

Davis, Susan

From: Joann White [jtoscano@sjrecwa.net]
Sent: Monday, September 27, 2010 12:44 PM
To: ILRP Comments
Cc: Steve Chedester; Paul Minasian; farmeratlaw@comcast.net; churley@slcc.net; cwhite@ccidwater.org; bryant_jeff@sbcglobal.net; Randy Houk
Subject: Comments on the Draft Program EIR for the Central Valley Irrigated Lands Regulatory Program
Attachments: ILRP Comments.pdf

Attached hereto for your review and consideration is a comment letter from the San Joaquin River Exchange Contractors Water Authority with regard to the above-entitled subject.

Please contact this office if you have any questions and/or comments.

Thank you.

Joann White (for Steve Chedester)

Joann White

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Consisting of 240,000 acres on the Westside of the San Joaquin Valley

JAMES E. O'BANION
Chairman

September 27, 2010

ROY CATANIA
Vice Chairman

Via Email: ILRPcomments@icfi.com

STEVE CHEDESTER
Executive Director

ILRP Comments

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**MINASIAN, SPRUANCE,
MEITH, SOARES &
SEXTON LLP**
Legal Counsel

RE: *Comments on the Draft Program Environmental Impact Report for
the Central Valley Irrigated Lands Regulatory Program*

Dear Ms Smith:

**CENTRAL CALIFORNIA
IRRIGATION DISTRICT**

James E. O'Banion
President

Christopher White
General Manager

**SAN LUIS CANAL
COMPANY**

James L. Nickel
President

Chase Hurley
General Manager

**FIREBAUGH CANAL
WATER DISTRICT**

Mike Stearns
President

Jeff Bryant
General Manager

**COLUMBIA CANAL
COMPANY**

Roy Catania
President

Randy Houk
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These are the comments of the San Joaquin River Exchange Contractors Water Authority and its members Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company (Exchange Contractors) regarding the Draft Program Environmental Impact Report for the Central Valley Irrigated Lands Regulatory Program (DPEIR) the Draft Staff Report, the Recommended Program Alternative (RPA), and the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (Economic Analysis). The Exchange Contractors are concerned with the fundamental errors made in developing these documents.

We concur and support the comments of the joint agricultural interests and incorporate those comments by reference. However, we would like to highlight two fundamental flaws of the DPEIR. First, the document does not properly define the "No Project" alternative. Second, the document fails to analyze the staff recommended alternative. These two fatal flaws make the DPEIR wholly insufficient. Given the nature of these flaws, the DPEIR provides little to no meaningful information for the Central Valley Regional Board to use in considering the development of a long-term irrigated lands regulatory program.

The DPEIR Relies on an Improper "No Project" Alternative

The DPEIR's mischaracterization of Alternative 1 as the "No Project" alternative results in an incorrect analysis throughout the document. The DPEIR correctly cites California Environmental Quality Act (CEQA) guidance at Title 14 California Code of Regulations (CCR) Section 15126.6(e)(3)(A): "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

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continuation of the existing plan, policy, or operation into the future.” However on pages 1-3 and 3-4 the DPEIR goes on to state “Given the ministerial nature of the extension or renewal of the ongoing waiver, which would allow continuation of the existing program, Alternative 1 is best characterized as the “No Project” Alternative.” This statement is completely incorrect and contrary to state law.

The Regional Boards decision to extend or renew the existing waiver is not ministerial. California Water Code (CWC) Section 13269(a)(2) states in part, “A waiver may not exceed five years in duration, but may be renewed by the state board or regional board....” (Emphasis added) Furthermore, CWC 13269(f) states, “Prior to renewing any waiver for a specific type of discharge established under this section, the state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

CCR Title 14, section 15369 defines Ministerial as:

“ “Ministerial” describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.”

Given the discretionary language “may” used in CWC 13269(a)(2) and the language of CWC section 13269(f) requiring the regional board to consider specific policy consideration at a public hearing before renewing a waiver, it is clear that the regional board’s decision to renew a waiver is not ministerial but instead requires substantial policy considerations requiring significant personal judgment by the regional board. The DPEIR characterization of the renewal of a waiver as “ministerial” defies common sense and is contrary to state law. Considering that the renewal of the existing conditional waiver would not be a ministerial act, Alternative 1 should be analyzed as an alternative and a true “No Project” alternative should be developed that consists of the regulatory framework that would remain if the existing conditional waiver were to expire at the end of its current term on June 30, 2011.

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The DPEIR Fails to Analyze the Staff Recommended Alternative

The comments of the joint agricultural interests document the legal deficiencies in the decision not to analyze the staff preferred alternative and the Exchange Contractors concur with those legal conclusion. However, the practical considerations of ignoring this important analysis also dictate that a more complete analysis must be conducted. If the final environmental impact report is intended to be used by the regional board to determine which regulatory alternative it will adopt it would be very useful to analyze the staff recommended alternative in the EIR. A complete analysis of the staff recommendation would allow the board to make a more informed decision. Accordingly the board should expand the DPEIR to include an analysis of the staff recommended alternative.

Conclusion

The Draft Program Environmental Impact Report for the Central Valley Irrigated Lands Regulatory Program, the Draft Staff Report, the Recommended Program Alternative, and the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program are all insufficient and must be revised in order to better inform the regional board regarding the adoption of a long-term irrigated lands regulatory program. The Exchange Contractors request that the DPEIR be revised consistent with the comments of the joint agricultural interests and with these comments. The landowners within our boundaries have fully engaged in the existing conditional waiver program and do not want misguided changes to that program to jeopardize the progress they have made in addressing agriculturally related water quality concerns.

Very truly yours,



Steve Chedester
Executive Director