

Smith, Megan

From: Pam Giacomini [pgiacomini@citlink.net]
Sent: Sunday, 26 September 2010 9:25
To: ILRP Comments
Cc: pam@hatcreekgrown.com
Subject: Comments on PDEIR
Attachments: NECWA ILRP PDEIR Comments.pdf

Hello Megan – Here are comments from the North Eastern California Water Association on the Irrigated Lands, PDEIR.

Thank you for your consideration, Pam

Pam Giacomini

North Eastern California Water Association

P.O. Box 367, McArthur, CA 96056

September 24, 2010

Delivered via email to: ILRPcomments@icfi.com

ILRP Comments
Ms. Megan Smith
ICF International
630 K Street, Suite 400
Sacramento, CA 95814

Dear Ms. Smith:

Please accept these comments of behalf of the North Eastern California Water Association (NECWA). We are a voluntary membership organization with 170 members and a geographic region that covers over 75,000 irrigated acres in the northeastern corner of the state, most of which are located in the Pit River Watershed. Our members are nestled between the Goose Lake Water Quality Coalition and Sacramento Valley groups and are a member of the Sacramento Valley Water Quality Coalition (SVWQC). NECWA was formed prior to the formation of the Irrigated Lands Regulatory Program for the purpose of protecting our members interests in water and property rights.

Comments specific to the Programmatic Draft Environmental Impact Report (PEIR) for the Irrigated Lands Regulatory Program.

One general comment regarding the analysis, the CEQA document which is being used to provide the analysis for the alternative that may or may not be selected by the Regional Board has analyzed only the five original alternatives. The sixth alternative has been analyzed in the Staff Report and Recommendation. We would wonder if the Regional Board will have the adequate CEQA coverage by constructing the analysis in that manner.

While our members have been active participants in the current Irrigated Lands Regulatory Program, (ILRP) we still believe that a regulatory program is unnecessary and is a drain on both private and public resources. Many of our members participated in the University of California's Rangeland Water Quality program that was strictly voluntary. They learned through that program how to implement many practices that improve and protect water quality. As you will note from the maps contained in the Staff Recommendation on pages 35 – 44, exceedances in our region rarely, if ever happen. There is one instance of E coli exceedance and that was attributed to factors outside of the control of irrigated agriculture. We certainly have very low to no negative impact on water quality.

NECWA's Mission is to protect and enhance water rights, water quality and riparian areas to the benefit of agriculture, the environment, recreation, and wildlife in the Northeastern California region.

That said, we are saddled with a costly and cumbersome regulatory program and understand that we must work within the regulatory framework that we have before us. We agree with these goals as outlined in the PEIR.

- Encourage implementation of management practices that improve water quality in keeping with the first objective without jeopardizing the economic viability for all sizes of irrigated agricultural operations in the Central Valley or placing an undue burden on rural communities to provide safe drinking water.
- Provide incentives (i.e., financial assistance, monitoring reductions, certification, or technical help) for agricultural operations to minimize waste discharge to state waters from their operations.
- Promote coordination with other regulatory and non-regulatory programs associated with agricultural operations to minimize duplicative regulatory oversight while ensuring program effectiveness (e.g., U.S. Department of Agriculture [USDA] National Organic Program, State Water Board Groundwater Ambient Monitoring and Assessment Program).

Our members would encourage the Board as you deliberate in your decision to craft a program that focuses on priorities and places the appropriate level of scrutiny and cost on problem areas as well as low priority areas.

We support the Tiering concept in Alternative 2. We agree with the staff recommendation on page 138 regarding creation of low priority areas and the concept on page 139 that creates a Tiered approach for reducing costs for the lower threat areas. However, we believe that as currently written there is a lot of confusion of how the Tiered approach would be implemented. Tiering needs to be developed using best available science and working cooperatively with knowledgeable, local resources. Please see our detailed comments below on the Staff Recommended Alternative and our concerns regarding how a 303(d) listed waterbody would be handled. Our recommendation is that our detailed monitoring be used to place our region and others like us that have no negative impact, into Tier 1, rather than using an arbitrarily listed 303(d) water body and placing our Region into Tier 2. Area priority should be re-classified by your Board using the data and information that we have collected over the term of the program.

In addition, NECWA believes that the concept of Best Practicable Treatment or Control (BPTC) should NOT be tied in any way to agricultural discharges in Tier 1. BPTC applies to industrial specific point source effluent limits - Irrigated agriculture is NOT a point source and should never be allowed to be addressed as one – it is specifically exempted from point source definition in the statute.

Comments specific to the Irrigated Lands Regulatory Program: Economics Report

NECWA is highly concerned that the economic analysis is not accurate for our region and regions like ours. The Central Valley Production Model absolutely will not apply to our region, that consists mainly of very low impact irrigated pasture and hay lands. It is very problematic to us that staff believes that a reduction in these types of operations is planned and will happen from implementation of any of the alternatives of the program. That reasoning should support placing us immediately into a Tier 1 situation and lessen our costs and burdens, not put us out of business.

The number of growers and acreage appear to be inaccurate as they are conflicting in a number of areas. Accurate numbers should be applied and analyzed.

One of the Key Study Assumptions states: "As discussed further in Chapter 3, the model assumes that growers will react to increased costs and other compliance requirements by adjusting crop production as needed to maximize net income and stay in business. Results from the Central Valley were extrapolated to affected areas in the foothills and upper watersheds." It continues, "It is likely; however, that growers will find or develop less expensive ways to modify their production practices, and therefore, direct impacts on their revenues and production would be less than those estimated in Chapter 3."

NECWA is highly concerned about these assumptions. Our members are highly limited by growing season, soil types, elevation and other environmental factors completely out of their control. The choice of crop types are very limited and aren't easily changed.

Comments specific to the Staff Report and Recommendation for a Preferred Alternative.

Topic: Groundwater

CVRWQCB Staff Recommendation: Include groundwater requirements.

NECWA opposes including the groundwater requirements, unless first, we are assured that we are in Tier 1 and those associated Tier 1 monitoring requirements (none) would be in effect. As you will note in the Staff Report on Figure B-9 Map of Hydrogeologically Vulnerable Areas from State Water Resources Control Board (2000) the region NECWA covers has only one minor and very small hydrologically vulnerable area. Additionally, on Figure B-10 California Department of Pesticide Regulations Groundwater Protection Areas, you will note that in the region NECWA covers, we have NO designated Groundwater Protection areas.

Topic: Waiver vs WDR's vs Direct CVRWQCB

CVRWQCB Staff Recommendation: A series of area-, geographically based, or commodity based implementation mechanisms with prioritized requirements. Implementation mechanisms could include waivers in low-priority areas and general WDRs in high-priority areas.

NECWA would support the Waiver approach, especially as we have pointed out the little risk our members pose to having a negative effect on water quality. We believe we should be allowed to work with CVRWQCB staff to develop a region-wide waiver and with that waiver would come the designation of being in Tier 1. Recall, our membership does not pose a significant risk to impaired water quality.

Topic: Coalition vs Coalition with JPA

CVRWQCB Staff Recommendation: Third-party structure established in Alternatives 1 and 2 with additional structural and third-party transparency requirements described above.

NECWA is concerned over the Coalition with JPA. This essentially means that we, as a volunteer run, membership organization take on the role of the enforcer. NECWA became involved to assist our members in dealing with the regulatory framework (ILRP) and chose to comply and work with the program. Outliers that have never joined a coalition, seemed to have gotten off scott free ... why doesn't the CVRWQCB go after those folks who have not complied, rather than adding more burden to our volunteer coalition?

Topic: Lead Entity (see above)

CVRWQCB Staff Recommendation: Third-party structure established in Alternatives 1 and 2 with additional structural and third-party transparency requirements described above.

NECWA believes the coalition approach in Alternative 2 is the best approach and that the Board should enforce their power under CWC §13267 to go after those property owners that have failed to participate in the coalition process.

Topic: Water Quality Management Plans

CVRWQCB Staff Recommendation: Regional water quality plans similar to those described in Alternatives 1 and 2 with additional requirements to (1) ensure the plans are designed to implement BPTC to minimize degradation and address exceedances of water quality objectives, and (2) develop individual water quality management plans where regional plans have been ineffective.

The Draft Staff Report makes an improper presumption that all irrigated agriculture creates a discharge of waste. In Appendix D the Surface Water Quality Management Plan (SWQMP) requirements fail to account for the possibility that irrigated agriculture may not be the predominant source of the identified exceedances as we discovered after spending a huge amount of our members dollars on surface water quality monitoring. As general qualification, the SWQMP requirements should state that only if irrigated agriculture is identified as the predominant source of the pollutant discharge should the Surface and Groundwater Quality Management Plan be required. There is a real possibility that inputs from other point and non-point sources are contributing to the exceedances identified at monitoring sites, as we discovered when there have been PH, DO and an EColi exceedance (the ONLY exceedances ever identified in all of our monitoring) and have NEVER proven to be from an agricultural source.

Topic: Tiers

CVRWQCB Staff Recommendation: Establish geographically based tiering system to reduce costs for lower threat areas.

While we support the Tiered approach, we have many questions about it's actual implementation. It appears that staff is recommending that there must be landowner level, site specific information submitted for Tier 1 to be applied. This will not be a lessening of work load and cost, but a significant increase. For example, what is the definition of High Priority Surface or Ground Water? Does the definition automatically place NECWA into Tier 2, until we can prove otherwise? Do 303d listed waterbodies automatically place NECWA into Tier 2, and if so, can we ever prove otherwise and get ourselves back to Tier 1?

The iterative process shown in Figure 21 is intended, over time, to bring all water bodies accepting agricultural wastes into compliance with water quality objectives (where agriculture is the source of exceedance) and evaluate and prevent degradation. NECWA would point out our lack of exceedances and urge the Board and Staff to place our region and other watershed areas like us, covered by a coalition, into Tier 1.

Topic: Tier 1 and Optional Certified FWQMP. NECWA believes as the Staff Alternative is currently written, it appears the only way to be in Tier 1 is by using the individual FWQMP approach. As we mentioned above, this approach will be highly burdensome and highly costly to our individual members and our coalition as a whole.

Topic: Enrollment and Transparency Requirements

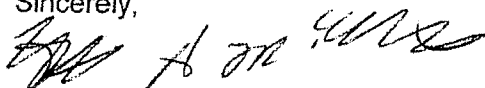
As described in Section IX.B, enforcement of program requirements can be difficult in the third-party framework. This is because the Board cannot enforce program requirements directly upon the third party; rather, enforcement must be conducted directly upon the irrigated agricultural operations. There may be cases where the individual operations may be unaware of third-party non-compliance, and also unaware of program requirements. This potential problem is mitigated in the recommended ILRP by (1) requiring individual operations to enroll directly with the Central Valley Water Board so that they are aware of the program and requirements, (2) requiring that third-party groups provide the Board with information regarding non-compliant operations, and (3) requiring that third-party groups provide transparency and communication of requirements with growers.

NECWA would reiterate that Board Staff and the Board should maintain the enforcement component. We would agree that (3) is a good concept and we could provide the Board with the information we send to our members regarding compliance with the program.

In summary, we urge the Board to accept Alternative 2 and ensure that a Tiered approach that utilizes prioritization on problem areas, allowing for a lessened burden onto regions that are low to no negative impact.

Thank you for accepting our comments.

Sincerely,



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Cc: Katherine Hart, Chair
Pamela Creedon, Executive Officer
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