

January 10, 2013

Via Email and U.S. Mail: AWlaputz@waterboards.ca.gov

Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670

Re: Comments on Proposed Individual Grower WDR for Irrigated Lands

Dear Mr. Laputz:

This office represents the San Joaquin County Resource Conservation District, which serves as the lead agency for the San Joaquin County and Delta Water Quality Coalition ("Coalition"). The Coalition has been implementing the current Irrigated Lands Regulatory Program ("ILRP") on behalf of its members.

Thank you for the opportunity to comment on the proposed Individual WDR for growers that is designed to be part of the board's long-term ILRP.

Our client previously objected to the Program Environmental Impact Report ("PEIR") the Regional Board prepared for the proposed long term regulatory program. See e.g., Final PEIR, Comment Letter 109 dated September 27, 2010. We believe the Regional Board failed to proceed in the manner required by law in preparing the PEIR before defining the long-term program to be reviewed under CEQA. Instead, the Regional Board improperly used the PEIR to come up with the "program." That procedure, however, turns CEQA on its head. CEQA is intended to provide the decisionmakers and the public with information about a proposed project *before* an agency approves the project. Pub.Res.Code §21002.1(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."). The statutory scheme was not intended to be used to "develop" a project as the Regional Board did here.

Requiring an agency to have a fully defined project or program *before* commencing CEQA review makes sense. Indeed, an accurate, stable, and "finite project description is indispensable to an informative, legally adequate EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; see also *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 ("an accurate project description is necessary for an intelligent evaluation of the potential

environmental effects of a proposed activity.”). An inadequate project description contaminates every aspect of the EIR process.

For example, without a well-defined project or program at the beginning of the EIR process, an agency cannot compare the proposed project to a range of reasonable alternatives in order to determine the environmentally superior alternative as required by CEQA Guideline §15126.6. That Guideline requires an EIR to “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.”

For these reasons, as well as the other objections contained in our previous letter and those of numerous other commenters, we believe the PEIR is legally defective for purposes of approving any aspect of a long-term regulatory program at this time.

The Regional Board, is now considering whether to approve an individual WDR as part of the ILRP, relying on the faulty PEIR. The PEIR is not an adequate CEQA document for the proposed WDR because it did not analyze the impacts of the proposed project.

The Coalition also joins, and incorporates herein by reference, the more specific comments submitted by the California Farm Bureau Federation.

Thank you for considering these comments. We respectfully request that this comment letter be included in the record of proceedings on this matter, as well as in the record of proceedings on the proposed long-term regulatory program. See Pub.Res.Code §§21177(a) (comments may be presented to agency either orally or in writing up to close of public hearing on a project before the issuance of the notice of determination); 21167.6(e)(3), (6), (7), (10) (defining record of proceedings).

Very truly yours,

Handwritten signature of Jennifer L. Spalletta in blue ink, followed by "by JAS #204234".

JENNIFER L. SPALETTA
Attorney-at-Law

cc: Client