

June 5, 2009

Mr. Adam Laputz  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, California 95670-6114

Re: Comments on Initial Draft Proposals – Long-Term Irrigated Lands Regulatory Program Alternatives

Dear Mr. Laputz:

The signatories to this letter submit the following comments on the *Initial Draft Proposals – Long-Term Irrigated Lands Regulatory Program Alternatives* (May 2009) (Draft Alternatives Report). Our comments on the Draft Alternatives are provided in the order as they appear on the report. Where appropriate, we have also provided suggested language changes in underline and strikeout format. Please note that our comments provided below are intended to provide input on the range of alternatives that will be considered in the Central Valley Regional Water Quality Control Board's (Regional Water Board) environmental documents with respect to the Irrigated Lands Regulatory Program (ILRP). The comments provided here should in no way be considered acceptance and/or support for the individual alternatives discussed by the parties identified below. Our preferences will be provided at a later date in this process when appropriate.

## **I. Goals and Objectives of the Long-Term Irrigated Lands Regulatory Program**

In order to ensure that goals and objectives of the ILRP properly reflect the goals and objectives of the Porter-Cologne Water Quality Control Act (Porter-Cologne), we recommend the following edits.

Page 2, Line 7: ILRP are to 1) restore and/or maintain the highest feasible water quality that is reasonable considering all the demands being placed on the water of state waters, 2) minimize waste discharges from irrigated agricultural lands that could affect the quality of the waters of the state, and 3) ....

Page 2, Line 11: Maintain appropriate beneficial uses ....

Page 2, Line 14: ... to achieve applicable water quality objectives in waters of the state.

## **II. Alternatives Development and Screening**

### **CEQA Requirements**

The CEQA requirements summary appropriately describes the regulatory requirements associated with evaluating alternatives under CEQA. However, the proposed language fails to discuss the Regional Water Board's intent with respect to evaluating all of the alternatives as "equal weight" alternatives versus providing a differing degree analysis depending on whether the alternative is considered the preferred project, or not. It is our understanding that the Regional Water Board staff does not intend to identify the staff recommended or preferred project until after the environmental impact report (EIR) has been drafted and/or circulated for public review. If we correctly understand the staff's intent, we recommend that the CEQA requirements section on page 3 (lines 2-21) be revised to better reflect that anticipated CEQA process for review and the anticipated process for selecting a preferred alternative. Further, this section should also be revised to recognize the Regional Water Board's obligation to discuss its rationale for selecting alternatives to be evaluated in the EIR as well as identifying those alternatives that were rejected.

## **III. Alternatives**

### **A. General Comments**

Overall, the Draft Alternatives Report appears to provide the appropriate range of alternatives for analysis in the EIR. However, the Draft Alternatives Report would be easier to understand if the alternatives were re-organized in a manner that went from the least regulatory program (e.g., no project) to the most restrictive regulatory program. Further, there appears to be a fair amount of overlap between the direct oversight options (Alternatives SW/GW 4(a) and 4(b)) and the tiered alternatives based on threat to groundwater (Alternatives GW 3(a) and 3(b)). We suggest that it may be appropriate to collapse these alternatives into one or two different options for ease of analysis within the EIR. Similarly, we recommend that the alternative titled "Management of Potential Impacts to Groundwater" be merged with the "Local Groundwater Management Plans GW-2" alternative. Our recommendations with respect to merging these two alternatives are provided further below.

Moreover, we recommend that the Draft Alternatives Report be revised to indicate how and when the Regional Water Board staff intends to evaluate the economic impacts associated with each alternative. The current version of the Draft Alternatives Report provides no detail on the Regional Water Board's planned efforts with evaluating costs and benefits associated with each alternative.

**B. Specific Comments on Each Alternative**

**1. Alternative SW/GW 1 – No Change Alternative**

This alternative is intended to represent the “no project” alternative and as such is summarized as maintaining the current program. In that description, the Draft Alternatives Report considers the current Conditional Waiver for Irrigated Agriculture for discharges to surface waters as the current program. While this is true, the existing Conditional Waiver expires in 2011. Under the Water Code, when a Conditional Waiver expires it is no longer in effect unless extended by Regional Water Board action. (Wat. Code, § 13269.) If the Regional Water Board fails to adopt one of the LTRP alternatives and instead adopts the “no project” alternative, the existing Conditional Waiver will be in effect only until 2011. After that time, there will be no program unless the Regional Water Board takes a subsequent affirmative action. Considering the impending expiration of the Conditional Waiver for surface water discharges, the “no project” alternative should be revised to reflect its expiration and the potential for no program at all. This is consistent with the Regional Water Board’s obligation under CEQA to describe what would reasonably be expected to occur in the foreseeable future if the project were not approved. (See CEQA Guidelines § 15126.6(e)(2).)

Further, to the extent that the Regional Water Board staff determines it appropriate to maintain the Conditional Waiver as part of the “no project” alternative, the summary of the waiver should be revised to accurately reflect the fact that the Conditional Waiver requires growers to work towards compliance with applicable water quality standards. The Conditional Waiver does not require immediate compliance with water quality standards.

Accordingly, we recommend the following revisions to the surface water sections of this alternative:

Page 6, lines 18-20: ... districts (hereafter referred to as growers) ~~comply work~~ towards compliance with applicable water quality standards (e.g., chemical, bacterial, salt standards), protect beneficial uses (e.g., aquatic life, drinking water) and prevent nuisance until June 2011 when the existing Conditional Waiver is set to expire. Thereafter, there will be no regulatory program for the control of discharges from irrigated agriculture to surface waters.

Page 6, lines 21-23: ... until its expiration in June 2011, ~~t~~This alternative would be based on watershed monitoring to determine whether operations are causing water quality problems. Where monitoring indicates a problem, third-party groups and growers would be required to implement management measures to address the problem. After 2011, there will be no watershed monitoring.

Page 8, lines 1-27; and, page 9, lines 1-4: Delete all.

With respect to groundwater, the Draft Alternatives Report describes local groundwater management functions under Water Code section 10750 et seq., and the

regulation of pesticides for the protection of groundwater by the Department of Pesticide Regulation (DPR). While it appears that the Regional Water Board intended to provide the information for explanatory purposes, the inclusion of this language implies that the Regional Water Board already relies on these programs to protect groundwater quality. Further, the language on page 7, lines 33-35 states that the Regional Water Board currently relies on these two programs to protect groundwater quality. However, it is more accurate to state that while these programs currently exist, the Regional Water Board has never before relied on either of these programs to protect water quality.

To ensure that the “no project” alternative clearly represents the current status of the Regional Water Board’s regulatory program, we recommend that the Draft Alternatives Report be revised as follows:

Page 7, lines 2-31: Delete all.

Page 7, lines 32-35: This alternative would not establish new Central Valley Water Board requirements for regulating irrigated agricultural discharges to groundwater. The alternative would ~~continue to rely on local expertise in~~ recognize that local groundwater management programs currently exist in some localities and that the Department of Pesticide Regulation (DPR) currently implements a Groundwater Protection Program to protect groundwater quality.

## **2. Alternative SW 2 – Water Quality Management Measures**

This alternative is currently labeled as being an alternative that applies only to surface water. As discussed at the May 19, 2009 stakeholder meeting, it is more accurate to depict this alternative as one that applies to both surface water and groundwater (i.e., SW/GW). Further, growers implementing management practices under this alternative should be presumed to be in compliance with the Regional Water Board’s regulatory program.

Accordingly, we recommend that the Draft Alternatives Report be revised as follows:

Page 10, line 21: ... management practices in good faith would be presumed to be in compliance with the Regional Water Board’s Conditional Waiver, not be penalized unless the management practice was not properly implemented (as determined by the local expert).

## **3. Alternative SW 3 – Individual Water Quality Management Plan**

Like Alternative SW 2, it was determined at the May 19, 2009 stakeholder meeting that this alternative would, in fact, apply to both surface water and groundwater. As such, the alternative should be revised accordingly. Further, the alternative needs to be revised to clearly state that this is an alternative to complying with a Conditional Waiver that is administered by a third-party or coalition group. It is our understanding that under this alternative, all growers would apply to the Regional Water Board for coverage, or have the

option of applying for coverage, under an individual conditional waiver and that the conditional waiver would require the development of individual water quality management plans. To ensure clarity, we recommend the following revision:

Page 11, lines 14-17: This alternative would ~~provide an option for~~ require compliance with the ILRP through the development of individual water quality management plans. This alternative may also be an option for those that do not desire to seek compliance through participation in a coalition or third-party group program. ~~compliance in addition to (and separate from) participation in a coalition or third party group program.~~ On-farm implementation of effective water quality management measures would be the mechanism to reduce or eliminate waste discharged to surface water and/or groundwater.

This alternative should also be revised to indicate that grower compliance with an approved water quality management plan should create a presumption of compliance with the conditional waiver and its regulatory requirements. Accordingly, we recommend the following revision:

Page 11, line 29: ... a WQMP). Good faith implementation of an approved WQMP shall be deemed a presumption of compliance with the conditional waiver and water quality standards.

#### **4. Alternative SW/GW 4(a) – Direct Oversight**

This alternative is similar to the Alternative SW 3, discussed immediately above. Comparatively, this alternative would require growers to prove compliance with applicable water quality standards while SW 3 would require compliance with approved water quality management plans. As part of this alternative, growers would be required to include one type of monitoring for surface water characterized as individual monitoring or cooperative monitoring. Monitoring results under this alternative would be used to determine if surface water discharges are in compliance with applicable water quality objectives. The language on this issue implies that compliance with water quality objectives could or would be measured in irrigation tail water run-off – not in receiving waters of the state. To provide further clarity on this issue as discussed at the May 19, 2009 stakeholder meeting, we recommend the following revisions:

Page 13, lines 32-33: This alternative would require that discharges of waste from irrigated agricultural operations not cause or contribute to a violation of growers ~~comply with~~ applicable water quality standards. Further, this alternative would require growers to protect beneficial uses, and prevent nuisance.

Page 14, lines 19-20: ... be responsible for implementing management practices in response to any exceedances of applicable water quality objectives in downstream receiving waters of the state shown by monitoring.

Page 14, lines 34-36: ... concern. Monitoring locations would be limited to waters of the state water courses that are mainly agricultural and wetland runoff in order to determine whether if these discharges they are meeting applicable water quality objectives, and to determine if agricultural discharges are causing or contributing to a violation of applicable water quality objectives.

#### **5. Alternative SW/GW 4(b) – Direct Oversight**

This alternative is one of the more restrictive alternatives and is similar to the requirements expressed in Alternative GW 3(b) for tier II operations. The primary difference between the two alternatives is that Alternative GW 3(b) for tier II operations applies only to potential groundwater discharges and does not include discharges to surface waters. Considering the overlap between the two alternatives, it may be appropriate to combine the two and/or eliminate one to avoid duplication.

Next, we recommend that the alternative be revised to distinguish between traditional water quality monitoring activities versus use tracking requirements. To this end, we recommend the following revisions:

Page 17, line 5: Nutrient ~~Monitoring~~ Use Reporting:

Page 17, line 9: Pesticide ~~Monitoring~~ Use Reporting:

#### **6. Alternative GW 2 – Local Groundwater Management Plans**

As indicated above, we recommend that this alternative be revised to incorporate the *Long-term Program Alternative to Manage Potential Impacts to Groundwater* as one of the implementation mechanism alternatives. Collectively, this alternative should be titled “Groundwater Management Plans.” Because of the extensive revisions necessary to meld the two alternatives together, we will provide a revised alternative at a later date after meeting and discussing this issue with Regional Water Board staff.

#### **7. Alternative GW 3(a) – Tiered Threat-Based Groundwater Protection Program**

As currently drafted, this alternative is somewhat confusing with respect to the role of third parties versus the role of the Regional Water Board. It appears that this alternative provides for the ability of third parties to assist in administering the program; however, each grower would still be required to apply individually to the Regional Water Board and comply with the appropriate requirements based on the grower’s threat to groundwater quality. In light of the ambiguity with this alternative, we encourage the Regional Water Board staff to revise the “Implementation Mechanism and Lead Entity” provisions included with this alternative to clarify the Regional Water Board’s intent.

#### **8. Alternative GW 3(b) – Tiered Groundwater Program**

Similar to other comments expressed above, this alternative implies that discharges from agricultural operations are required to meet water quality objectives instead of waters of the state being required to meet applicable water quality objectives. To ensure that compliance with water quality objectives is measured appropriately in waters of the state, we recommend the following revisions:

Page 23, lines 14-15: The goal of this alternative is to ensure that all irrigated agricultural operations are ~~meeting~~ not causing or contributing to a violation of applicable Basin Plan water quality objectives in waters of the state.

Next, to determine vulnerability to groundwater, we recommend that the provisions for determining what qualifies as a Tier I operation be revised to include consideration based on soil type. (See page 23, lines 18-31.) With respect to the regulatory requirements for Tier II operations, the provisions related to nutrient management plans should be revised to indicate where nitrate levels are measured to determine vulnerability. (See page 24, lines 32-33.) Currently, the language is silent.

Thank you for providing us the opportunity to comment on the Draft Alternatives Report. As indicated above, our comments at this time recognize that the Regional Water Board staff's intent with this document is to put forward a range of alternatives for evaluation in the EIR. With that in mind, our comments are intended to provide further clarification on all of the alternatives proposed. Comments regarding the potential economic impact and feasibility of implementing all of the above options by the agricultural community will be provided at a later time.

Very truly yours,

California Farm Bureau Federation  
California Rice Commission  
East San Joaquin Water Quality Coalition  
Sacramento Valley Water Quality  
Coalition  
San Joaquin County-Delta Water Quality  
Coalition  
Westside San Joaquin River Watershed  
Coalition

California Cattlemen's Association  
California Grape & Tree Fruit League  
California Citrus Mutual  
California Cotton Ginners and Growers  
Associations  
Merced Irrigation District  
South San Joaquin Irrigation District  
Western Growers Association  
Western Plant Health Association  
Western United Dairymen