



June 23, 2009

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Long-term Irrigated Lands Program
Central Valley Regional Water Board
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Re: Comments on ILRP draft alternatives

Dear Mr. Laputz,

On behalf of California Rural Legal Assistance Foundation (CRLAF), Clean Water Fund (CWF), and Community Water Center (CWC), we appreciate the opportunity to submit comments on the draft alternatives for the Irrigated Lands Regulatory Program (ILRP)

Regardless of our preferences, CEQA requires that one or more alternatives be identified that accomplish the following;

- Fully comply with current laws and regulations. In this case, the code compliant alternative could also double as the environmentally superior alternative;
- Allow for an examination of a full range of impacts;
- Accomplish the stated goals of the project.

While we understand that these alternatives are still in draft form, several only partially address the universe of discharges. We assume that these alternatives will be combined to create a comprehensive program, but would like more clarity about when those combinations will be created, and how they will be evaluated in the CEQA process.

Goals & Objectives:

The third Goal currently reads, “maintain the economic viability of agriculture in California’s Central Valley.” While we agree with the emphasis on importance of agriculture and the need to ensure that the requirements of the program do not destroy the economic viability of that industry, inclusion of that as one of three primary goals for the program seems misplaced. Firstly, unlike the other two objectives, the economic viability of any one industry is not within the mandate or powers of the Central Valley Regional Water Quality Control Board. There are a number of other agencies for which this goal would be more appropriate and would have more direct power over the many variables



that determine the economic viability of an industry. Secondly, if, as we assume you intended, this was meant to emphasize that you want to pursue the first two goals while not inhibiting the economic viability of the operators discharging from irrigated lands, then this should be restated as such. Additionally, we do not feel it is appropriate in the goals to single out only the economic viability of agriculture, as this suggests it should be elevated above other issues affected by the program, such as the health of rural community drinking water supplies and/or the environment. These are all important beneficial uses in the region and should be able to co-exist, as is required per the beneficial uses in the Basin Plans.

The first objective, to “maintain beneficial uses” should be amended to read “maintain *and restore* beneficial uses”.

While we appreciate objective 3, which refers to the economic viability of the agricultural community, the objectives should also recognize the economic costs to rural communities struggling to obtain safe drinking water. We suggest that this objective be revised to read “Implement management practices....without jeopardizing the economic viability of all sizes of irrigated agricultural operations in the Central Valley *or placing an undue burden on rural communities to provide safe drinking water.*”

Alternative-specific comments:

Alternative SW/GW1 – No Change Alternative

We agree that this is a no change alternative. It is important to note as well that there are a number of areas in the Central Valley not covered by local agency groundwater management programs.

Alternative SW2:

This alternative, as written, does not seem significantly different from the “no project” alternative, so we question the need for it. However, given the discussion during the stakeholder meeting, it should be clarified whether it was meant to apply to groundwater, and if so then those requirements should be clearly articulated. If it does move forward in the CEQA process, we recommend the following changes:

- Incorporate some kind of feedback mechanism (tracking and reporting) for problem identification and program adaptation. While the honor system may function very well, there should be some requirement for additional actions (monitoring, reporting,



inspections) when water quality problems occur. Lacking such an oversight mechanism, this alternative becomes a voluntary program, and as such is indistinguishable from the no project alternative.

- Include mandatory data reporting to the water board, including monitoring results, fertilizer and pesticide application, and irrigation practices.
- Making the Board responsible for “Seeking 100% ILRP representation” again infers that this is a voluntary program. If this alternative is a mandatory program, the Board’s function would be to “enforce full compliance.”
- The final sentence under “Regulatory Requirements” refers to “ILRP eligibility requirements.” It would be helpful to specify those requirements in this section.

Alternative SW3:

The good thing about this alternative is that it contains adaptive management language, requiring that Water Quality Management Plans be “updated as operations and conditions change.” However, since water quality monitoring is *not* required, it is not clear how changes in conditions that could trigger enforcement or additional water quality protection measures would be detected.

The reference is also made here to “applicable” operations; it would be helpful to understand what operations would be considered eligible for this program.

This alternative seems even less restrictive than the no project alternative, so we would recommend that it not be included. However, we would like this or similar adaptive management language incorporated into other alternatives.

Again, given the discussion in the stakeholder meeting, it should be clarified as to whether or not it was meant to apply to groundwater, and if so what the requirements would be. Additionally, it should be clarified whether this was meant to be implemented instead of the coalitions or as an optional alternative to coalitions, as discussed in the stakeholder meeting.

Alternative SW/GW 4(a):

This proposal provides for no monitoring of groundwater quality by agricultural operations, and relies only on data currently being gathered through other programs.



While this data may be appropriate for determining some impacts of activities at specific locations, it is a pretty big leap to assume that currently available data will be sufficient to gauge the success of the program. There are significant data gaps in groundwater quality data; this alternative does nothing to fill those gaps, and would, we feel, lead to uneven and inadequate program enforcement.

Additionally, there is no funding for many of these other monitoring programs, such as GAMA, to continue. Therefore, it should be clarified which monitoring programs will be filling these gaps (local community drinking water tests, GAMA, Fertilizer Use) and whether the intent is to rely on these programs to accomplish the monitoring for the ILRP. If so then participation in/contributions to those efforts should be included in the alternative requirements. It should also be clarified whether the fees collected under this program will be used to fund these monitoring programs like the GAMA program.

Alternative SW/GW 4(b)

We find this to be an environmentally superior alternative in terms of protecting water quality, and support its inclusion as an alternative for CEQA analysis purposes.

Alternative GW2:

In order for this to be a valid alternative that differs from the no-action alternative, the Board would need to approve the local groundwater management plans. Also, since these are voluntary plans, it is unclear how their requirements will be enforced and how the Board can mandate plan amendments if problems persist and change is required to meet Basin Plan objectives. This alternative needs to clarify the legal relationships between the dischargers, the Groundwater Management Agency, and the Regional Board.

We oppose the proposal to implement this alternative through a Basin Plan Amendment because it would be inconsistent with the mandate of the Basin Plans to protect beneficial uses within the basin and comply with the anti-degradation policy

It is also important to clarify whether the local groundwater management plans will be required to include specifications/requirements for management practices for irrigated lands. Many if not all local groundwater agencies may not have current authority to require such practices or set requirements on dischargers. Therefore, the authority of the local groundwater agencies to set such requirements should be clarified before the alternative can be evaluated. If the plans do not set requirements for management



practices or other protections from dischargers, it is not clear how this differs from a no action alternative, other than perhaps as a monitoring program alone.

Additionally, if, as was discussed at the stakeholder meeting, this alternative was meant to be combined with the other coalition alternative the full program should be clarified.

We agree that agency coordination is key to the success of this program. Since the provision of potable water to residents is a key beneficial use of groundwater, it would make sense to specify the Department of Public Health drinking water program as one of the coordinating agencies.

Alt GW 3(a):

This is the most thorough and complete program description presented. We look forward to seeing this level of detail for all the alternatives.

In addition to site reviews of Tier 3 operations, this program should also conduct reviews of a statistically significant sampling of Tier 2 operations in hydrologically vulnerable areas to confirm that practices to reduce groundwater impacts are continued.

It is unclear from the program description whether and under what circumstance the Board would require pesticide monitoring and control measures in excess of DPR's Groundwater Protection program. Can you provide that explanation?

Alternative GW 3(b):

As was discussed at the stakeholder meeting, we will provide citations for UC Davis's nutrient number and work with staff to clarify when/how discharges may be re-evaluated to determine what tier applies.

Additionally, we wanted to correct that nutrient management plans should be signed by a nutrient specialist from UC Extension or NRCS or another source that does not have a conflict of interest in selling fertilizer nutrients. It is important that either discharges pay fees to fund such programs or pay for these services directly to ensure they are available to provide these services.

Conclusion



We believe there is some merit to a combination monitoring program from existing programs and from dischargers directly (regionally or individually). However, the feasibility and reliability of depending on other data/monitoring programs needs to be fully assessed in order to decide which programs are dependable. We are disappointed that one such opportunity to work with the Glenn and Butte CACs is not being pursued, as this could provide valuable information for the CEQA review. We would hope that the stakeholders and the staff would reconsider this and we urge you to not bypass the opportunity to investigate a potential approach that would save farmers a lot of time and resources.

The success of the program will be based on the ability to enforce it and one critical aspect of its enforceability is the implementation mechanism. It's critical that the different implementation tools proposed in these alternatives be reviewed for their ability to meet the goals of the program. We do not believe that Basin Plan amendments are a viable alternative.

Additionally, further development of these alternatives should include a clear explanation of the legal relationship between the individual dischargers, any entities (such as water quality coalitions or groundwater management groups) that administer all or part of the program, and the Board.

Thank you for the opportunity to provide comments and we look forward to working with the Regional Board staff to develop an effective long-term regulatory program for irrigated lands in the Central Valley.

Sincerely,

A handwritten signature in black ink that reads "Laurel Firestone".

Laurel Firestone
Co-Executive Director & Attorney at Law
Community Water Center

A handwritten signature in black ink that reads "Jennifer Clary".

Jennifer Clary, Water Policy Analyst



Clean Water Fund

Martha Guzman

Martha Guzman Aceves, Legislative Analyst
California Rural Legal Assistance Foundation