Per the Workgroup Charter, staff originally did not intend to continue informal public participation to complete the drafting of the Program EIR. However, the Workgroup requested Regional Board staff to identify their recommended approach based on an initial review of the five alternatives. Central Valley Water Board staff accommodated that request and developed a "straw proposal," which was composed of elements and ideas from the five alternatives. Staff met several times with members of the Workgroup to discuss the straw proposal from January through May 2010. Based on feedback from the stakeholders and further evaluation of legal requirements, Board staff modified the straw proposal in developing its Recommended Program Alternative, which was included and evaluated in the Draft PEIR as Appendix A.

The Draft PEIR was released in July 2010. Staff provided a 60-day period for the submittal of written comments on the Draft PEIR. In September 2010, Board staff held public workshops in Tulare, Modesto, Rancho Cordova, and Chico to describe the Draft PEIR and receive public input. In addition, staff held several informal meetings with interested parties during the comment period. The public review process generated 145 comment letters with over 1,100 individual comments.

⁷ A number of the petitioners were Workgroup members and participated consistently throughout the process. The California Sportfishing Protection Alliance participated in an initial organizational meeting (December 2008), but did not attend subsequent meetings.

Numerous written comments requested clarification or further description of the recommended program alternative. In response to those comments, Central Valley Water Board staff developed a draft paper to provide staff's conceptual ideas based on the alternatives presented in the PEIR on how to regulate irrigated land moving forward. This draft paper was referred to as the Long-Term Framework. Staff's intent was to seek input, feedback and direction from the Board on their conceptual thoughts. Copies of the draft paper were provided to the stakeholder group for their review and comments. Although the conceptual ideas presented in the Framework would not have been binding on staff, in an effort to give some level of assurance to the stakeholder group, staff believed a resolution by the Board agreeing to the general concept would be appropriate. Staff scheduled an agenda item for the Board to consider adoption of Framework resolution on the same day it would consider a resolution certifying the Final PEIR.⁸

The final Program EIR was certified by the Board at its April 2011 meeting. The Board satisfied the conditions of the stipulated judgment when it considered and certified the Program EIR at its 7 April 2011 meeting.

At the same 7 April 2011 meeting, the Central Valley Water Board opened a new hearing and proceeded to consider the proposed Framework resolution. After hearing comments critical of the proposed resolution and after discovering the stakeholders' confusion regarding the intent and purpose of the draft document and applicability of CEQA to the Board's action, the Board decided not to adopt the resolution. Instead, the Board directed staff to begin developing draft orders and to report back for further direction at the next Board meeting. Petitioners refer to the draft resolution as the "Long Term Framework." This implies that the Board took final action on the proposed resolution. However, since staff's proposed resolution was never adopted by the Board, there is no adopted "Long-Term Framework."

Short-Term Renewal of 2006 Coalition Group Waiver

At its June 2011 meeting, the Central Valley Water Board renewed the Coalition Group conditional waiver for two years and directed staff to begin developing orders to address discharges to groundwater and surface water from irrigated lands. Identifying the waiver renewal as a CEQA "project," the Board relied upon the Program EIR for the associated environmental analysis, acknowledging the potential adverse environmental impacts associated with continuation of the Coalition Group conditional waiver. The PEIR identified a number of practices implemented by growers that could result in potential impacts, if not mitigated. Renewal of the 2006 Coalition Group conditional waiver in June 2011 included additional provisions to mitigate those identified potential impacts.⁹

Because the Board relied upon the Program EIR for the environmental analysis for the waiver renewal and issued a notice of determination acknowledging that fact, the Petitioners are entitled to challenge the Program EIR under CEQA. Specifically, Public Resources Code section 21167(c) allows a lawsuit challenging the adequacy of an environmental impact report within 30 days of a lead agency's filing of a notice of determination. Before it can file such a lawsuit, however, a litigant must file a water quality petition with the State Water Resources

⁸ See Central Valley Water Board 7 April 2011 Board Meeting agenda, item 7.

⁹ See Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Attachment B [AR Part 1, Volume 39, Index 43].

Control Board.¹⁰ For this reason, the petitions contain numerous contentions challenging the adequacy of the underlying Program EIR.

**RESPONSE TO PETITION A- 2173(a)
PETITION OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE AND CALIFORNIA
WATER IMPACT NETWORK (“Environmental Group Petitioners” or “Environmental
Groups”)**

The Environmental Group Petitioners make the following contentions:

- A.1. Renewing the existing waiver program for two more years is inconsistent with the State’s Antidegradation Policy.
- A.2. Renewing the existing waiver for two more years violates the Nonpoint Source Policy (NPS Policy).
- A.3. Renewing the existing waiver program for two more years is inconsistent with the public interest and Water Code § 13269.
- B. The renewed waiver is inconsistent with the State’s Antidegradation Policy and water quality objectives because it fails to address ground water pollution.
- C.1 General purposes and standards under CEQA
- C.2 The PEIR fails to include a stable project description – indeed, no proposed project is included.
- C.3 The objectives borrowed from the stakeholder process attempt to lend support to purported benefits of elements of Alternative 1 – including its regional planning basis and lack of farm specific information of any sort – which are its main faults.
- C.4 The PEIR fails to identify the superior alternative.
- C.5 The PEIR does not provide meaningful comparative analysis of the selected alternatives because the assumption that all five alternatives would be equally effective at implementing BPTC and achieving standards is unsupported by any evidence.
- C.6 The Regional Board may not approve four out of five of the proffered [sic] alternatives because they would conflict with other laws, i.e. Porter-Cologne.
- C.7 The PEIR fails to consider a reasonable range of alternatives because most of the alternatives are weighted down with components that render them ineffective.
- C.8 The PEIR ignored CSPA’s and others’ scoping comments.
- C.9 The PEIR overlooks a number of important significant impacts.

¹⁰ Water Code § 13330, subd. (c).

C.10 The PEIR's analysis of many key potential impacts and the alternatives' proposed mitigations are not supported by substantial evidence.

Below are responses to these contentions, which are labeled as "Environmental Groups' Contentions" to differentiate from the other petition. To the extent the contentions address alleged deficiencies in the Program EIR, the responses below summarize and supplement the responses to public comments already included in the Final Program EIR, which is hereby incorporated by reference. For ease of review, each contention is summarized in italics in the beginning of each response.

Response to Environmental Groups' Contention A.1

Renewing the existing waiver program for two more years is Inconsistent with the State's Antidegradation Policy

Central Valley Water Board staff agrees that discharges of waste above water quality standards or above background conditions that cause pollution are not to the maximum benefit of the people of the state. The Conditional Waiver, however, does not authorize discharges of waste from agricultural lands that (1) are above water quality standards, (2) cause exceedances of water quality standards in receiving waters, (3) affect beneficial uses, or (4) cause nuisance. The Conditional Waiver explicitly prohibits such discharges. It also requires Coalition Groups and/or dischargers to implement management practices to protect the waters of the state.

The Conditional Waiver does not violate State Water Board Resolution 68-16 because it does not authorize the degradation of any high quality waters. The Water Code authorizes, and the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy) affirms, the use of conditional waivers to address non-point source pollution. It is not a violation of the Water Code to allow conditional waivers of waste discharge requirements. Water Code section 13269 does not limit conditional waivers to insubstantial discharges of waste. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). As stated in finding 23 of the Conditional Waiver, such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution 68-16, and it is not necessary for a regional water board to conduct an anti-degradation analysis for those waters. The Conditional Waiver does not authorize further degradation of such waters – it seeks to improve the quality of those waters.

With respect to surface water discharges to high quality waters, the Conditional Waiver does not allow further degradation. Instead, the Conditional Waiver requires compliance with water quality standards, protection of beneficial uses, and prevention of nuisance. In addition, Provision C.2 of Attachment B of the Conditional Waiver requires Coalition Groups and/or Dischargers to implement management practices to achieve best practicable treatment or control that will reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and prevent nuisance. This requirement applies regardless of whether the receiving water is high quality or not. This approach is similar to waste discharge requirements that require compliance with water quality standards and implementation of best practicable treatment or control (BPTC).

The Central Valley Water Board concurs that more information on the types of practices being implemented, their effectiveness, and whether they achieve BPTC will help advance the irrigated lands regulatory program. In developing new WDRs to regulate discharges from irrigated agriculture, the Board will be improving its efforts to collect information on management practices and their effectiveness. With that said, the Conditional Waiver continues to require submittal of relevant and important information about management practice implementation. Had the Board allowed the 2006 Conditional Waiver to lapse before adoption of new general WDRs, it would have set back its information collection efforts significantly.

Even assuming *arguendo* that the waiver will authorize some degradation, any such degradation would not go beyond any levels previously authorized by the 2006 Conditional Waiver. If a decline in water quality was permitted consistent with state antidegradation policies, the most recent water quality resulting from the permitted action constitutes the relevant baseline for determination of whether the water body is high quality.¹¹ To the extent that the Environmental Groups seek an analysis of a claim that the 2006 Conditional Waiver authorized degradation of high quality waters in violation of State Water Board Resolution 68-16, that argument is barred by the statute of limitations.¹²

Response to Environmental Groups' Contention A.2

Renewing the existing waiver program for two more years violates the NPS Policy.

The Conditional Waiver does not violate the NPS Policy with respect to discharge from irrigated lands to surface waters. The Conditional Waiver contains conditions or findings that address the five key elements of the NPS Policy. Consistent with Element 1 (purpose of nonpoint source program), the Conditional Waiver explicitly requires compliance with water quality standards, protection of beneficial uses, and prevention of pollution or nuisance.

Consistent with Element 2 (description of management practices), the Conditional Waiver requires implementation of management practices to comply with water quality standards, protect beneficial uses, and prevent pollution or nuisance. The Conditional Waiver requires Coalition Groups and/or dischargers to submit management plans that specifically identify the management practices used, as directed by the Executive Officer. Coalition Groups and/or Dischargers must describe and implement management practices consistent with Element 2. This requirement, carried over from 2006 waiver, has provided the Board with significant evidence of management practice implementation and improvements in water quality (see discussion in Background section).

Element 3 (time schedule and milestones) recognizes that it may take time to achieve water quality standards and that various processes may be needed. The Conditional Waiver requires all Coalition Groups and dischargers to implement management practices to achieve

¹¹ See, e.g., State Water Board Order WQ 2009-0007, at p. 12.

¹² As mentioned in the Background section of this response, the Central Valley Water Board satisfied the conditions to stipulated judgment resulting from the Environmental Petitioners' challenge to the 2006 Conditional Waiver when it considered and certified the PEIR in April 2011. Any further challenges to the 2006 Conditional Waiver are barred by Water Code section 13330.

compliance with water quality standards. A general time schedule for compliance is not included in the Conditional Waiver. However, where management plans are required, such management plans must include time schedules to achieve compliance with water quality standards. Monitoring and reporting are required on a set time schedule, and management plans are required as directed by the Executive Officer as water quality problems are identified. In addition, the Conditional Waiver requires management plans to be submitted whenever there is more than one exceedance of a water quality standard in three years, unless the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.¹³ No one time schedule would be applicable to all water quality problems associated with irrigated agriculture.

Consistent with Element 4 (feedback mechanisms), the Conditional Waiver requires monitoring and reporting, and these reports are available to the public and posted on the Central Valley Water Board's website. The monitoring measures, protocols, and associated frequencies are all specified in the Monitoring and Reporting Program for Coalition Groups or are contained in Coalition specific MRP orders. The Board frequently holds and will continue to hold meetings to obtain updates and provide an opportunity for public review and comment. The Central Valley Water Board's Executive Officer's report has a special section on the Irrigated Lands Regulatory Program, which provides the Board and public with frequent updates on activities related to implementation of the program. Finally, as mentioned in regards to Element 2, the Conditional Waiver requires reporting of management practice implementation and corresponding improvements in water quality. While there are opportunities for this process to be improved, the current requirements have resulted in important steps forward, and will continue to do so until the discharges are transitioned from the Conditional Waiver to coverage under WDRs.

Consistent with Element 5, the Conditional Waiver makes clear the enforcement mechanisms, including termination of the Conditional Waiver and/or termination of coalition group authorization. As described in the Background section, *ante*, the Board has also taken enforcement action in a number of instances. The Regional Board may consider other options to assure implementation of the NPS Policy.

Response to Environmental Groups' Contention A.3¹⁴

Renewing the Existing Waiver Program for Two More Years is Inconsistent with the Public Interest and Water Code § 13269

It is not always clear what is in the best interest of the public, but it is clearly NOT in the best interest of the public to stop regulating and monitoring discharges to surface waters from 5 million acres of Central Valley irrigated agriculture.

Water Code section 13269 authorizes regional water quality control boards to waive waste discharge requirements if such waiver is in the public interest. The statute does not define what is in the public interest. The Central Valley Water Board considered the goals of the

¹³ See Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 39, Index 43], Attachment B, condition B.7.

¹⁴ To the extent that Contention A.3 duplicates Contentions A.1 and A.2, the Central Valley Water Board does not repeat its responses to those contentions here. Instead, it incorporates those responses by reference.

Water Code and the interests of the public, including environmental and discharger interests. In finding 12 of the Conditional Waiver, the Board made a finding that a short-term renewal of the Conditional Waiver is in the public interest. In explaining the basis for the finding, the Board stressed that an interim continuation of the current regulatory program would minimize the disruption that would have resulted had it let the 2006 Conditional Waiver expire before the new WDRs were in place. It also explained that renewing the waiver would maximize the resources available to develop the new WDRs. It then provided seven additional reasons for making the public interest finding.¹⁵ In renewing the Conditional Waiver, the Board found that it would take up to two years to finalize the new orders.¹⁶ While it may take up to two years or longer¹⁷ to finalize all of the orders, the Central Valley Water Board minimized the reach of the extension by automatically excluding dischargers from Conditional Waiver coverage as each replacement WDR is adopted.¹⁸

Petitioners contend that renewal of the Conditional Waiver is not in the public interest because the Conditional Waiver does not protect water quality. In doing so, it argues that the current program has not been effective, and has been unenforceable. It also points to conclusions made by the Central Coast Regional Water Board staff about the efficacy of its program.

While further improvements to the irrigated lands regulatory program are warranted and will be made, the Central Valley Water Board largely objects to these characterizations. Statements made by the staff of the Central Coast Water Board about the effectiveness of its irrigated lands conditional waiver are not germane to the instant petition. Nevertheless, the Central Valley Water Board notes that the Central Coast Water Board has renewed its existing waiver twice subsequent to issuance of the preliminary staff report.¹⁹ It has done so while staff continues to develop proposed revisions to its irrigated lands regulatory program. The Central Coast Water Board took this approach, which is similar to that taken by the Central Valley Water Board, despite the staff report's critical review of the existing conditional waiver.

In regards to the enforceability and efficacy of the current program, the Conditional Waiver requires dischargers to comply with water quality standards and to implement management practices. In addition, the Executive Officer may request a management plan at any time and that management plan must, among other things, evaluate the effectiveness of existing

¹⁵ Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 39, Index 43], finding 12. Those reasons include, but are not limited to, findings that the Conditional Waiver complies with Water Code section 13269, requires compliance with water quality standards for surface water discharges, includes conditions intended to reduce and prevent pollution and nuisance and protect beneficial uses, optimizes the use of staff resources, and provides regulatory flexibility through participation in Coalition Groups.

¹⁶ *Id.* at finding 6.

¹⁷ Please note that subsequent to the June 2011 hearing, Board staff have distributed a revised schedule for completing all of the proposed general WDRs that would result in the final general WDR being completed after 30 June 2011. The revised schedule reflects an additional process step to allow for interested parties to informally comment on an administrative draft. Should additional time be required beyond the expiration date, Board staff would request an extension of the Conditional Waiver only for those geographic areas not covered by a general WDR.

¹⁸ Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 39, Index 43], at finding 48 ("The Conditional Waiver does not apply to discharges of waste that are regulated under another Conditional Waiver, individual WDRs or general WDRs.").

¹⁹ Order No. R3-2010-0040 (July 8, 2010); Executive Officer Order No. R3-2011-0208 (March 29, 2011) [AR part 1, Volume 32, Index 5 and AR Part 1, Volume 38, Index 59].

management practices in achieving applicable water quality standards; propose a time schedule to implement the plan and achieve water quality standards; identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its participants propose to implement to achieve applicable water quality standards; and identify how the effectiveness of those additional actions will be evaluated.

To date, there has been substantial progress in documenting management practice implementation and improvements in water quality. The Board has followed a typical process for addressing water quality problems – 1) monitoring and data collection; 2) assessment of data; 3) development of plans to address identified problems; 4) implementation; and 5) evaluation. As discussed in the Background section, *ante*, the monitoring, assessment, and planning processes have resulted in the collection of hundreds of thousands of water quality data and the development of plans addressing over 500 parameter/water body combinations.

Ensuring compliance when addressing a large group of dischargers is a significant task, whether using a conditional waiver approach or using general waste discharge requirements. An example is the General Industrial Stormwater Permit Program, which took many years to achieve a high percentage of compliance. The Industrial Stormwater Program addresses about 2,500 sites. There are over seven million acres of irrigated lands in the Central Valley, which involves tens of thousands of parcels and more than 30,000 owners or operators. The Central Valley Water Board is using a conditional waiver as the regulatory tool as an interim program due to the unprecedented large-scale nature of the long-term program. This approach is consistent with and recommended in the NPS Policy.

The Regional Board is following the iterative approach set forth in the renewed Conditional Waiver, which is similar to the Municipal Stormwater Program. When an exceedance of standards is identified based on monitoring data, a report must be submitted to the Board within five business days describing the actions to be taken to address the exceedance. Whenever there is more than one exceedance of a water quality standard in three years, the Coalition Groups must propose management plans for Executive Officer approval.²⁰ The Coalition Groups are required to report annually on their progress in implementing the management plans, the effectiveness of the management practices, and revise the plans, if necessary.²¹

The management plans have been approved relatively recently (late 2008/early 2009) and progress on management plan implementation is reported annually. However, there is some evidence of improvement even at these early stages. The East-side San Joaquin water quality coalition has conducted dozens of on farm interviews and surveys of growers in watersheds with identified water quality problems. Receiving water data collected from those watersheds suggests the frequency of exceedances is decreasing. In the Sacramento Valley, farmers in El Dorado and Napa counties participated in a pilot program to document management practice implementation in exchange for reduced monitoring. Over 95% of the Coalition

²⁰ See Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 39, Index 43], Attachment B, condition B.7.

²¹ See Conditional Waiver, Resolution No. R5-2011-0032, Short-Term Renewal of Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands [AR Part 1, Volume 39, Index 43] Attachment B, condition B.6.

members in each county participated and the Coalition has begun the process of on-farm verification of management practice implementation. The rice coalition took early action based on increasing levels of propanil to develop a management plan, although the trigger for requiring a management plan (two exceedances in a three year period) had not been reached. The first year of follow-up monitoring suggests that propanil levels in receiving waters have stabilized or decreased. A number of the problems that the Petitioners cite have, in a number of instances been shown to not have an irrigated agricultural source. Management plans for the Rice Coalition, Goose Lake Coalition, and Sacramento Valley Water Quality Coalition have been deemed complete after the appropriate studies and information were provided to the Regional Board (see Background section of this response).

In summary, the use of a conditional waiver in this circumstance does not violate section 13269 or the policies of the State Water Board, which specifically contemplate the use of conditional waivers for nonpoint source discharges. As properly found by the Board, the temporary renewal of the 2006 Conditional Waiver is in the public interest because it preserves the status quo only as necessary to transition dischargers into the long term regulatory program as it comes online. Again, it is clearly NOT in the public interest to allow regulation of irrigated agriculture to lapse until the General WDRs are adopted.

Response to Environmental Groups' Contention B.

The renewed waiver is inconsistent with the State's Antidegradation Policy and water quality objectives because it fails to address ground water pollution.

The Environmental Groups do not provide any legal argument in support of their contention that the renewed Conditional Waiver, because it fails to address groundwater discharges, is inconsistent with the State's Antidegradation Policy and water quality objectives. With that said, Central Valley Water Board staff agrees that groundwater is an extremely important resource in the Central Valley. As a new and complex regulatory program involving millions of acres and thousands of surface water bodies, the Board chose in 2003 to prioritize its regulatory efforts and begin the regulation of discharges of waste from irrigated lands to surface water. The Board has directed staff to develop new WDRs over the next two years that regulate groundwater. The directive was memorialized at the waiver hearing and in the board members' agenda package for the waiver renewal.²² This directive was noted by two Board members during an informational item discussed by the Board immediately before the hearing on the waiver renewal.²³

In summary, the Central Valley Water Board is in the midst of developing orders that will make improvements in its surface water quality efforts and will broadly regulate discharge from

²² The summary of the proposed resolution was posted on the website as included in the board members' agenda package. That summary clearly indicated that the WDRs to be adopted over the next 24 months will regulate groundwater. See June 9, 2011 Agenda Item 10, Buff Sheet - Consideration of a Resolution Approving a Short-term renewal of the Coalition Group Conditional Waiver of WDRs [AR Part 1, Volume 39, Index 23], at p. 1 ("At its April 2011 meeting, the Board directed staff to begin developing orders to address discharges from irrigated lands to groundwater and surface water.") At the hearing on the waiver renewal, staff reminded the board that it has been directed by the board to develop WDRs over the next 24 months to regulate both groundwater and surface water discharges. See June 9, 2011 Agenda Item 10 audio recording [AR Part 1, Volume 39, Index 35] at minute 72.

²³ See June 9, 2011 Agenda Item 9 audio recording [AR Part 1, Volume 39, Index 35], at minute 59.

irrigated lands to groundwater for the first time. Petitioners' suggestion that the State Water Board should rescind the Central Valley Water Board's current surface water quality protection efforts would impair the Regional Board's ability to regulate ongoing agricultural activities during development of the new orders. This setback would not move the Central Valley Water Board any closer to addressing groundwater pollution in the region, nor would it reduce the time the Regional Board needs to develop the new orders.

Environmental Groups Contention C.1

General purposes and standards under CEQA

Response to Environmental Groups' Contention C.1

Since this section does not include any specific contentions, the Central Valley Water Board does not provide a response to Contention C.1.

Response to Environmental Groups Contention C.2

The PEIR fails to include a stable project description – indeed, no proposed project is included.

Petitioners contend that the PEIR lacks a project description. The Central Valley Water Board disagrees. The PEIR contains a project description in section 2 of the Draft PEIR which is expanded upon in section 3 of the Draft PEIR. The Central Valley Water Board complied with CEQA's specific requirements for a project description as detailed further below. Because of the programmatic nature of PEIR, the "project description" is framed as a "program description."²⁴ Broadly, it is important to recognize that the PEIR is an analysis of a complex and expansive program, not a discrete single project, and the "program description" is therefore by necessity less specific and detailed than it would be in a project EIR.

Petitioners' assertion the PEIR did not include a project description is belied by the fact that the PEIR included a project description that meets the requirements of CEQA Guideline 15124 and related case law. As required by CEQA Guideline 15124(a), Chapter 2.3 of the Draft PEIR described the precise location and boundaries of the program and was accompanied by detailed maps. Chapters 2.4 and 2.5 of the Draft PEIR contain the clear statement of program objectives and purpose described by CEQA Guideline 15124(b). As mentioned in the Background section of this response, the Central Valley Water Board developed the program goals and objectives with the Stakeholder Advisory Workgroup through an extensive and inclusive process. As required by CEQA Guideline 15124(d), the Draft PEIR discloses the intended uses of the PEIR in Chapters 2.4.2 and 2.4.3.

Pursuant to CEQA Guideline 15124(c), the Draft PEIR provides a "general description of the project's technical, economic, and environmental characteristics" in Chapter 2 and expands upon this general description in Chapter 3, which is entitled "Program Description." As the text makes explicit, project descriptions may be general. The court in *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, has interpreted this guideline to mean that project descriptions must describe the main features of a project, "rather than the details or

²⁴ Although CEQA does expressly say so, the "program" referenced in CEQA Guidelines section 15168 "is itself a project." *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 201.

particulars.²⁵ A general project description also helps accomplish one of the stated advantages of PEIRs, which is to "allow the Lead Agency to consider broad policy alternatives and programmatic mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts."²⁶ A project description is sufficient if it provides decision makers with information which enables them to make a decision which ultimately must take account of environmental consequences.²⁷

As stated above, because of the programmatic nature of the PEIR, the project description is by necessity less specific than for a discrete project. Nevertheless, the program's technical, economic, and environmental characteristics are provided in greater detail in discussions of the proposed alternatives. CEQA did not require the Central Valley Water Board to identify a preferred project²⁸; instead, the Board described the program as one of the five project alternatives identified in the Draft PEIR, or a staff recommended program alternative comprised of elements from the project alternatives.²⁹ The project alternatives are described in Chapter 3 of the Draft EIR, including a reference to a staff proposed project alternative described in Appendix A of the Draft EIR.³⁰

The project description meets the requirements of CEQA. While project descriptions, especially PEIR program descriptions may be general and need not include the details or particulars, Chapter 3 includes details that go beyond the requirements of Guideline 15124(c). In that Chapter, the PEIR includes details of the "no project alternative" and four project alternatives.³¹ This description and listing of a range of alternatives, combined with the other information in the PEIR, will enable the Board members to select an action based on his or her understanding of the alternatives.

The cases cited by Petitioners do not support their contention that the project description was absent or inadequate. As a preliminary matter, the cited cases concern project rather than program EIRs. Further, even if relevant to a programmatic EIR, the cases do not support Petitioners' argument. *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 185, concerned an internally inconsistent EIR that conflicted with itself in describing the effect of the proposed project. The cited section of *Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011, considered the plaintiffs' contention that the EIR's project description was improperly segmented. Since the Petitioners do not claim that the project description was internally inconsistent or improperly segmented, the cases do not speak to the adequacy of the PEIR's project description.

²⁵ *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28. See also, CEQA Guideline section 15124 (stating that project descriptions "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.")

²⁶ CEQA Guideline section 15168, subd. (b)(4).

²⁷ *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26; see also CEQA Guideline section 15124.

²⁸ See Response to Agricultural Groups contention C.9.

²⁹ See Draft PEIR [AR Part 1, Volume 32, Index 57], section 1.4, at p. 1-3.

³⁰ See Draft PEIR [AR Part 1, Volume 32, Index 57], Chapter 3.

³¹ Appendix A of the PEIR provides extensive details of the recommended program alternative (Alternative 6).

Response to Environmental Groups' Contention C.3

The objectives borrowed from the stakeholder process attempt to lend support to purported benefits of elements of Alternative 1 – including its regional planning basis and lack of farm specific information of any sort – which are its main faults.

The Long-term ILRP goals and objectives were developed and adopted through consensus by the Stakeholder Advisory Workgroup. Considered together, the goals and objectives provide a balanced approach to evaluating Long-term ILRP alternatives.

The Draft PEIR, at Appendix A, evaluated whether each of the alternatives was consistent with the program goals and objectives, California Water Code, NPS Policy, and Antidegradation requirements. This evaluation considered protection of beneficial uses, state policy, costs, and environmental impacts.

In general, the California Water Code requires that, in developing waivers/WDRs, the Board implement Basin Plan requirements, consider past/present/probable future beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, environmental characteristics and available water quality, water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area, economic considerations, the need to develop housing in the region, and the need to develop and use recycled water (Water Code sections 13263, 13269, and 13241). In addition, the California Water Code requires that costs be considered in the development of any new water quality control program for agriculture (Water Code section 13141). The goals and objectives are consistent with the requirements of the California Water Code—to consider other factors in the development of regulatory requirements, while ensuring those requirements will result in protection of water quality.

- a. **Contention: The project's objective to restore or maintain "appropriate" beneficial uses qualifies the Regional Board's duty to maintain all existing or designated beneficial uses.**

In response to the Environmental Groups' written comments on the Draft EIR, the Central Valley Water Board revised language for the Final PEIR to clarify Objective 1. Objective 1 in the Final PEIR reads: "Restore and/or maintain applicable beneficial uses established in Central Valley Water Board water quality control plans by ensuring that all state waters meet applicable water quality objectives."³² Of course, the Central Valley Water Board maintains the independent authority to revise water quality objectives and/or beneficial uses through the basin planning process, but nothing in the PEIR affects that existing authority.

- b. **Contention: The objective to encourage implementation of BMPs is inconsistent with Resolution No. 86-16's [sic] duty that the Regional Board ensure implementation of all best practicable control technologies (BPTC).**

The second program goal to "*Encourage implementation of management practices that improve water quality in keeping with the first objective...*" (Draft PEIR, page 1-2) is intended to encourage operators to implement practices that would minimize their waste discharge.

³² See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-25.

This objective must be considered along with the other goals and objectives. The concern that this objective diminishes the Central Valley Water Board's mandate to establish requirements that implement or be consistent with water quality control plans is not supported considering the following objective:

Objective 1: "Restore and/ or maintain applicable beneficial uses established in Central Valley Water Board Water Quality Control Plans by ensuring that all state waters within the Central Valley meet applicable water quality objectives."

The second program goal does not supplant or supersede Objective 1. Because of that, nothing in Goal 2 of the Final PEIR could justify relaxation of a requirement to implement best practicable control technologies if required by the Central Valley Water Board pursuant to State Water Board Resolution 68-16.³³ Accordingly, nothing in the listing of goals and objectives for the long-term program improperly forecloses the consideration of legally feasible alternatives.

c. Contention: The objective to provide incentives to minimize waste discharges cannot be construed to allow less monitoring without any proof that waste discharges have been minimized.

The objective to "Provide incentives for agricultural operations to minimize waste discharge to state waters from their operations," is intended to encourage operators to minimize waste discharges. This objective is considered along with the other goals and objectives. The concern that essential water quality protection and monitoring would be traded as incentives to minimize waste discharge is not supported, considering Goal 2 and Objective 1 require that waste discharge that could affect the quality of state waters be minimized and that all applicable beneficial uses be protected.³⁴ Accordingly, nothing in the listing of goals and objectives for the long-term program improperly forecloses the consideration of legally feasible alternatives.

d. Contention: If the objective to coordinate with other regional programs means to mimic the regional scope of other ineffective pollution control programs, then this objective is inconsistent with the other three objectives.

The Petitioners' comment that regional efforts have been ineffective lacks specificity. With that said, the program goals and objectives were developed and adopted, through consensus, by an inclusive Stakeholder Advisory Workgroup process. Objective 5 requires that the Long-term ILRP promote coordination with other programs associated with irrigated agriculture.³⁵ Nothing in this objective is inconsistent with the Porter- Cologne Water Quality Control Act.

Irrigated agriculture operations are nonpoint sources. Many of the water quality concerns facing irrigated agriculture have multiple sources that may only be effectively controlled through a combined effort. Examples include nitrate sources from irrigated agriculture, dairies, septic systems, and municipalities; pesticides from cities, golf courses, and irrigated

³³ The Final PEIR included a programmatic discussion on how Resolution 68-16 and related policies may apply to the orders comprising the long-term program. The propriety of that discussion is addressed in response to Environmental Groups Contention C.6, *post*.

³⁴ Draft PEIR [AR Part 1, Volume 32, Index 57], Chapter 1, Summary, page 1-2.

³⁵ See Draft PEIR [AR Part 1, Volume 32, Index 57], Appendix A, page 103.

agriculture. Coordination with other programs in a watershed-based model should facilitate coordination with other waste control programs.

Response to Environmental Groups' Contention C.4

The PEIR fails to identify the environmentally superior alternative.

The CEQA Guidelines at Section 15126.6(e) (2) does not necessarily require that an environmentally superior alternative be identified in every Draft EIR. Section 15126.6(e)(2) of the Guidelines applies exclusively to the description of the "no project" alternative. That section states that "If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." Here, the "no project" alternative for the long-term program would not be the environmentally superior alternative because it does not include a groundwater component with the opportunity to improve groundwater quality. Therefore, in this instance, there is no requirement under CEQA to identify an environmentally superior alternative. Nonetheless, the environmental effects of the project alternatives are clearly compared in Table 1-1 beginning on page 1-10 of the Draft PEIR, thus providing sufficient information to the public and to the Regional Board to determine which alternative would result in fewer adverse environmental effects.

Response to Environmental Groups' Contention C.5

The PEIR does not provide meaningful comparative analysis of the selected alternatives because the assumption that all five alternatives would be equally effective at implementing BPTC and achieving standards is unsupported by any evidence.

The overarching focus and intent of the Long-term ILRP is to maintain and improve water quality. The program alternatives are expected to have largely beneficial effects to the physical environment. The project analyzed in the PEIR does not compare agricultural operations in the Central Valley to a theoretical baseline without any agricultural operations. Rather, existing agricultural operations are part of the baseline of the analysis.³⁶

The Long-term ILRP alternatives include a number of management and eventual regulatory actions that are designed to identify and reduce the adverse effects of runoff or percolation of water from irrigated agriculture. The anticipated effects of all alternatives are beneficial to water quality, including groundwater, in that none of the six alternatives will worsen water quality. CEQA directs government agencies to disclose to the public the adverse effects of their discretionary actions. Although some EIRs do discuss the relative merits of alternatives, the focus required by CEQA is on potential negative or adverse effects. The PEIR does not discuss in depth the relative degree of likely beneficial impacts of the ILRP alternatives.

From a programmatic level, the Long-term ILRP alternatives are founded on the presumptions that growers will enact management practices to meet the Program objectives and the types of practices anticipated to be implemented to meet these requirements will not vary across alternatives (except Alternative 1, which does not address discharge to groundwater). Thus, the alternatives have similar adverse and beneficial physical impacts. While the alternatives' beneficial effects could vary based on comprehensiveness of monitoring and other factors,

³⁶ See *Communities For A Better Environment v. South Coast AQMD*, (2010) 48 Cal.4th 310, 321-322 (indicating that the environmental baseline is the environmental conditions existing at the time of the CEQA analysis rather than hypothetical allowable conditions.).

CEQA does not require the PEIR to focus on this distinction. The purpose of the CEQA analysis is to assist the Central Valley Water Board in selecting a method to achieve the Program's goals with fewer significant adverse environmental impacts.³⁷ The primary distinctions in the alternatives lie in their implementing mechanisms, costs, and consistency with Central Valley Water Board policy and legal obligations, elements that the Board will consider in adopting the subsequent orders. Thus, where alternatives result in different adverse impacts to resources, as in Agriculture Resources, such impacts are described (see, e.g., Draft PEIR Chapter 5, Section 5.10, Agricultural Resources).

Response to Environmental Groups' Contention C.6

The Regional Board may not approve four out of five of the proffered [sic] PEIR alternatives because they would conflict with other laws, i.e. Porter-Cologne.

a. Contention: The first four alternatives all violate the state's anti-degradation policy.

Nothing in State Water Board Resolution 68-16 required the Central Valley Water Board to complete its antidegradation analysis before it issues the specific orders that will comprise the long-term program. To the extent this contention challenges hypothetical future orders, therefore, the argument is not ripe for review. To the extent the Environmental Groups are arguing that none of the alternatives are feasible because they allegedly will violate Resolution 68-16, the Regional Board disagrees for the following reasons.

The discussion of the Antidegradation Policy in Appendix A of the PEIR evaluates the Long-Term ILRP at a programmatic level for consistency with the legal requirements of the Central Valley Water Board. The antidegradation discussion does not posit that the antidegradation policies are triggered simply because the Long-term ILRP will authorize agricultural discharges to surface and groundwater to continue in some fashion. Rather, the discussion sets forth that the ILRP will encompass some discharges with potential to degrade high quality waters and therefore the antidegradation policies must be analyzed at a programmatic level. It also discusses how, where a receiving water is not "high quality" (e.g. currently degraded), the Central Valley Water Board is required under State Water Board precedent to set limitations more stringent than the objectives set forth in the Basin Plan if it can be shown that those limitations can be met using "best efforts." State Water Board Order WQ 81-5; see also State Water Board Orders WQ 79-14, WQ 82-5, WQ 2000-07.

Because the Long-term ILRP will encompass some discharges with potential to degrade high quality waters or discharges to waters that are already degraded, each order comprising the Long-term ILRP must meet the provisions of the Antidegradation Policy. Applicable antidegradation provisions are described in the Draft PEIR, Appendix A, Section IV.E, State Antidegradation Policy. That section, as revised in the Final PEIR³⁸, explains that, at the programmatic level, the Long-term ILRP will be consistent with Resolution 68-16 and related policies by ensuring that:

³⁷ See, e.g., Public Resources Code section 21002.1, subd. (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.").

³⁸ The final revisions to this section of the Draft PEIR are found in the Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 4, pp. 4-15 through 4-24.

- At a minimum, irrigated agricultural waste discharges must be addressed in a manner that achieves and maintains water quality objectives and beneficial uses.
- Because it is expected that there may be degradation of some Central Valley high quality waters receiving irrigated agricultural discharges, maximum benefit to the people of the State must be shown.
- The requirements implementing the Long-term ILRP must result in use of Best Practicable Treatment or Control (BPTC) where irrigated agricultural waste discharges may cause water degradation of high quality waters; where waters are already degraded, the requirements must result in pollution controls that reflect the "best efforts" approach.

The term BPTC is found in Resolution 68-16 and is not defined in the resolution or the California Water Code. Promulgated federal technology standards may inform BPTC, but BPTC is not derived from these standards.³⁹ The State Water Board has evaluated what level of treatment or control is technically achievable using "best efforts" and this approach has informed the BPTC analysis. (See State Water Board Orders WQ 79-14 and WQ 2000-07.) Because of the similarity of the BPTC and "best efforts" requirements, it is likely that the Central Valley Water Board would set a single set of requirements that would apply equally to high quality waters and waters that are already degraded.⁴⁰

Appendix A of the PEIR lays out a maximum benefit analysis that concludes that continued waste discharges associated with irrigated agricultural operations that may cause degradation of high quality waters is, at a programmatic level, consistent with the maximum benefit to the people of the State. Nevertheless, the PEIR acknowledges that, at the programmatic level, it is not feasible to conduct a conventional analysis of waste loadings, assimilative capacities, and socioeconomic concerns to determine consistency with maximum public benefit for every Central Valley irrigated agricultural waste discharge. Instead, the following programmatic approach has been developed for practically applying antidegradation provisions for a Central Valley Long-term ILRP:

Implementation of the program must work to achieve site-specific antidegradation and antidegradation-related requirements through iterative implementation of BPTC/ "best efforts" and representative monitoring (i.e., where monitoring indicates degradation, BPTC would evolve to prevent such degradation).

This iterative process is shown graphically in Figure 21 of the Draft PEIR, Appendix A (see revisions to Figure 21 in Chapter 4, Revisions to the Draft Program Environmental Impact Report, page 4-24 of the Final PEIR) and is intended, over time, to bring all water bodies

³⁹ United States Environmental Protection Agency (U.S. EPA) guidance clarifies that the federal antidegradation policy (40 CFR § 131.12) does not require states to impose controls on nonpoint sources. U.S. EPA believes that the federal policy "does not require that States adopt or implement best management practices for nonpoint sources prior to allowing point source degradation of a high quality water. However, States that have adopted nonpoint source controls must assure that such controls are properly implemented before authorization is granted to allow point source degradation of water quality." (Water Quality Standards Handbook, 2d Ed., § 4.5.) The federal regulation only requires implementation of practices that are "cost-effective and reasonable." (*Ibid.*)

⁴⁰ See Final EIR [AR Part 1, Volume 38, Index 80], Chapter 4, at p. 4-23.

accepting agricultural wastes into compliance with water quality objectives (where agriculture causes or contributes to the exceedance) and evaluate and prevent degradation from occurring. In Sections IX.A.4 and XI.A.4 of the Draft PEIR, Appendix A, each of the alternatives is evaluated against the above approach for implementing antidegradation requirements. In this evaluation, Alternatives 4–6 were found to be fully consistent with antidegradation provisions. Alternatives 2 and 3 were found to be partially consistent with antidegradation requirements, and Alternative 1 is not consistent.

The Central Valley Water Board disagrees that farm-specific implementation and monitoring are the only ways to meet the requirements of Resolution 68-16. The Draft PEIR, Appendix A programmatic evaluation adequately analyzes the Long-term ILRP alternatives with respect to the Antidegradation Policy. Orders developed under the Long-term ILRP will include findings with regard to the consistency with the Antidegradation Policy.

b. Contention: Alternatives 1 through 4 violate the NPS policy.

The Long-term ILRP would regulate waste discharges from irrigated agricultural lands to state waters as a nonpoint source program. Accordingly, the Long-term ILRP must meet the provisions of the NPS Policy. When it issues orders under the ILRP, the Central Valley Water Board must find that it will promote attainment of water quality objectives. The ILRP also must meet the requirements of five key structural elements. The Draft PEIR, Appendix A Sections IX, Evaluation of Long-Term Program Alternatives, and XI, Evaluation of Recommended Long-Term Irrigated Lands Regulatory Program, evaluate the consistency of each of the proposed alternatives with the requirements of the NPS Policy.⁴¹

The Draft PEIR, Appendix A evaluation found that Alternatives 1–6 all meet the requirements of NPS Policy Key Element 1. This is mainly because the element requires, in part, that the NPS control implementation program's ultimate purpose be explicitly stated. The purpose of the Long-term ILRP is explicitly stated in the ILRP Goals and Objectives and the objectives include restoring and maintaining appropriate beneficial uses by ensuring that all state waters meet water quality objectives. As stated in the Goals and Objectives, the ultimate purpose of all Long-term ILRP alternatives is the same. Accordingly, all program alternatives are consistent with Key Element 1.

In general, NPS Policy Key Element 2 requires that a nonpoint source implementation program include a description of the management practices expected to be implemented to ensure attainment of the program's purpose (i.e., goals and objectives), and the process used to select and ensure proper implementation of management practices. Successful implementation of water quality management measures will work toward achieving the goals and objectives of the Long-term ILRP. The PEIR and Draft ILRP Economics Report discuss the types of management practices that would likely be implemented for all of the alternatives. ILRP components that would work to achieve consistency with Key Element 2 include water quality management plans to protect surface and groundwater and tracking of implemented management practices. Alternatives 2–6 are consistent with Key Element 2 because they include requirements to develop surface and groundwater quality management plans and mechanisms to ensure implementation of management practices (e.g., tracking, inspections).

⁴¹ See Draft PEIR [AR Part 1, Volume 32, Index 57], Appendix A, page 107 and 165, respectively.

The State Water Board's NPS Policy describes that: "A first step in the education process offered by these [nonpoint source] programs often consists of discharger assessment of their lands or operations to determine NPS problems, followed by development of a plan to correct those problems."⁴² The first step, assessment of lands or operations to determine nonpoint source problems, can be accomplished by the development of individual farm water quality management plans (FWQMPs) (required under Alternatives 3, 4, and 5). Regional water quality plans were also considered (Alternatives 1, 2, and 6). One of the features of the regional plans is for the managers of irrigated agricultural operations to identify the management practices they are implementing to protect water quality, which would require the manager to assess his or her operation. Regional water quality management plans can be used to assess irrigated agricultural operations, provide grower education, and develop a description of the types of practices that need to be implemented. With appropriate oversight, both regional and individual water quality plan approaches can be utilized to meet the NPS Policy requirement of assessing land/operations and planning to correct water quality problems. Regional management has been selected in the Recommended Program Alternative (Alternative 6) considering the need to coordinate with other programs, costs, and the limitations of the Board (e.g., there are an estimated 7 million acres of land and over 30,000 potential operations).

If the Central Valley Water Board determines that it is necessary to allow time to achieve water quality requirements in a nonpoint source program, Key Element 3 requires that the program include a time schedule with quantifiable milestones. In Sections IX.A.3 and XI.A.3 of the Draft PEIR, Appendix A, Alternatives 2–6 were found to be consistent with Key Element 3 because time schedules would be included in surface and groundwater quality management plans. Alternative 6 also includes specific time schedules for working to achieve water quality objectives in priority areas. Alternative 1 (long-term implementation of Conditional Waiver) is not consistent with this element because there are recognized exceedances of groundwater quality objectives (e.g., nitrates), and the alternative would not require groundwater protection requirements or a time schedule for working toward achieving those water quality objectives.⁴³ Petitioners claim that the Central Valley Water Board does not have authority to issue compliance schedules. The Board has such authority. Should the Board implement the ILRP through WDRs, California Water Code Section 13263, subdivision (c) explicitly clarifies that the requirements "may contain a time schedule, subject to revision in the discretion of the Board." Should the Board opt for conditional waivers, the NPS Policy's section on time schedules, which addresses both programs implemented through WDRs and conditional waivers, explicitly allows time schedules to be employed where necessary.⁴⁴

Key Element 4 requires that a nonpoint source program include feedback mechanisms so that the Central Valley Water Board, regulated operations, and the public can determine whether the program is effective. In Sections IX.A.3 and XI.A.3 of the Draft PEIR, Appendix A (Draft PEIR, Appendix A), only Alternatives 4–6 were found to be fully consistent with this element. This is because these alternatives include surface and groundwater quality monitoring to provide feedback on whether the ILRP is meeting goals and objectives. These alternatives

⁴² NPS Policy, at p. 11.

⁴³ Since the goals and objectives of the long-term program are to address discharges to groundwater and surface water, there is an inconsistency with the NPS policy in using the Conditional Waiver over the long-term. However, as discussed in the response to Environmental Groups Contention A.2, *ante*, the short-term renewal of the Conditional Waiver is consistent with the NPS policy with respect to discharges to surface waters.

⁴⁴ NPS Policy, at p. 13.

include two different types of feedback mechanisms. Alternatives 4 and 6 include regional monitoring, while Alternative 5 includes individual monitoring. Both individual and regional monitoring approaches are considered acceptable feedback mechanisms for the Long-term ILRP (see Draft PEIR, Appendix A, pages 94–95).

Petitioners contend that Alternatives 1 through 4 are inconsistent with Key Element 4 because they rely on regional monitoring. The benefits and drawbacks of regional monitoring compared with farm-based monitoring were considered in the Draft PEIR, Appendix A. As described on page 95 of the report:

...the waste discharge characteristics of runoff from each farm would be determined [under farm-based monitoring]. However, with this approach, it will be difficult to characterize the actual effects agricultural waste discharges are having on receiving water bodies. A good example is where a farm discharges to a large river. Farm-based monitoring would not necessarily provide enough information to tell whether the discharge is affecting the river's water quality.

Farm-based monitoring alone will not answer whether agricultural discharges are affecting receiving waters. It is also important to recognize that water quality objectives apply within receiving waters, not within farm fields or in effluent from management practices. Therefore, monitoring edge of field discharge or effluent management practices as the primary monitoring approach would not provide the information necessary to evaluate whether irrigated agricultural operations are meeting water quality objectives.

The Central Valley Water Board agrees that representative field monitoring can provide valuable information on the effectiveness of management practices. However, monitoring of every field is not a requirement of the NPS Policy. Regional, watershed-based monitoring of receiving waters is a reasonable approach to determine whether receiving water quality objectives are being met, and can be used to provide program feedback as required by the NPS Policy.

Key Element 5 requires that the Central Valley Water Board make clear, in advance, the potential consequences for failure to achieve a nonpoint source control implementation program's stated purposes.

Compliance with this element is the responsibility of the Central Valley Water Board. The potential consequences for failure to achieve the Long-term ILRP's stated purpose would be the same regardless of the chosen program alternative and would include the following steps:

1. Require, in an iterative process, additional monitoring information, and/ or management practices where water quality objectives are not being met.
2. Specify enforcement action where an iterative process is unsuccessful, program requirements are not met, or time schedules are not met.
3. Require submittal of a report of waste discharge (ROWD), by operators, to work individually with the Central Valley Water Board.

As described on page 167 of the Draft PEIR, Appendix A, the Central Valley Water Board will ensure consistency with Key Element 5 by including the above potential consequences in orders adopted to implement the Long-term ILRP. The Central Valley Water Board agrees with the Petitioners that dissolving a non-compliant third-party would also place difficulties

upon the Regional Board, especially where no general order is in place for individuals not enrolled in a coalition. However, this action is necessary where a third-party group is not fulfilling Long-term ILRP requirements. Accordingly, as staff discussed with the Regional Board, staff will prepare general WDRs for Board consideration that will be implemented in areas where either no third-party exists or it has been dissolved or for those individual discharges not in compliance under the third-party framework.

Response to Environmental Groups' Contention C.7

The PEIR fails to consider a reasonable range of alternatives because most of the alternatives are weighted down with components that render them ineffective.

The CEQA Guidelines provide direction on selection of project alternatives at Section 15126.6. Section 15126.6(a) states "An EIR shall 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. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." The section further states that "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." The rule of reason is described at Section 15126.6(f) as follows: "The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." The CEQA Guidelines clearly designate the Lead Agency as the responsible party for selecting a range of alternatives and must publicly disclose its reasoning for selecting those alternatives.

With this guidance in hand, the Central Valley Water Board embarked on a broad and lengthy stakeholder participation process to develop, consider, and describe alternatives to be included in the Draft PEIR. The development of the Long-Term ILRP Stakeholder Advisory Workgroup (Workgroup) and its process of developing program goals, objectives, and alternatives are described in Draft PEIR, Appendix A, beginning on page 5. This Workgroup included a broad range of interests, including local government, industry, agriculture, and environmental/environmental justice from throughout the Central Valley. This group included the Petitioners. The stakeholder participation process started in the fall of 2008 and concluded in August 2009 with an approved set of goals, objectives, and range of alternatives. The information developed by this Workgroup is included in the December 2009 *Proposed Long-Term Irrigated Lands Regulatory Program Alternatives* document, which is included as Appendix A of the Draft PEIR. The program alternatives presented in the 2009 report were subsequently used as the basis of the alternatives analysis in the Draft PEIR. The Central Valley Water Board believes this process thoroughly considered and developed a range of reasonable alternatives as required by the CEQA Guidelines.

a. Contention: The irrigated lands program should not rely on coalitions to implement or comply with the regulations.

Petitioners have not shown that including the reliance on coalitions within the range of alternatives violates CEQA. Third-party groups provide coordination and help to leverage local expertise (e.g., Agricultural Commissioners, other government entities) in addressing water quality problems, thereby allowing the Board to reach tens of thousands of operations with

minimal available staffing. In fact, the NPS Policy supports regional board efforts to take advantage of state agency third-party efforts to avoid duplication of effort and to leverage staffing and financial constraints.⁴⁵ The NPS Policy reads: "The RWQCBs have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovative and creative as possible, and, as appropriate, to build upon Third-Party Programs."⁴⁶

In general, third-party groups may not have the authority to require that members implement water quality management plans. Consequently, where a third-party is unable or unwilling to require members (irrigated agricultural operations) to implement management plans, the Central Valley Water Board's recourse would be to enforce requirements against individual members of the Coalition, who individually retain all obligations to meet water quality requirements, notwithstanding their membership in a Coalition. As reflected in the Final PEIR, the Central Valley Water Board has considered these benefits along with the mentioned enforcement concerns.

b. Contention: Alternatives that rely solely on regional monitoring to determine the adequacy of BPTC or enforcement of individual farms are destined to fail and do not meet CEQA's duty to mitigate impacts.

Petitioners have not shown that the regional monitoring alternative violates CEQA's duty to mitigate impacts. The project analyzed in the Draft PEIR is not agricultural operations in the Central Valley; rather, existing agricultural operations are part of the CEQA baseline.⁴⁷ The ILRP alternatives include a number of management and eventual regulatory actions that are designed to identify and reduce the adverse effects of runoff or percolation of water from irrigated agriculture. The anticipated effects of all alternatives are beneficial to water quality, including groundwater, in that none of the six alternatives will worsen the rate of discharges as compared to the baseline. There are indirect effects of implementing modified farming practices as a result of the program that are potentially adverse; these were discussed in the PEIR.

Regarding mitigation, CEQA Guidelines Section 15126.4 directs lead agencies to describe feasible mitigation measures that could minimize significant adverse impacts. Since the water quality effects of the program will likely be beneficial, the PEIR clarifies that no mitigation measures are required for hydrology and water quality resources.⁴⁸ Therefore, contrary to Petitioners' assertions, the PEIR does not identify the implementation of water quality management practices as a mitigation measure for water quality resources. Accordingly, CEQA does not require a mitigation and monitoring program for water quality resources. The individual effluent monitoring scheme proposed by petitioners is not required by CEQA as a mitigation measure, or a mitigation measure monitoring program.

Draft PEIR Chapter 5, Section 5.1.2, Significance Determinations and Mitigations, discusses the Long-term ILRP approach to mitigation of potentially adverse environmental impacts identified by the PEIR. This approach to mitigation and mitigation monitoring is consistent with

⁴⁵ NPS Policy, at p. 9.

⁴⁶ *Id.*, at p. 10.

⁴⁷ See *Communities For A Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 321-322.

⁴⁸ See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 4, at p. 4-10.

the direction of CEQA Guidelines Section 15126.4(a)(2).

c. Contention: Alternative 3 includes components that begin to address the shortcomings of the current program but is weighed down with odious requirements and illegal delegation of Board responsibilities.

The support that Petitioners give to Alternative 3, along with specific recommendations, is being considered in the development of the Long-term ILRP. However, the requirements for the long term-ILRP have not yet been set.

The PEIR's discussion of this alternative was valid and did not violate CEQA. All of the described alternatives are legally feasible. For example, Alternatives 4 and 5 include the requirement that individual FWQMPs be developed, without a condition that the Central Valley Water Board would review and approve the plans—as suggested by the Petitioners. California Water Code Section 13223 describes delegation of authorities from the Central Valley Water Board to the Executive Officer. That section does not apply. The Board agrees with the Environmental Group Petitioners that there is no legal requirement that the Board review or approve each individual FWQMP. Nevertheless, Alternatives 3, 4, and 5 all include provisions for either Central Valley Board review of the FWQMP when requested by the Board or as part of a site inspection or allow for a credible third-party to certify the plans' sufficiency. These are appropriate ways to ensure water quality protection as part of an overall program.⁴⁹

In regards to concerns over inspections and monitoring, the Central Valley Water Board recognizes the Environmental Groups' support for site inspections on a certain percentage of operations each year, individual water quality plans, and tailwater monitoring. There is sufficient water quality data available from existing surface water and groundwater monitoring programs that indicate the importance of continued regulation of agricultural discharges in the Central Valley (see Draft PEIR, Appendix A, Table 3, page 26).

While collection of additional water quality monitoring data will provide information important to developing the Long-term ILRP requirements, the Board can adopt regional monitoring requirements to ensure that discharges of waste associated with irrigated agriculture do not cause or contribute to exceedances of water quality objectives without requiring effluent monitoring at the edge of each field.⁵⁰

d. Contention: Alternative 4 includes fewer poison pills but its failure to require BMP and effluent monitoring means that it would not achieve water quality objectives or ensure implementation of BPTC.

The Petitioners' support for certain elements of Alternative 4 (a tiered program as a way to focus limited resources on the more significant pollutant issues, development of individual farm plans, and individual monitoring) is being considered in the development of the Long-term ILRP. Staff recognizes the Environmental Group Petitioners' recommendations regarding Tier 2 and 3, and the use of monitoring and farm management plans. However, the

⁴⁹ See, e.g., NPS Policy, at p. 10 ("The RWQCBs have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovative and creative as possible, and, as appropriate, to build upon Third-Party Programs.")

⁵⁰ See, e.g., discussion of regional monitoring in Response to Contention C.6.b, *ante*.

requirements for the long term-ILRP have not yet been set.

The Board evaluated each of the alternatives for consistency with applicable state policy and requirements, including the NPS and Antidegradation policies. In the evaluation, Alternative 4 was found to be fully consistent with the NPS and Antidegradation policies.

The Central Valley Water Board disagrees that farm-specific implementation and monitoring are the only ways to meet the requirements of Resolution 68-16. As discussed in Environmental Groups' contention C.3(a), *ante*, the Draft PEIR, Appendix A's programmatic evaluation adequately analyzes the Long-term ILRP alternatives with respect to the Antidegradation Policy. Orders developed under the Long-term ILRP program will include findings with regard to the consistency with the Antidegradation Policy.

The comment also outlines concerns over whether regional monitoring can be used to provide feedback on whether changes in farm management are resulting in changes in water quality. The benefits and drawbacks of regional monitoring compared with farm-based monitoring have been considered in the Draft PEIR, Appendix A (page 95) and are discussed in response to Environmental Groups' Contention C.6 (b), *ante*.

Regarding the frequency of monitoring, Alternative 4 would require only 1 year of monitoring every 5 years for low priority operations. Generally, low priority operations or areas are those where there is no identified water quality problem associated with waste discharge from irrigated agriculture and the operations are not located in an area where surface/ groundwater is vulnerable due to types of operations or geophysical conditions (soil types, rainfall, etc.). The existing conditional waivers have collected substantial water quality information since 2003.⁵¹ In addition, there is a vast amount of publicly available information collected by other agencies.⁵² If an operation or area has not been linked to water quality problems despite this information, Central Valley Water Board staff believes that a much lower frequency for water quality monitoring would be justified and would be consistent with California Water Code Section 13267 and/or 13269 requirements.

Petitioners question the need for regional entities to oversee water quality monitoring. As discussed throughout the Draft PEIR, Appendix A, there are important advantages to be gained through the use of coalitions rather than direct regulatory oversight of tens of thousands of growers. In summary, the description of Alternative 4 was legally sufficient for purposes of CEQA.

e. Contention: Alternative 5's aggressive agency reviews and approvals and expensive monitoring proposals go beyond the reasonable next step but it is the one alternative reviewed in the PEIR that, if implemented, would dramatically reduce irrigated land pollution discharges.

The Petitioners' support for Alternative 5 is being considered in the development of the Long-term ILRP. However, the requirements for the long term-ILRP have not yet been set.

⁵¹ The coalitions have conducted approximately 304,800 water quality analyses since program monitoring began in 2004.

⁵² See, *e.g.*, 2008 Existing Conditions Report at Chapters 3 and 4.

Under Alternative 5, all operations would not be required to implement BPTC, only those with waste discharges that could degrade a "high quality water." Alternative 5 includes monthly tailwater monitoring of "constituents of concern." The Petitioners' suggestion that Alternative 5's monitoring frequency (e.g., monthly tailwater sampling) is too comprehensive will be considered in the development of the Long-term ILRP, but does not affect the legal sufficiency of the alternative. Also, as described in the petition, a reduced individual monitoring frequency has been considered as part of Alternative 4.

Page 2-19 of the Draft ILRP Economics Report provides a cost estimate for monitoring basic parameters (e.g., pH, EC, nitrates, E. coli) and up to 20 constituents of concern (organics, boron, selenium). These costs were used to estimate the potential costs of individual monitoring. The petition describes that the parameters or constituents of concern, estimated in the Draft ILRP Economics Report for Alternative 5 monitoring, go well beyond what is necessary for protecting water quality objectives. A recommended list of constituents for individual monitoring was provided in the Petitioners' previous comments on the Draft PEIR. The list included: flow, toxicity, total nitrogen, nitrate-nitrite, total ammonia, total phosphorous, soluble ortho-phosphate, temperature, turbidity, pH, EC, coliform, applied pesticides, metals. Table 3 of the Draft PEIR, Appendix A, lists the constituents for which management plans are required in the current program. There are 7 metals and 13 pesticides in this list. These 20 constituents are essentially the "high threat" constituents of concern for the ILRP. Depending on the number of pesticides used at an individual operation, the estimate of 20 constituents of concern shown in the Draft ILRP Economics Report is reasonably consistent with the petition's description of necessary parameters (basic parameters + pesticides used + metals), notwithstanding the additional monitoring for toxicity described by the petition. Generally, the costs for toxicity monitoring are much higher than chemical parameters. Therefore, the monitoring parameters proposed by the petition would likely be more costly than the estimate provided in the Draft ILRP Economics Report.

Regarding the Petitioners' concern for groundwater monitoring wells, Alternative 5 would require installation of groundwater monitoring wells. However, the alternative does not specify that every operation would be required to install monitoring wells. The alternative specifies that monitoring wells would be required "*...if requested by the Executive Officer. Locations chosen for groundwater monitoring will be prioritized based on Central Valley Water Board staff-developed vulnerability factors.*" (Draft PEIR, page 3-28) Regardless, the Petitioners' support for utilizing existing wells for monitoring will continue to be considered in the development of the Long-term ILRP. The Petitioners are referred to the response to Environmental Groups' Contention C.7(c) above regarding the time frame for developing FWQMPs.

The Petitioners voice a concern about access to FWQMPs. Alternative 3 includes a requirement for individual FWQMPs to be submitted to the Central Valley Water Board. The petition's recommendation has therefore been evaluated within the range of alternatives in the Draft PEIR.

The Central Valley Water Board appreciates the concerns expressed by the Petitioners regarding staffing, although it disagrees that the estimates for Alternative 5 were exaggerated. The Draft PEIR, Appendix A's estimates used to evaluate the resources necessary to implement the Long-term IRLP alternatives clearly indicate the alternatives that involve staff working directly with individual irrigated agricultural operations would require substantially

more resources (staffing, translating to time and expense) to implement (see Draft PEIR, Appendix A, pages 116–120).

Alternative 5 is based on the Central Valley Water Board's Dairy Program (similar requirements and framework). Staffing needs, expressed as staff:facility ratios, are expected to be similar. Accordingly, the projected staffing needs for Alternative 5 have been calculated using current Dairy Program staffing ratios (see pages 119 and 120 of the Draft PEIR, Appendix A). The Stormwater Program has also been considered in the development of the Long-term ILRP (see page 86 of the Draft PEIR, Appendix A). It is important to note, however, that there are differences in complexity between the Stormwater Program and Alternative 5 that prompt the need for higher staffing ratios.

f. Contention: The PEIR fails to consider the true no project alternative – automatic termination of the waiver and implementation of individual WDRs.

The CEQA Guidelines (Title 14 CCR) at Section 15126.6(e)(3)(A), state: “When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the ‘no project’ alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.” The CEQA Guidelines, at Section 15126.6(e) (3) (C), further state

...the Lead Agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be 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.

The Central Valley Water Board determined that an appropriate interpretation of this section of the CEQA Guidelines requires that the No Project Alternative for the proposed Long-term ILRP be defined as “the extension or renewal of the ongoing waiver, which would allow continuation of the existing program...” (Draft PEIR, Chapter 3, Program Description, page 3-4). The contention that “no project” should assume that the Central Valley Water Board would take no action on extending the current program (the existing conditional waiver program) assumes that CEQA equates “no project” with no action, which contradicts the directive of Section 15126.6 of the CEQA Guidelines (as presented above). The Central Valley Water Board believes it is reasonable to expect in the foreseeable future that if a proposed new Long-term ILRP is not adopted, the Central Valley Water Board would extend the existing program until that time when a new program was adopted. None of the cases cited by petitioners defeat the Draft PEIR's position on the No Project Alternative, or that the “no project” alternative should have been issuance of individual WDRs, which the PEIR concludes would be infeasible.⁵³

Additionally, Title 14 CCR Section 15126.6[e] [1] states that “the purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” Consistent with this guideline provision, the approach to the No Project Alternative taken in the PEIR best serves the purpose of allowing the Central Valley Water Board to compare the

⁵³ See Draft PEIR [AR Part 1, Volume 32, Index 57], Chapter 3.7.2., at p. 3-29.

impacts of revising the ILRP with those of continuing the existing program. It should be emphasized that, even if the existing regulatory program for irrigated agriculture had been allowed to expire at the end of June 2011, its expiration would not have led to an absence of regulation of irrigated agriculture. Agricultural dischargers, as persons "discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state," would have the ongoing obligation under California Water Code Section 13260 to file a Report of Waste Discharge, and the Central Valley Water Board would need to issue individual or general WDRs to regulate the discharges or adopt a new waiver. As such, designating the scenario of waiver expiration as the no project alternative, in addition to being contrary to a reasonable reading of the CEQA Guidelines, would result in the creation of an amorphous alternative incapable of providing a meaningful point of comparison of the impacts of moving forward on the project.

Finally, the Central Valley Water Board determined in the PEIR that immediate expiration of the waiver was not a feasible "no project" alternative. The Draft PEIR, at Chapter 3.7.1, explained that immediate expiration of the waiver was not feasible because "this alternative does not meet the Central Valley Water Board's obligations nor the goals and objectives of the program." Contrary to Petitioners' assertion, expiration of the waiver was in fact considered in the PEIR. Although it did not receive full consideration as a feasible alternative, it was nonetheless considered and rejected. CEQA does not require consideration of infeasible alternatives.⁵⁴ In reviewing whether a particular alternative should have been discussed in detail in an EIR, the court employs a rule of reason standard of review.⁵⁵

Response to Environmental Groups' Contention C.8

The PEIR ignored CSPA's and others' scoping comments.

The Long-term ILRP alternatives and scope for the environmental analysis were developed cooperatively after consideration of extensive and thorough public involvement. The Central Valley Water Board did not agree with all of Petitioners' scoping comments, but considered them. In compliance with CEQA Guidelines Section 15123(b) (2), the Draft PEIR discusses known areas of controversy in Chapter 2, Section 2.6.4, page 2-8. Those areas of controversy were further revealed and expanded as part of the comment period and the hearings before the Board.

Response to Environmental Groups' Contention C.9

The PEIR overlooks a number of important significant impacts.

CEQA requires a lead agency to disclose to the public adverse impacts to the environment that may result from their discretionary actions. As explained in *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, (2008) P.3d 709, an EIR is not required to set forth alternatives and mitigation measures that go beyond reducing project impacts and seek to solve preexisting environmental problems.

The ongoing impacts of agricultural operations in the Central Valley are part of the

⁵⁴ CEQA Guideline section 15126.6, subd. (a); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, (2008) 184 P.3d 709, 722.

⁵⁵ *Ibid.* (citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

environmental baseline of the Long-term ILRP program analyzed in the PEIR.⁵⁶ The petition mistakenly argues that a failure of the Long-term ILRP to “significantly reduce pollution discharges from irrigated lands” would represent an adverse impact of the program to specific resources. Such an outcome is unlikely because implementation of any of the program alternatives are expected to result in improved water quality conditions.⁵⁷ Reduction of the pollution discharges the petition mentions is the primary goal of the Long-term ILRP. However, a failure to do so to below the environmental baseline would not be considered an adverse impact of the program under CEQA.⁵⁸

a. Contention: The PEIR fails to address impacts to Recreation and Aesthetics.

The PEIR addresses potential impacts of the program alternatives to recreation, and aesthetics and public health. The Draft PEIR analyzed water quality impacts for all six alternatives, and determined all alternatives were likely to improve overall water quality throughout the jurisdiction of the ILRP. The analysis in the PEIR focuses on potential changes from baseline conditions, as it should. Baseline (existing effects) is given in considerable detail in the Draft PEIR.

The potential for recreation impacts is discussed in the Draft PEIR at Chapter 5, Section 5.11 (page 5.11-2); the analysis indicates that implementation of a Long-term ILRP would not adversely affect existing recreation facilities or limit recreation opportunities. Aesthetic effects are also addressed in Section 5.11 (page 5.11-1); the discussion states that any changes in agricultural operations generated by implementing the program would occur on active agricultural lands and would not adversely affect scenic resources. The principal public health effects resulting from irrigated agriculture are related to transport, use, and subsequent water contamination from pesticide and herbicide use. Implementation of any of the Long-term ILRP alternatives would be expected to reduce human health risks associated with these activities (see page 5.11-1).

The Central Valley Water Board appreciates the Petitioners' concern regarding the quality of water as it relates to bacteria levels. One of the primary objectives of the Long-term ILRP is to improve water quality in the state, especially within the Central Valley region, including implementation of irrigation management practices that would facilitate reduction of bacteria levels in receiving waters. Water quality is the top priority of the Long-term ILRP.

b. Contention: PEIR fails to analyze cultural impacts re: traditional uses of salmon or other fish.

As the Petitioner notes, contaminants are acknowledged as an issue in the Draft PEIR. The changes that could arise from the program alternatives are given. The changes would be beneficial as surface water quality would be improved. Therefore, effects on traditional uses of salmon or other fish should also be positive compared to existing conditions.

⁵⁶ See, e.g., State Water Board Order 2002-0004, at p. 15.

⁵⁷ See Draft PEIR [AR Part 1, Volume 32, Index 57], at Chapter 5.9.

⁵⁸ See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952 (“It is only against [the environmental] baseline that any significant environmental effects can be determined.”)

c. Contention: The PEIR fails to address public health impacts of authorizing continued discharges of pesticides and other pollutants from irrigated lands effluent to groundwater.

Water quality improvement is of the utmost concern to the Central Valley Water Board and is the primary motivation for the development of the Long-term ILRP. The Draft PEIR analyzed water quality impacts for all six alternatives, and determined all alternatives were likely to improve overall water quality throughout the jurisdiction of the Long-term ILRP. Therefore, the Central Valley Water Board determined that the Long-term ILRP would improve public health in the Central Valley by reducing the adverse water quality impacts from irrigated agriculture as compared to the environmental baseline.

Response to Environmental Groups' Contention C.10

The PEIR's analysis of many key potential impacts and the alternatives' proposed mitigations are not supported by substantial evidence.

The overarching focus and intent of the Long-term ILRP is to maintain and improve water quality. The program alternatives will have largely beneficial effects on the physical environment. The project analyzed in the Draft PEIR is not agricultural operations in the Central Valley; rather, existing agricultural operations are part of the baseline of the analysis.

The anticipated effects of all alternatives are beneficial to water quality, including groundwater, in that none of the six alternatives will worsen water quality. CEQA directs government agencies to disclose to the public the adverse effects of their discretionary actions. Although some EIRs do discuss the relative merits of alternatives, the focus required by CEQA is on potential negative or adverse effects.

a. Contention: The analysis of impacts to water quality is flawed because there is no evidentiary support for the assumption that mitigation measures proposed by each alternative would be equally effective.

The Petitioners' concern regarding the PEIR's assumptions of the effectiveness of each alternative's mitigation measures is addressed in the response to Environmental Groups' Contention C.5 above. Also, the adequacy of mitigation measures is discussed in the response to Environmental Groups' Contention C.7(b).

The anticipated effects of all alternatives are beneficial to water quality, including groundwater, in that none of the six alternatives will worsen water quality. CEQA directs government agencies to disclose to the public the adverse effects of their discretionary actions. Although some EIRs do discuss the relative merits of alternatives, the focus required by CEQA is on potential negative or adverse effects.

b. Contention: The analysis of impacts to fisheries is flawed because there is no evidentiary support for the assumption that all alternatives would be equally effective at protecting fisheries.

The Central Valley Water Board's position regarding the relative effectiveness of the various alternatives to improve water quality, and therefore, fisheries, is addressed in response to Environmental Groups' Contention C.5 above.

Additionally, all program alternatives would have beneficial effects on water quality and all operational changes likely to be stimulated by the program alternatives would have effects on fisheries that can be reduced to less than significant by mitigation measures proposed in the PEIR. Also, the adequacy of mitigation measures is discussed in response to Environmental Groups' Contention C.7 (b).

c. Contention: The PEIR fails to discuss numerous cumulative impacts to water quality and fisheries habitat currently plaguing the Delta and other areas of the Central Valley.

As described in the Draft PEIR Chapter 6, Cumulative and Growth-Inducing Impacts, the CEQA Guidelines (Section 15130) dictate that an adequate discussion of significant cumulative impacts should contain the following elements:

- An analysis of related future projects or planned development that would affect resources in the project area similar to those affected by the proposed project; or a summary of projections contained in an adopted local, regional or statewide plan that describes or evaluates conditions contributing to the cumulative effect.
- A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available.
- A reasonable analysis of the cumulative impacts of the relevant projects. An EIR must examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

In order to provide practical information, the Board determined the likelihood of cumulative impacts by comparing foreseeable ILRP effects with known existing conditions, as well as with widely acknowledged issues of continuing environmental damage within the area of program influence. For example, as discussed in Subsection 6.2.2.5 of the Draft PEIR, if a management practice resulted directly or indirectly in the reduction in quality habitat and the take of individual listed plants or wildlife species, that impact could combine with other extensive human impacts from land conversion, water development, population growth, and recreation in the Central Valley to result in a potentially cumulatively considerable impact.

As discussed in the response to Environmental Groups' contention C.9, the CEQA analysis must determine what adverse effects the program alternatives would create over and above those present within the baseline condition. Thus while, as the Petitioners correctly note, the water quality and fisheries impacts of allowing discharges of irrigated lands waste is known, this condition is part of the baseline. The alternatives would improve, not worsen this condition, thus no adverse impact is identified. Thus, implementation of one of the proposed program alternatives would not contribute to cumulative surface water quality or fisheries effects. (Draft PEIR, Chapter 5, Sections 5.8 and 5.9).

d. Contention: The PEIR's discussion of possible agricultural impacts is inadequate because it relies on a flawed economic analysis.

The CEQA Guidelines recognize varying roles for program and project-level EIRs in CEQA compliance at Section 15168. A Program EIR is appropriate, where, as with the ILRP, a

series of actions can be characterized as one large project and are related "as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effect which can be mitigated in similar ways" (CEQA Guidelines Section 15168[a][4]).

Program EIRs can be detailed enough to support all future program actions. CEQA Guidelines Section 15168(c) (2) and (c) (5) state:

If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. . . . With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

The CEQA Guidelines at Section 15146 also recognize that the level of specificity contained in an EIR should correspond to the level of detail provided for the project or program that is being analyzed in the EIR. A reduced level of detail is accordingly appropriate at the beginning of the analysis of a program if limited details are available. The California Supreme Court makes this issue clear in its discussion in *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 184 P.3d 709, 715:

In addressing the appropriate amount of detail required at different stages in the tiering process, the CEQA Guidelines state that "[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof . . . the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographic scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (Cal. Code Regs., tit. 14, § 15152, subd. (c)). This court has explained that "[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, [citation omitted].)

The economic analysis in the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program* is adequate for the Central Valley Water Board's consideration of how a range of programmatic alternatives to the existing ILRP could adversely impact agriculture resources. Because of the programmatic nature of the alternatives, their various components, and the anticipated reactions of the regulated community to this Long-term ILRP, the Central Valley Water Board made appropriate assumptions on changes in management practices and subsequent changes in the costs of maintaining agricultural operations in the Central Valley.

The highest costs identified were associated with the adoption of new management practices. The limited information available on the extent of implementation of management practices

and the Board's limited ability to predict how individual growers will respond to the regulatory program made it necessary to make a number of assumptions. Although the exact estimates may be off due to the assumptions made, the analysis provides a good basis for comparison between the alternatives and draws conclusions that are sound and reasonable.

It is reasonable to expect a greater amount of monitoring, reporting, and individual plan preparation to increase agricultural operational costs (for example, see the costs of Alternative 2 versus Alternative 5). It is also reasonable to assume that an alternative that requires the same level of effort throughout the Central Valley will result in the implementation of more management practices than an alternative that is focused on higher threats to water quality (for example, see the costs of Alternative 4 versus Alternative 5), leading to a greater overall cost for management practice implementation. The conclusion that growers of lower value crops have less ability to absorb additional costs, which could result in loss of production of those crops, is sound – the economic analysis demonstrated that the higher cost alternatives would result in greater loss of production for feed and forage crops, and irrigated pasture.

The economic analysis clearly went into more depth than required by CEQA. The economic analysis was prepared for the Central Valley Water Board by ICF International with assistance from Mark Roberson, Ph.D., Stephen Hatchett, Ph.D. and Thomas Wegge of TCW Economics, who agreed with the Regional Board that the analysis provided an adequate basis to compare the potential impacts on agricultural resources of the six alternatives. The Petitioners' consultant asserts that alleged flaws in the economic analysis led to an overly conservative estimate of impacts to agriculture resources. Even assuming, *arguendo*, that these concerns are valid, Petitioners do not point to any authorities that would invalidate an EIR on the basis that its estimates of potential environmental impacts were too conservative.

SWRCB/OCC FILE A-2173(b)**PETITION OF SOUTHERN SAN JOAQUIN VALLEY WATER QUALITY COALITION, ET AL.**

Southern San Joaquin Valley Water Quality Coalition et al. (Agricultural Groups, or Agricultural Group Petitioners) make the following contentions:

- A. Staff's belated preferred alternative was issued to avoid economic and environmental review
- B. The RPA and Long-Term Framework include entirely new regulatory provisions that have not been analyzed in the ILRP EIR
- C.1 The ILRP EIR fails to include a project description.
- C.2 The cumulative impacts of the preferred alternative are not accurately analyzed.
- C.3 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.
- C.4 The ILRP EIR misrepresents the baseline conditions, so, the entire environmental analysis is tainted.
- C.5 The ILRP EIR fails to evaluate the program's reasonably foreseeable direct and indirect effects on the environment
- C.6 The ILRP EIR grossly understates the program's potential impacts on land use.
- C.7 The ILRP EIR's conclusions regarding global warming are not supported by substantial evidence.
- C.8 The ILRP EIR arbitrarily imposes mitigation measures that may not be legally imposed.
- C.9 The ILRP EIR fails to identify a preferred alternative.
- C.10 The ILRP EIR must be recirculated following an adequate analysis of all proposed alternatives including the RPA and the Long-Term Framework which were never analyzed in the ILRP EIR.
- C.11 The Regional Board's assumption that all irrigation constitutes a discharge of waste thereby degrading groundwater or surface water regardless of soil and/or climatic [sic] conditions lacks substantial evidentiary support.
- C.12 The Regional Board employed an improper threshold definition of groundwater for purposes of determining whether groundwater impacts may be considered significant.
- D. The Regional Board's economic analysis is substantially deficient and fails to comply with Water Code § 13141.

- E. The ILRP EIR cannot be relied upon as a Program EIR during adoption of the eight to twelve waste discharge requirements in the future because the ILRP EIR does not contain a thorough analysis of the relevant environmental issues and the effects of the entire program in a specific and comprehensive manner, nor analyzes the individual programs that will be subsequently created.

Below are responses to these contentions. To the extent the contentions address alleged deficiencies in the Program EIR, the responses below summarize and supplement the responses to public comments already included in the Final Program EIR, which is hereby incorporated by reference. For ease of review, each contention is summarized in italics in the beginning of each response.

Response to Agricultural Groups' Contention A

Staff's belated preferred alternative was issued to avoid economic and environmental review

The Petitioners contend that the Recommended Program Alternative, which was analyzed in Appendix A of the Draft PEIR, is not a program alternative and, because it is a combination of various elements of five alternatives, is not adequately analyzed in the PEIR.

The process by which the Recommended Program Alternative (Alternative 6) was developed, analyzed, and made available for decisionmaker and public consideration is in keeping with the best practices and the purpose and intent of the CEQA process. Alternative 6 was developed following a thorough review of the many regulatory process options available to the Central Valley Water Board to reduce the effects of discharges from agricultural lands to the waters of the state. The alternatives development process was shared with a broad representation of agricultural and public interest stakeholders (the Stakeholder Advisory Workgroup or Workgroup) assembled by the Central Valley Water Board and engaged over an extended time period.⁵⁹ Representatives of five of the nine Agricultural Groups were members of the Workgroup.⁶⁰

Once the preliminary range of alternatives had been evaluated for potential environmental and economic effects through the Draft PEIR and the economic analysis of the Long-term Irrigated Lands Regulatory Program (Long-term ILRP) alternatives technical memorandum, and following requests from stakeholders to provide more detail regarding the basic elements of the program options, the Central Valley Water Board crafted a recommended alternative by combining elements of several of the alternatives analyzed in the Draft PEIR. In doing so, the Central Valley Water Board went beyond CEQA's requirements. CEQA requires that a draft EIR include a project description, including identification of the location and boundaries of the project, a statement of objectives with clarification on the underlying purpose of the project, a general description of technical, economic, and environmental characteristics of the project, and a statement briefly describing the intended uses of the EIR.⁶¹ CEQA also requires the

⁵⁹ See *Proposed Long-Term Irrigated Lands Regulatory Program Alternatives* [Central Valley Regional Water Quality Control Board and ICF Jones & Stokes 2009] and the discussion in the Background section of this memorandum.

⁶⁰ See *Proposed Long-Term Irrigated Lands Regulatory Program Alternatives* [Central Valley Regional Water Quality Control Board and ICF Jones & Stokes 2009] and the discussion in the Background section of this memorandum.

⁶¹ CEQA Guidelines Section 15124.

presentation of a reasonable range of alternatives that meets most of the project objectives, are potentially feasible, and would avoid or substantially lessen any potentially significant effects of the proposed project.⁶² CEQA does not require identification of a preferred project.

Moreover, Alternative 6 was crafted to avoid or minimize environmental and economic effects of the other alternatives where possible, to be consistent with the legal mandates of the Central Valley Water Board, and to include added detail to its essential elements. This process of developing and modifying a proposed project based on potential effects is clearly consistent with CEQA's procedural requirements. The CEQA Guidelines state that a range of reasonable alternatives be considered in an EIR and that "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason."⁶³ The Central Valley Water Board approach to using various elements of the other alternatives to develop a recommended alternative is common practice for developing a proposed action, and is consistent with the rule of reason included in the CEQA Guidelines at Section 15126.6(f) and CEQA case law. In the context of project approval, the courts have found that the lead agency is not required to grant "blanket approval" of the proposed project described in the EIR.

CEQA does not handcuff decision-makers . . . The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed. Decision-makers should have the flexibility to implement that portion of a project which satisfies their environmental concerns.

(*Dusek v. Redevelopment Agency* (1985) 173 Cal. App. 3d 1029, 1041; see also *Sierra Club v. City of Orange* (2008) 163 Cal.App. 4th 523, 533 [citing *Dusek*]; *Sequoiah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 716 [(upholding findings as adequate on the basis that reasonable inferences could be drawn from findings on related issues].)

This earlier effort to indicate a proposed direction for the program enables earlier and greater public disclosure. As long as all of the elements of the approved project or program have been analyzed in the PEIR and the new assemblage of pieces does not create significant adverse effects that have not been discussed in the PEIR, this hybrid alternative described in the Draft PEIR appendix can be approved with no additional CEQA consideration.

Further, Alternative 6, although developed concurrently with the administrative draft of the PEIR, was incorporated into the Draft PEIR and circulated with the Draft for public and agency review. The location of this alternative and its analysis is clearly indicated in the introduction to Chapter 3, Program Description, on page 3-1 of the Draft PEIR. The decisionmaker and the public had the ability to compare the environmental merits and deficiencies of Alternative 6 to the other alternatives, as shown in the comparisons on pages 171–173 in Draft PEIR Appendix A. Far from burying the discussion of Alternative 6 in an appendix, the Draft PEIR specifically calls out and highlights the discussion of Alternative 6 in the Appendix, and that discussion, in turn, is based on full disclosure of significant impacts and potential mitigation in the body of the Draft PEIR.

⁶² *Id.*, at § 15126.6.

⁶³ *Id.*, at § 15126.6, subd.(a).

The Petitioners also contend that the introduction of a "Long-term Framework" in the staff report that accompanied the Final PEIR should have been analyzed in the PEIR. The Board did not adopt the Long-term Framework that staff proposed. As described in more detail in response to Agricultural Group Petitioners' Contention B, *post*, the non-adopted Framework is not a "project" within the meaning of CEQA. Since the Framework is not a CEQA project, there was no legal requirement to provide an environmental analysis of its components in the ILRP EIR, or elsewhere.

Regarding the Petitioners' contention that the economic analysis of the Recommended Program Alternative was inadequate, the economic analysis prepared for the Long-term ILRP alternatives was used to inform the Central Valley Water Board of the potential environmental effects of the program to agriculture resources.⁶⁴ As described in more detail in response to Environmental Groups' Contention C.10(d), *ante*, the economic analysis provided an adequate basis to compare the potential impacts on agricultural resources of the six program alternatives.⁶⁵ Economic and social effects may also be used to determine the significance of a physical change caused by the project (CEQA Guidelines Section 15131[b]). However, CEQA does not require a detailed economic analysis of a proposed action beyond these considerations. To the extent the Agricultural Groups are contending that the Economic Analysis of the Recommended Program Alternative violated California Water Code section 13141, please see the Central Valley Water Board's response to Agricultural Groups' Contention D, *post*.

Response to Agricultural Groups' Contention B

The RPA and Long-Term Framework Include entirely new regulatory provisions that have not been analyzed In the ILRP EIR

In regards to the claim that the PEIR did not adequately analyze the details of the Recommended Program Alternative (Alternative 6), please see the Central Valley Water Board's response to Agricultural Groups' Contention A, *ante*.

The Agricultural Groups also contend that the Long-Term Framework (Framework) contains regulatory provisions that were not analyzed in the ILRP EIR. As described in the Background section of this response, the Central Valley Water Board did not adopt staff's proposed Framework.⁶⁶ As such, the non-adopted Framework is not a "project" within the meaning of CEQA.⁶⁷ Since the Framework is not a CEQA project, there was no legal requirement to provide an environmental analysis of its components in the ILRP EIR, or elsewhere. Likewise, the Agricultural Groups' contentions that the Framework violates the Water Code are groundless because the Central Valley Water Board never adopted the Framework. Significantly, the Agricultural Groups' petition does not claim that the Board's failure to approve the Framework was improper. Therefore, Petitioners' challenges to the non-adopted Framework itself are baseless, as are any CEQA claims based on the Framework.

⁶⁴ See Draft PEIR [AR Part 1, Volume 32, Index 57], Section 5.10 (entitled *Agriculture Resources*).

⁶⁵ *Ibid*.

⁶⁶ In fact, since neither the Environmental Groups nor the Agricultural Groups has petitioned the Central Valley Water Board's failure to adopt the proposed resolution, the staff's proposed Framework and its associated documentation is not included in the administrative record.

⁶⁷ See Pub. Resources Code § 21065.

Response to Agricultural Groups' Contention C.1

The ILRP EIR fails to include a project description

In response to the contention that the PEIR does not contain an adequate project description, please see Central Valley Water Board response to Environmental Groups' Contention C.2, *ante*. The propriety of including the Recommended Program Alternative in the PEIR and assembling it from elements of the other alternatives is addressed in response to Agricultural Groups' Contention A, *ante*.

Regarding the requirements for including a preferred project, please see the Central Valley Water Board's response to Agricultural Groups' contention C.9 below.

Response to Agricultural Groups' Contention C.2

The cumulative impacts of the preferred alternative are not accurately analyzed

In response to the claim that the PEIR did not adequately analyze the details of the Recommended Program Alternative (Alternative 6), please see the Central Valley Water Board's response to Agricultural Groups' Contention A.

In response to the contention that the PEIR violated CEQA Guideline section 15130, the Central Valley Water Board addressed this contention in the PEIR. As described in the Draft PEIR Chapter 6, Cumulative and Growth-Inducing Impacts, the CEQA Guidelines (Section 15130) dictate that an adequate discussion of significant cumulative impacts should contain the following elements:

- An analysis of related future projects or planned development that would affect resources in the project area similar to those affected by the proposed project; or a summary of projections contained in an adopted local, regional or statewide plan that describes or evaluates conditions contributing to the cumulative effect.
- A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available.
- A reasonable analysis of the cumulative impacts of the relevant projects. An EIR must examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

CEQA Guideline Section 15130(b) directs a lead agency to ensure its analysis of cumulative impacts be guided by "standards of practicality and reasonableness." As described below, conducting this analysis in a feasible, meaningful way for the Long-term ILRP required that Central Valley Water Board move away from either a traditional list- or plan-based approach while taking the steps necessary to provide the public with valuable information concerning foreseeable cumulative impacts. This decision was due to the limitations of the Draft PEIR's programmatic approach and the ILRP's primarily beneficial effects.

Typically, a program's or project's impacts are identifiable or quantifiable by location, nature, and severity. In this instance, the Long-term ILRP's alternatives foreseeable impacts would result from the indirect effects caused by the actions and choices of growers concerning employment of management practices as growers seek regulatory coverage for discharges to waters of the state under the Long-term ILRP. These management choices may lead to

impacts, the location, nature, and severity of which could vary widely across the Central Valley Water Board's jurisdiction. The same management practices would likely also lead to broad beneficial impacts. The PEIR identifies the possible nature of these impacts, but the lack of information concerning the impacts' locations prevented the Board from making any reasonable site-specific or location-specific conclusions of the cumulative severity of those impacts in light of other related past or present projects. Furthermore, this same challenge made identification of related probable future projects or planned development speculative.

In order to analyze cumulative impacts, the Board determined the likelihood of cumulative impacts by comparing foreseeable Long-term ILRP effects with known existing conditions, as well as with widely acknowledged issues of continuing environmental damage within the area of program influence. For example, as discussed in Subsection 6.2.2.5 of the Draft PEIR, if a management practice resulted directly or indirectly in the reduction in quality habitat and the take of individual listed plants or wildlife species, that impact could combine with other extensive human impacts from land conversion, water development, population growth, and recreation in the Central Valley to result in a potentially cumulatively considerable impact.

Response to Agricultural Groups' Contention C.3

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

This contention is addressed by the Central Valley Water Board in response to Environmental Groups' Contention C.7 (f), *ante*, regarding the definition of "No Project".

To the extent that Petitioners contend that two specific cases invalidate the approach taken by the Central Valley Water Board, these cases are inapposite. In *Sherwin-Williams v. South Coast Air Quality Management Dist.* (2001) 86 Cal.App. 4th 1258, the court said it was permissible for the lead agency to analyze an alternative proposed by the appellant under the "No Project Alternative" section in the EIR. The court did not decide whether that alternative was appropriately characterized as the "No Project Alternative" pursuant to CEQA Guidelines section 15126.6. Because Petitioners argue that the Board mischaracterized the "No Project Alternative," the case does not support Petitioners' argument. *Sunset Skyranch v. County of Sacramento* similarly does not address Petitioners' complaint about the Board's characterization of the "No Project Alternative." That court found that a lead agency's refusal to issue a conditional use permit was not a "project" under CEQA. Because that case involved a specific project, rather than the regulatory program considered by the PEIR, the case has no application to the instant question, which is whether the Regional Board's interpretation of CEQA Guideline section 15126.6 was appropriate.

Response to Agricultural Groups' Contention C.4

The ILRP EIR misrepresents the baseline conditions, so the entire environmental analysis is tainted

The CEQA Guidelines, at Section 15125(a), state:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This

environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

In 2004, following the issuance of the Notice of Preparation, the Central Valley Water Board commenced its environmental analysis. The first step was compiling a record of environmental conditions within its jurisdiction. In 2008 the information collected was published in the *Irrigated Lands Regulatory Program Existing Conditions Report* (ICF Jones & Stokes 2008) (ECR).⁶⁸ The ECR was made available to the public through the Central Valley Water Board website. In March and April 2008, the Central Valley Water Board held a second set of scoping meetings.

The existing conditions information included in Chapter 4, Environmental Setting, and Chapter 5, Environmental Impacts and Mitigation Measures, of the Draft PEIR generally summarize the water quality, hydrology, and land use information from the ECR. Existing conditions information for other resources analyzed in the Draft PEIR is also general because of the large geographic area covered by the regulatory program and the programmatic nature of the impact analysis. The Central Valley Water Board determined that, although presented in general terms, the existing conditions information is presented in sufficient detail to be used as the baseline for determining the potential effects of the regulatory program and subsequent changes in agricultural practices associated with the changed regulatory approach. The quantitative information requested by Petitioners, including the amount of surface water diverted and groundwater pumped for agricultural irrigation, was not included in the ECR or Draft PEIR because this information is not reasonably obtainable as it was not collected and reported by the agricultural industry on a comprehensive and uniform basis. As stated in Section 4.1 of the Draft PEIR, additional resource-specific setting information beyond that included in Chapter 4 is included in the text of Chapter 5 so that the setting is closely associated with the impact analysis of each resources topic. This placement of the additional resource-specific information is designed to facilitate the reader's understanding of the material.

Because the PEIR is a programmatic CEQA document analyzing the effects of a Central Valley-wide regulatory program, the existing conditions/baseline information also includes the discharges occurring pursuant to regulatory conditions that existed at the time CEQA scoping was conducted, even though assumed compliance or noncompliance with regulatory conditions are not part of the CEQA baseline.⁶⁹ The PEIR did not provide a detailed description of resources or values for which implementation of the proposed regulatory changes have no potential to cause a significant effect on the physical environment. Those resources and values are listed in the Draft PEIR, Chapter 1, Summary, on page 1-8.

⁶⁸ *Irrigated Lands Regulatory Program Existing Conditions Report* (ICF Jones & Stokes 2008) [AR Part 2, Volume 1, Index 8].

⁶⁹ See *Communities For a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 322 (baseline emissions were those occurring at time of CEQA analysis, not theoretical emissions allowable under the current operating permit); and *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278-80 (baseline for airport expansion was existing airport operations, even though the airport had been operating and had expanded without a required permit for several years.).

Response to Agricultural Groups' Contention C.5

The ILRP EIR fails to evaluate the program's reasonably foreseeable direct and indirect effects on the environment

The Central Valley Water Board included discussions of indirect program effects in its Draft PEIR wherever it could be determined that the effects were not speculative. As indicated in Chapter 5, Section 5.1, Approach to Impacts (Draft PEIR page 5-1), the management practices that may be undertaken by farmers to comply with the requirements of a new Long-term ILRP are not mandatory and are likely to vary greatly across the varied landscape of the Central Valley. Nonetheless, these management changes are what would create the physical effects on the environment. Management decisions to remove lands from agricultural use or change agricultural use as a result of economic pressures are also a possible effect of the program. Most of the likely effects of changing agricultural practices or eliminating agricultural operations would be indirect effects and could possibly be avoided by implementing alternate management practices. Therefore, the indirect effects of the program are discussed throughout Chapter 5, but in a programmatic way and without undue speculation.

As indicated by the Petitioners, CEQA Guidelines, Section 15064(d) require that an EIR analyze both direct physical changes in the environment and reasonably foreseeable indirect physical changes in the environment which may be caused by the project. It is also important to note, however, that the CEQA Guidelines require the lead agency to use its judgment in describing indirect effects. Section 15064(d)(3) states that "an indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable." The Central Valley Water Board used this standard in discussing the effects of adopting a new Long-term ILRP.

The specific areas of concern in the indirect effects analysis identified by the Petitioners are addressed in the following paragraphs.

1. Improvements in irrigation water management, which would reduce the demand for both surface and groundwater diversions, is not expected to significantly affect groundwater, other than reducing the potential for agricultural chemicals to be transported to groundwater bodies. In areas where current irrigation practices provide for some groundwater recharge, reduced irrigation may reduce groundwater levels. However, improvements in water use efficiency may also result in less pumping of groundwater in some areas. In areas where irrigation water comes exclusively from surface water diversions and there is no likelihood of reductions in groundwater pumping, small changes in groundwater levels may occur. Without specific information on locations and amounts of reduced surface irrigation that would result from the program, it would be speculative to discuss any changes in groundwater levels that might result. This issue can be reconsidered, provided information or data to support further analysis are provided when specific implementation mechanisms (e.g. WDRs) with smaller geographic limits are brought forward for Central Valley Water Board consideration.

2. The Central Valley Water Board did not attempt to speculate on the potential for program-related effects on groundwater due to changes in cropping patterns. It is certainly possible that, at some locations, low value crop land that currently uses large amounts of irrigation water (e.g., irrigated pasture) could be converted to higher value cropland with lower water requirements (e.g., vineyards) as a result of the economic pressures of the program. It is also possible that higher value crops could have higher water demands (e.g., orchards or rice). However, there is no way to accurately predict the location and extent of management practice changes at this programmatic level. This situation was made clear on page 5.11-1 of the Draft PEIR in the discussion of land use. The document states that land use changes associated with implementation of the program alternatives are unknown. Some lands may be converted from the current agricultural use to other uses (including higher value crops), but the location and nature of those changes is unknown at this time. Given the lack of information or clear rationale for concluding that groundwater pumping would increase, the Central Valley Water Board chose not to speculate on changes in groundwater levels that could occur as a result of changing from low value to higher value crops.
3. The potential for an adverse effect on surface water hydrology from reduced irrigation return flows was evaluated in Chapter 5, Section 5.9, Hydrology and Water Quality, on pages 5.9-15 and 5.9-16 of the Draft PEIR for Alternative 1, and on subsequent pages for other alternatives. The surface water hydrology effects of concern under CEQA include altering runoff or drainage patterns in a manner that would degrade water quality, increase erosion, or increase the risk of flooding. Increase in use of tailwater recovery systems would not create any such impacts. Due to the programmatic nature of the alternatives and the impact analysis, quantification of changes has not been conducted. Where land goes out of production, there is the potential for less water being diverted from surface water and groundwater bodies. As indicated in the petition, there is the potential that there would be less agricultural return flow in some seasons and some locations. The combined effects of reduced tailwater return flows and less diversion from natural waterways will vary with a whole range of factors that cannot be predicted at the programmatic level of analysis.
4. Regarding air quality and energy effects of installing more pressurized irrigation systems, Chapter 5, Section 5.5, Air Quality, Table 5.5-8 in the Draft PEIR indicates that the installation of pressurized systems could result in "minor amounts of exhaust emissions...if construction activities are required." Improved irrigation practices may reduce the amount of time that existing pressurized pumping systems are used, which may offset emissions and energy use generated by "new" devices.⁷⁰ The use of improved water management techniques, including pressurized systems, may also reduce the pumping of groundwater or pumping of water from existing waterways or canals, thereby reducing the energy used and the emissions related to these existing practices. The extent to which this may occur is speculative at this juncture and is not analyzed further as the location and extent of the changes in irrigation practices are unknown.

⁷⁰ See Draft PEIR [AR Part 1, Volume 32, Index 57], page 5.6-12.

The text of the air quality analysis, beginning on page 5.5-26 (Operational Emissions) was modified in the Final PEIR to specifically mention the potential increase in groundwater well operation in support of sprinkler and drip systems.⁷¹ The potential for increased well operation was considered in this analysis, as indicated on page 5.5-26 and subsequent impact discussions, but the switch from flood and furrow irrigation to pressurized irrigation was not mentioned. The modification did not result in a new significant adverse impact not discussed in the Draft PEIR. As indicated on page 5.5-28 (Impact AQ-2) and subsequent pages, it was not possible to quantify these emissions due to the lack of information on the extent of this water management change. There are also likely to be offsetting reductions in energy use related to agricultural management changes (reduced pumping of both surface and groundwater as water use is reduced through improved water management).

5. Regarding land use issues, the Draft PEIR, on page 5.11-1, stated that land use changes associated with implementation of the Long-term ILRP alternatives are unknown. Some lands may be converted from active agriculture to other uses, but the location and nature of those changes is unknown at this time. It was reasonable to assume that if lower-value cropland is fallowed as a result of economic forces associated with the program, a change in use will occur; however, the effect of the change will vary with specific location, the type of new land use and other factors. Any changes in use that would require development would be subject to local government review, including consideration of consistency with land use plans, policies, and regulations. It would be speculative to address potential inconsistencies at this programmatic level. Agricultural lands are taken in and out of production routinely in the Central Valley and the issues associated with changing use are addressed at the local level.

Response to Agricultural Groups' Contention C.6

The ILRP EIR grossly understates the program's potential impacts on land use

Petitioners claim that the PEIR does not analyze the creation of potential inconsistencies with local, regional, and state plans. They specifically claim that the PEIR did not properly evaluate potential inconsistencies with general plans that designate agricultural land uses.

As described below, the ILRP would not create inconsistencies with local, regional, and state plans, any existing zoning for agricultural use, or Williamson Act contracts. Further, it would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Program (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

CEQA Guidelines Section 15125(d) states:

The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air-quality attainment or maintenance plan (or State

⁷¹ See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 4, Revisions to the Draft Program Environmental Impact Report, pages 4-3-4-5.

Implementation Plan), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans (HCP's), natural community conservation plans, land use plans for the protection of coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

As discussed in the Draft PEIR, the nature of specific changes in land use are influenced by myriad factors, making it speculative to assume what land use changes, if any, may result from the program. This is discussed in greater detail below.

Page 5.10-6 of the Draft PEIR states:

It is important to note that that the terminology "lost from production" or "removed from production," as used in this draft PEIR and the Draft ILRP Economics Report, does not necessarily mean that the land no longer would be used to produce crops, only that it would not be used to produce the particular crop type in question. It is reasonable and logical to assume that, while some portion of the affected farmland would be converted to nonagricultural use, a majority of the lost acreage would not be converted to a nonagricultural use but instead would be used to produce a crop that would require lower compliance costs and generate sufficient revenue to stay in agricultural production.

Page 5.11-1 of the Draft PEIR goes on to explain that neither the location of potential land conversions nor the specific nature of said conversions can be identified, thus any analysis of such impacts would be unreasonably speculative. Most general plans discouraging conversion of agricultural lands use zoning as a primary tool used to reach that objective. The Program does not call for land use changes as an element of its implementation or otherwise cause inconsistencies with or violations of land use plans. As an example, even if some agricultural operations were to cease as a result of the program, such cessation would not be in direct conflict such zoning ordinances. The landowner would still be required to comply with the local ordinance; the program does nothing to absolve a landowner of his or her obligation to comply with local regulations set forth in applicable local, regional, and state plans.

In regards to potential impacts to groundwater banking programs or groundwater recharge projects, the Central Valley Water Board notes that this issue was not raised to the board by the Agricultural Groups prior to certification of the PEIR on April 7, 2011. Because of this, Petitioners have not exhausted their administrative remedies as required by the State Water Board's petition regulations and CEQA.⁷² In any event, the Petitioners have not established that these projects are "general plans," or the type of "regional plans" enumerated in CEQA Guideline section 15125(d). Further, Petitioners do not identify any specific groundwater recharge/banking projects that would be inconsistent with the long-term program.

For the reasons stated above, potential inconsistencies with HCPs, general plans, land use plans, or regional plans were not a significant concern and were not further addressed in the PEIR, other than additional discussion of specific plans in the response to comments on the Draft PEIR.⁷³

⁷² See Cal. Code Regs., tit. § 2050, subd. (a)(9); Pub. Resources Code § 21177.

⁷³ See Final EIR [AR Part 1, Volume 38, Index 80], at pages 2-19 and 2-20.

Response to Agricultural Groups' Contention C.7

The ILRP EIR's conclusions regarding global warming are not supported by substantial evidence

The PEIR fully evaluates climate change impacts related to the Long-term ILRP to the extent that information is available. CEQA Guidelines, Section 15064.4, states that "A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project" and that a lead agency shall have the discretion to "rely on a qualitative analysis or performance based standards." Information required to conduct a rigorous quantitative analysis of greenhouse gas (GHG) emissions is not available for the evaluation of the proposed Long-term ILRP alternatives. Thus, the Central Valley Water Board conducted a qualitative assessment of direct and indirect GHG emissions associated with construction and operation of the Long-term ILRP.

Consistent with the CEQA Guidelines and scientific consensus regarding the cumulative nature of GHGs, the PEIR concluded that project-level impacts relating to climate change would be less than significant. Climate change is a global problem, and GHGs are global pollutants, unlike criteria air pollutants (such as ozone precursors), which are primarily pollutants of regional and local concern. Given their long atmospheric lifetimes (see Draft PEIR, Chapter 5, Section 5.6, Climate Change, Table 5.6-1), GHGs emitted by countless sources worldwide accumulate in the atmosphere. No single emitter of GHGs is large enough to trigger global climate change on its own. Rather, climate change is the result of the individual contributions of countless sources—past, present, and future. Therefore, GHG impacts are inherently cumulative. Considering the cumulative nature of GHGs on climate change and CEQA's allowance for conducting qualitative analysis of GHG impacts, the PEIR's project-level conclusion is supported by the best available science and current CEQA analysis practice.

In response to the claim that use of pressurized systems could contribute to increased GHG emissions, the PEIR addresses that issue. Chapter 6, Cumulative and Growth-Inducing Impacts, of the Draft PEIR evaluates the Long-term ILRP's contribution to climate change on a cumulative level and concludes that emissions would be significant. This conclusion was based on the qualitative analysis of direct and indirect GHG emissions presented in Chapter 5, Section 5.6. Direct emissions sources associated with the Long-term ILRP include fuel combustion by heavy-duty construction equipment and on-road vehicles. Indirect sources include increases in energy use from electric powered pumps. While the exact emissions associated with these sources are not quantified, the Draft PEIR discusses the potential for the Long-term ILRP to increase the use of equipment and on-road vehicles, as well as install new electric powered pumps. The relationship between increased equipment use and GHG emissions is well documented in established literature and is not speculative.

As discussed in the Final PEIR, emissions associated with land use change are too speculative to qualitatively or quantitatively consider in the GHG analysis. Because specific information related to the subsequent land use type that would replace low value crops following implementation of the Long-term ILRP is not available, estimating the program's effects on carbon sequestration and GHG emissions is far more uncertain and speculative than for other classes of emissions (e.g., construction and operations). Consequently, emissions resulting from land use change were not included in the analysis. However, in

response to public comments, a discussion of carbon sequestration and the analysis limitations was added to the Final PEIR, pages 5.6-12 and 5.6-13.⁷⁴

The 2007 study referenced by the petition indicates that agricultural activities help mediate global warming and have a net cooling effect on surrounding communities, as well as actively sequestering carbon dioxide. However, agriculture also produces carbon emissions through natural decomposition and decay. Thus, the extent that reducing irrigated land would result in increased climate change impacts cannot be definitively concluded without location-specific information. Thus, to avoid a conclusion based on speculation, the Final EIR does not include an analysis of the degree to which land use changes would affect carbon emissions.

Within the constraints of available information and the current regulatory setting, the PEIR made a good-faith effort to characterize potential GHG emissions and climate change impacts associated with the Long-term ILRP.

Response to Agricultural Groups' Contention C.8

The ILRP EIR arbitrarily imposes mitigation measures that may not be legally imposed

Petitioners contend that the mitigation measures contained in the Draft PEIR are not feasible because of a belief the Central Valley Water Board lacks the means or authority to insure the measures are implemented. They also contend that the mitigation measures improperly create obligations for growers to comply with legal mandates (such as CEQA compliance and conducting delineations for waters of the United States) and mitigation when the change in management practice that may stimulate the need for mitigation is non-discretionary. As described below, those contentions are without merit.

CEQA Guidelines Section 15126.4 directs lead agencies to describe feasible mitigation measures that could minimize significant adverse impacts. Section 15126.4(a) (2) specifically states that mitigation measures for impacts resulting from a plan or policy, such as the Long-term ILRP, can be incorporated into the plan or policy. In order to be considered feasible, a mitigation measure must be fully enforceable through permit conditions, agreements, or other legally binding instruments. Draft PEIR Chapter 5, Section 5.1.2, Significance Determinations and Mitigations, discusses the Long-term ILRP approach to mitigation, stating that the Central Valley Water Board will enforce the identified mitigation through inclusion of measures in the ILRP enforcing mechanism, which will be a legally binding instrument. These measures are likely to be included in prohibitions, discharge specifications or provisions in the enforcing mechanism (WDRs, waivers). In fact, these measures were included as enforceable conditions to the Conditional Waiver, which relied upon the PEIR for CEQA compliance. This approach to mitigation and mitigation monitoring is consistent with the direction of CEQA Guidelines Section 15126.4(a) (2).

The Central Valley Water Board regulates discharges to waters of the state from irrigated agricultural operations. Growers who choose to participate in the Long-term ILRP for those discharges are bound by the terms of the program requirements (i.e., WDRs or waivers), including mitigation measures in the form of prohibitions, discharge specifications or provisions described therein. In this way, the mitigation measures that were proposed for the Long-term

⁷⁴ See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 4, Revisions to the Draft Program Environmental Impact Report, pages 4-5-4-8.

ILRP can be binding on program participants and therefore legally feasible. However, growers who believe they cannot comply with the program's mitigation requirements may opt out of the Long-term ILRP and seek individual WDRs. The issuance of individual WDRs is a discretionary action for the Central Valley Water Board, providing for the CEQA review. In these cases, the individual grower may work with the Central Valley Water Board to develop alternative mitigation or consider undertaking individual CEQA review to deal with potentially significant effects of changes in management practices. Thus, the mitigation measures required under the program do not go beyond the jurisdiction of the Central Valley Water Board and are not legally infeasible.

Under all six Long-term ILRP alternatives, growers would not be mandated by the ILRP to implement particular water quality management practices. The Long-term ILRP alternatives leave the choice of management practices needed to reach water quality goals to the growers. However, when a management practice selected by a grower to achieve compliance with the terms of the Long-term ILRP enforcing mechanism has the potential to create significant impacts, mitigation will be required to maintain coverage under the implementing mechanism.

As an example, Chapter 5.7, Vegetation and Wildlife, Section 5.7.6, Mitigation, directs growers that desire coverage under the Long-term ILRP to mitigate potential management practice impacts through avoidance of management practices that interfere with or harm identified sensitive resources. However, in the unlikely instance that all available management practices will have adverse impacts, and one of those management practices must be implemented to meet the terms of the ILRP implementing mechanism, such impacts are indirect effects of the ILRP that must be mitigated if feasible. The PEIR, therefore, identifies feasible mitigation measures for these potential impacts. It is unknown where or if a significant impact may occur as a result of implementing the Long-term ILRP because of the programmatic level of analysis contained in the Draft PEIR, so it is not possible to draft project-level mitigation for this contingency. If the Central Valley Water Board determines a specific impact or mitigation measure has not been analyzed in the PEIR, site-specific CEQA compliance may be required.

Petitioners also challenge the mitigation measure for wetland loss requiring delineation of wetlands in accordance with U.S. Army Corps of Engineers (USACE) methods. Throughout the Draft PEIR, mention is made of a grower's need to comply with applicable federal Clean Water Act (CWA) requirements for wetlands in his or her compliance with the ILRP. This is not a duty placed upon growers by virtue of their participation in the ILRP. Regardless of a grower's participation, compliance with the CWA is the obligation of all growers where relevant. The ILRP neither creates nor relieves such an obligation. To the extent that Petitioners challenge the mitigation measure as exceeding the Central Valley Water Board's legal authority for wetlands that are not waters of the United States, the Board has clear jurisdiction under the Porter-Cologne Water Quality Act over wetlands that are waters of the state. As such, it was well within the Board's authority to require the delineation of wetlands in accordance with the existing federal methods. The Central Valley Water Board determined that using federal USACE methods to delineate all wetlands, including those that are not waters of the United States, is feasible. The Central Valley Water Board did not exceed its authority when identifying the wetland loss mitigation measure in the PEIR.

Response to Agricultural Groups' Contention C.9*The ILRP EIR fails to identify a preferred alternative*

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 Recommended Program Alternative is described and analyzed in the Draft PEIR, Appendix A.

Consistent with the desire to provide the Board with a broad range of policy and implementation mechanism choices, the Central Valley Water Board and its Long-term ILRP Stakeholder Advisory Workgroup - of which several Agricultural Group Petitioners were members - did not limit the selection of alternatives to just those that might reduce the adverse effects of the existing regulatory program. In fact, the description of the program alternatives in Chapter 3, Program Description, of the Draft PEIR does not include a proposed or preferred program as a basis for comparing alternatives. Instead, the Draft PEIR describes alternatives in an equal level of detail; the impact analyses in Chapter 5, Environmental Impacts and Mitigation Measures, and Chapter 6, Cumulative and Growth-Inducing Impacts, also provide an equal level of detail for the alternatives. Because what was being considered was a broad program, the alternatives also included policy and implementation authority differences that are important for the Regional Board to consider, not just environmental impact differences. The decision to not specify a single proposed project allowed for the full comparison of alternatives and provides the Central Valley Water Board with broad discretion in selecting a long-term program from among the various components of the alternatives.

Response to Agricultural Groups' Contention C.10*The ILRP EIR must be recirculated following an adequate analysis of all proposed alternatives including the RPA and the long-term Framework which were never analyzed in the ILRP EIR.*

The Agricultural Groups contend that CEQA Guideline section 15088.5 required the Central Valley Water Board to recirculate the PEIR to allow for public comment on the Recommended Program Alternative and the "Long Term Framework." In response, the Central Valley Water Board notes that neither of these issues was raised to the Board prior to certification of the PEIR on April 7, 2011. State Water Board petition regulations, at 23 Cal.Code Regs. section 2050, subdivision (a)(9), require Petitioners to verify that each substantive issue or objection in the petition was raised before the regional water board, or explain why the petitioner was not required or unable to raise them before the regional water board. Petitioners have not complied with this requirement. CEQA contains a similar exhaustion requirement.⁷⁵

Should the State Water Board consider these arguments notwithstanding these exhaustion requirements, the Central Valley Water Board provides the following substantive responses. With respect to the Recommended Program Alternative, recirculation requirements only become a potential CEQA issue if significant new information is added to an EIR "after public

⁷⁵ Pub. Resources Code § 21177, subd. (a) ("No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.").

notice is given of the availability of the draft EIR for public review under section 15098 but before certification.”⁷⁶ The new information is not significant unless “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.” (CEQA Guidelines Section 15088.5[a]). Since the Recommended Program Alternative was included in the Draft PEIR as Appendix A,⁷⁷ recirculation was clearly not required. Moreover, the new effects identified by the Agricultural Groups (increased costs, loss of agricultural land, and decreased agricultural return flows for groundwater recharge) are all addressed in the Draft PEIR and the Recommended Program Alternative’s effects would fall within the range of effects contained in the Draft PEIR. Therefore, these effects would not warrant recirculation under Section 15088.5. With respect to the “Long-Term Framework,” the non-adopted “Long-Term Framework” is not a “project” within the meaning of CEQA and did not require environmental review.⁷⁸ The proposed Framework was not intended as a supplement to the EIR. It was put forward as a proposed Board action that would have fallen within the range of the analysis contained in the PEIR. Because it was not adopted, however, the sufficiency of the Framework’s CEQA coverage is not relevant.

Response to Agricultural Groups’ Contention C.11

The Regional Board’s assumption that all irrigation constitutes a discharge of waste thereby degrading groundwater or surface water regardless of soil and/or climatic conditions lacks substantial evidentiary support

The Draft PEIR, at Appendix A, included a staff report discussion of the Central Valley Water Board’s regulatory authority, including authority over groundwater discharges.

The Agricultural Groups assert that the Central Valley Water Board violated CEQA Guideline section 15064, subdivision (f)(5) by stating in Appendix A that all irrigated agriculture potentially creates a discharge of waste that could affect the quality of groundwater. The context of the cited subdivision is important. CEQA Guideline section 15064 reads: “a decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.” From the petition, it is impossible to tell what “significant effect” determination in the PEIR the Agricultural Groups claim to have been influenced by the Board’s statement about discharges to groundwater. In fact, the administrative record shows that the Central Valley Water Board did not rely on its statement to make any “significant effects” determinations. The State Water Board should reject this contention.

While labeled as a CEQA argument, the Agricultural Groups appear to be making a non-CEQA argument about the Central Valley Water Board’s authority over discharges to groundwater from irrigated lands. While those arguments are not ripe at this point because the Regional Board has not taken final action to regulate such discharges, the Central Valley Water Board strongly urges the State Water Board to consider the arguments presented below.⁷⁹

⁷⁶ Pub. Resources Code § 15088.5, subd. (a).

⁷⁷ See also Response to Agricultural Groups’ Contention A.1.

⁷⁸ This position is more fully explained in response to Agricultural Groups’ contention B.2.

⁷⁹ See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 2, response 2.2.12.2, at p. 2-21.

The basis for the position that most, if not all, irrigated agricultural operations discharge or propose to discharge waste that could affect groundwater quality to some degree and over some period of time is based upon review of groundwater quality data, the physical properties of water, the principles of irrigation, and the gravitational process. As described in Section III.C.2 of the Draft PEIR, Appendix A, a considerable number of wells in the Central Valley have high levels of nitrate. The use of chemical nitrogen-based fertilizers has been found to be a potential cause of nitrate contamination of groundwater in agricultural areas (see pages 99–100 of the Draft PEIR, Appendix A). Also, DPR's Groundwater Protection Program has found pesticides in groundwater from irrigated agricultural use. Water is a natural solvent that dissolves a variety of compounds contained within the soil (e.g., salts, minerals, certain polar organics). The resulting solute may include nutrients, pesticides, salts, or other naturally occurring or applied chemicals. During irrigation, water/solutes infiltrate the soil and pass downward under the force of gravity to the root zone of the crop where a portion of this subsurface water is taken up by the plant's root system. The remaining water passes below the root zone and can no longer be utilized by the crop. This process is acknowledged by state and local agencies to provide necessary groundwater recharge in areas within the Central Valley.

Response to Agricultural Groups' Contention C.12

The Regional Board employed an improper threshold definition of groundwater for purposes of determining whether groundwater impacts may be considered significant

The Draft PEIR, at Appendix A, included a staff report discussion of groundwater subject to regulation under the Porter-Cologne Water Quality Control Act. Because those statements were included in the Draft PEIR, the Central Valley Water Board accepted comments on them, and provided a written response.

The Agricultural Groups assert that the Central Valley Water Board violated CEQA Guideline sections 15064, subdivision (f)(5) and 15064.7, subdivision (a) by stating in Appendix A that first encountered groundwater is subject to regulation under the Porter-Cologne Water Quality Control Act. Both of the cited CEQA Guidelines describe evidence necessary to support a finding of "significant effect" under CEQA. From the petition, it is impossible to tell what "significant effect" determination in the PEIR the Agricultural Groups claim to have been influenced by Appendix A's statement about first encountered groundwater. In fact, the administrative record shows that the Central Valley Water Board did not rely on its statement to make any "significant effects" determinations. The State Water Board should reject this contention.

While labeled as a CEQA argument, the Agricultural Groups appear to be making a non-CEQA argument about the Central Valley Water Board's authority over discharges to first encountered groundwater. While those arguments are not ripe at this point because the Central Valley Water Board has not taken final action to regulate such discharges, the Central Valley Water Board strongly urges the State Water Board to consider the arguments presented below⁸⁰:

⁸⁰ See Final PEIR [AR Part 1, Volume 38, Index 80], Chapter 2, response 2.2.18.2, p. 2-30.

The Water Quality Control Plans for the Sacramento River Basin and the San Joaquin River Basin specify, "Unless otherwise designated by the Regional Water Board, all ground waters in the Region are considered as suitable or potentially suitable, at a minimum, for municipal and domestic water supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO)." Likewise, the Tulare Lake Basin Plan stipulates that, "For ground water, the following beneficial uses have been identified and occur throughout the Basin: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), Water Contact Recreation (REC-1), and Wildlife Habitat (WILD)."

Both Basin Plans define groundwater as "...subsurface water that occurs beneath the ground surface in fully saturated zones within soils and other geologic formations." First encountered groundwater is a water of the state (as defined by California Water Code Section 13050 (e)) which has been ascribed a MUN beneficial use by the Water Quality Control Plans that have been developed for the Central Valley Region. Monitoring first encountered groundwater provides the earliest indication of groundwater impact due to irrigated agricultural operations and is a direct evaluation of the effectiveness of agricultural management practices and any changes in such practices made to address a water quality concern. Direct measurement of assimilative capacity is obtained by sampling at the point of impact; in this case, after transport through the vadose zone and into first encountered groundwater. It is at this point that impact to the beneficial use may occur. The two Basin Plans include criteria that the Regional Board will use in applying exceptions to the beneficial use designations. Any such exceptions must be part of an amendment to the Basin Plan.

Response to Agricultural Groups' Contention D

The Regional Board's economic analysis is substantially deficient and fails to comply with Water Code § 13141

The Petitioners argue that social and economic impacts are relevant where an EIR identifies significant environmental impacts. They further indicate that "The ILRP EIR, the Recommended Program Alternative, and the Long-Term Framework all fail to satisfy either CEQA or Porter-Cologne because they do not contain an accurate or detailed discussion of the economic impacts of the program." The CEQA Guidelines, at Section 15131, indicate that economic and social effects *may* be included in an EIR under certain conditions. Economic and social changes related to a project may be presented when these changes result in a physical change in the environment (Section 15131[a]). Consistent with this guidance, the PEIR includes a discussion of the changes in agricultural production that may occur as a result of the costs of implementing a new Long-term ILRP (Section 5.10 of the Draft PEIR). Economic and social effects may also be used to determine the significance of a physical change caused by the project (CEQA Guidelines Section 15131[b]). CEQA does not require a detailed economic analysis of a proposed action beyond these considerations.

The contention that the Economic Analysis fails to comply with Water Code section 13141 is premature, as the Board has not taken an action subject to section 13141 that relies on that analysis. The purpose of the Economic Analysis was to inform the Central Valley Water Board of the potential environmental effects of the long-term program to agriculture resources.⁸¹

⁸¹ See Final EIR [AR Part 1, Volume 38, Index 80], Section 5.10 (entitled *Agriculture Resources*).

Water Code section 13141 reads: "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 Central Valley Water Board has released draft amendments to the Water Quality Control Plans (Basin Plans) for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin that rely in part on the Economic Analysis to estimate such costs.⁸²

The draft amendments are tentatively scheduled for consideration by the Central Valley Water Board at its October 2011 meeting. The proper forum for the Agricultural Groups to voice concerns about the adequacy of the draft amendments is to present comments to the Central Valley Water Board on the proposed amendments.⁸³

⁸² See *Non Regulatory Amendments to Provide a Cost Estimate and Potential Sources of Financing for the Long-Term Irrigated Lands Program* [provide admin record citation]. Pursuant to California Code of Regulations, title 23, section 2050.6, the Central Valley Water Board asks that the State Water Board take official notice of the proposed *Non-Regulatory Basin Plan amendments*, which can be found at http://www.waterboards.ca.gov/centralvalley/public_notices. The information, which could not have been provided to the Central Valley Water Board prior to certification of the PEIR, is being provided as evidence that the board is considering a basin plan amendment to identify the costs of administering the upcoming long-term program.

⁸³ It is questionable whether section 13141 applies to the upcoming orders that will constitute the long-term irrigated lands regulatory program. Porter-Cologne requires waste dischargers to submit reports of waste discharge and obtain waste discharge requirements or waivers. (Wat. Code, §§ 13260, 13263, 13269.) The 1999 amendments to section 13269 (Senate Bill 390) require waivers to be conditional and include specific fee provisions applicable to irrigated agriculture waivers.

The first sentence of section 13141 does nothing more than provide an effective date for various plans and policies to become part of the California Water Plan. The requirement to indicate the costs and financing sources of an "agricultural water quality control program" in a basin plan before "implementation" of the program could simply be an exception to the general provisions of the first sentence. The Regional Board concurs that section 13141 would most clearly apply when an "agricultural water quality control program" is established in a water quality control plan. Potentially conflicting statutes must be read in context. (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, ___, 128 Cal.Rptr.3d 658, 672.) Water Code section 13141 does not explicitly apply to the issuance or waiver of waste discharge requirements for discharges of waste from irrigated lands. Section 13141 is silent about the requirement that all waste dischargers, including dischargers from agricultural lands, must obtain WDRs or waivers. Section 13141 is also silent about the enforcement remedies available for unpermitted discharges. (See, e.g., Wat. Code §§ 13264, subd. (b); 13265.) This silence may signify that Section 13141 is not intended to apply to issuance of WDRs or waivers.

Section 13141 does not define "agricultural water quality control program." The issuance of a waiver or waste discharge requirements does not necessarily constitute the adoption of a regulatory program. Section 13141 is part of Chapter 3 of Porter-Cologne, which authorizes the State Water Board to formulate state policy for water quality control and establishes related powers and duties of the State Water Board. The relevant powers and duties of the regional water boards, are in Chapters 4, articles 1-2 (general powers and duties), article 3 (basin plan requirements) and article 4 (waste discharge requirements and waivers). It is questionable whether a regional water board's issuance of a general waiver, one or more general WDRs, or site-specific WDRs for all dischargers constitutes the "implementation" of an "agricultural water quality control program" within the meaning of section 13141.

Response to Agricultural Groups' Contention E

The ILRP EIR cannot be relied upon as a Program EIR during adoption of the eight to twelve waste discharge requirements in the future because the ILRP EIR does not contain a thorough analysis of the relevant environmental issues and the effects of the entire Program in a specific and comprehensive manner, nor analyzes the individual programs that will be subsequently created

This contention questions the adequacy of the PEIR to support the issuance of subsequent orders comprising the ILRP because the PEIR does not contain a thorough analysis of the relevant environmental issues. This argument is not ripe because the Central Valley Water Board has not yet issued the subsequent orders. Moreover, the contention that the document is not adequate to serve as a Program EIR for subsequent, specific waste discharge requirements has no relationship to the adequacy of the PEIR as a basis for establishing the new ILRP. The PEIR is consistent with Section 15168 of the CEQA Guidelines because the PEIR will be used to consider the effects of a series of actions (subsequent general orders of waste discharge requirements), consistent with Section 15168(a), and the PEIR will allow the Central Valley Water Board to consider broad policy alternatives and program-wide mitigation measures as specified in Section 15168(b). The PEIR will allow the Central Valley Water Board to use the analysis contained in the PEIR to consider subsequent activities and determine whether additional environmental documentation is needed as specified in Section 15168(c).

cc:

[via U.S. Mail and email]

Michael R. Lozeau, Esq.
Christina M. Caro, Esq.
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
michael@lozeaudrury.com
christina@lozeaudrury.com

[via U.S. Mail and email]

William J. Thomas, Esq.
Harriet A Steiner, Esq.
Kimberly E. Hood, Esq.
Best Best & Krieger LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
william.thomas@bbklaw.com
harriet.steiner@bbklaw.com
kimberly.hood@bbklaw.com

[via U.S. Mail and email]

Ms. Carolee Krieger, President
California Water Impact Network
808 Romero Canyon Road
Santa Barbara, CA 93108

[via U.S. Mail and email]

Mr. Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
deltakeep@me.com

[via U.S. Mail and email]

Mr. Wayne Zipser
Mr. Parry Klassen
East San Joaquin Water Quality Coalition
Stanislaus County Farm Bureau
P.O. Box 3070
Modesto, CA 95353-3070
waynezip@stanfarmbureau.org
pklassen@unwiredbb.com

[via U.S. Mail and email]

Mr. John Brodie, Watershed Coordinator
Mr. Mike Wackman
San Joaquin County Resource
Conservation District
San Joaquin County and Delta Water
Quality Coalition
3422 W. Hammer Lane, Suite A
Stockton, CA 95219
rvranglr@yahoo.com
info@sidedeltawatershed.org
michaelkw@msn.com

[via U.S. Mail and email]

Mr. David Orth, Steering Committee Chairman
Southern San Joaquin Valley Water
Quality Coalition
4886 East Jensen Avenue
Fresno, CA 93725
dorth@krcd.org

[via U.S. Mail and email]

Kari E. Fisher, Esq.
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833
kfisher@cfbf.com
photz@cfbf.com

[via U.S. Mail and email]

Mr. Susan Ramos
Mr. Orvil McKinnis
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
sramos@westlandswater.org
omckinnis@westlandswater.org

cc: (continued)

[via U.S. Mail and email]

Mr. Bruce Houdesheldt
Mr. David Guy, Northern
California Water Association
Sacramento Valley Water Quality
Coalition
455 Capitol Mall, Suite 335
Sacramento, CA 95814
bruceh@norcalwater.org
dguy@norcalwater.org

[via U.S. Mail and email]

Mr. Timothy A. Johnson
Ms. Roberta Firoved, California Rice
Commission
8801 Folsom Boulevard, Suite 172
Sacramento, CA 95826
tjohnson@calrice.org
rfiroved@calrice.org

[via U.S. Mail and email]

Mr. Joseph McGahan, Watershed
Coordinator
San Joaquin Valley Drainage Authority
Westside San Joaquin River Watershed
Coalition
887 N. Irwin Street
P.O. Box 1122
Hanford, CA 93232
jmcgahan@summerseng.com

[via U.S. Mail and email]

Mr. Herb Jasper
Goose Lake Water Quality Coalition
P.O. Box 212
New Pine Creek, OR 97635
bry.jasper@oregonstate.edu

[via U.S. Mail and email]

Theresa Dunham, Esq.,
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
tdunham@somachlaw.com

[via U.S. Mail and email]

Diane V. Rathman, Esq.
Linneman, Burgess Telles, Van Atta, Vierra
Rathman, Whitehurst & Keene
1820 Marguerite Street
P.O. Box 156
Dos Palos, CA 93620
drathmann@aol.com

[via U.S. Mail and email]

Jennifer L. Spaletta, Esq.
Herum/Crabtree
2291 W. March Lane, Suite B-100
Stockton, CA 95207
jspaletta@herumcrabtree.com

[via U.S. Mail and email]

Mr. Rod Stiefvater
Pleasant Valley Water Quality Coalition
2985 Airport Drive
Madera, CA 93637
rstiefvater@speccrop.com

