



CALIFORNIA FARM BUREAU FEDERATION

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August 15, 2011

Ms. Katherine Hart, Chairwoman
Central Valley Regional Water Quality Control Board
Attn: Brett Stevens
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: *Non-Regulatory Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to Provide a Cost Estimate and Potential Sources of Funding for a Long-Term Irrigated Lands Program*

Dear Chairwoman Hart and Members of the Board:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity provided by the Central Valley Regional Water Quality Control Board (“Regional Board”) to submit comments on the Non-Regulatory Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to Provide a Cost Estimate and Potential Sources of Funding for a Long-Term Irrigated Lands Program (“Basin Plan Amendments”). Farm Bureau has numerous reservations and concerns regarding the Basin Plan Amendments and offers the following specific comments contained herein.

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A. Improper Reliance on the Economic Analysis to Amend the Basin Plan

The Basin Plan Amendments addressing the economic costs associated with the Long-Term Irrigated Lands Program (“LT-ILRP”) rely upon the Economic Analysis¹ released in conjunction with the LT-ILRP Draft Environmental Impact Report (“Draft PEIR”) and the LT-ILRP Final Environmental Impact Report (“Final PEIR”). Unfortunately, the Economic Analysis is flawed and failed to properly evaluate the potentially substantial costs associated with practices required or prohibited by the various program alternatives, including but not limited to nutrient management, irrigation practices, and the installation and operation of monitoring wells.

The Economic Analysis cursorily estimated the associated costs of the five Alternatives analyzed within the Draft PEIR and Final PEIR. Although the economic assessment of these five Alternatives was insufficient and flawed, a larger concern is the Economic Analysis’ failure to analyze the impacts of Staff’s Recommended Project Alternative (“Alternative 6”) or the Regulatory Framework Alternative (“Alternative 7”).² Alternatives 6 and 7 were the two alternatives favored by staff. Further, Alternative 7 is now “staff’s current approach” and will be used by staff in “developing proposed orders and other regulatory actions that will establish the Long-Term Program.” (See *Non-Regulatory Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to Provide a Cost Estimate and Potential Sources of Funding for a Long-Term Irrigated Lands Program Staff Report* (July 2011) p. 3 (“BPA Staff Report”).) In combination with the flawed analysis of the five Alternatives that were evaluated, the Economic Analysis’ failure to analyze *any* of the costs associated with Alternatives 6 and 7 amounts to a grave error, and thus, cannot be relied upon to amend the Basin Plan.

B. Failure to Adequately Analyze the Economic Impacts of the Regulatory Framework Alternative Under Porter-Cologne

The requirement to consider economics under the Porter-Cologne Water Quality Control Act (“Porter-Cologne”) is absolute. Water Code, section 13141 explicitly mandates:

State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans

¹ Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (July 2010) (“Economic Analysis”).

² The Draft PEIR analyzed five program alternatives and a separate document, Appendix A, contained a section describing the Staff Recommended Program Alternative (Alternative 6). In conjunction with the release of the Final PEIR, a staff report was released in March 2011 containing the Regulatory Program Framework, an entirely new alternative (Alternative 7). The Regulatory Framework Alternative contained wholly new regulatory concepts and requirements, as well as a conglomeration of some elements presented in the five alternatives that were analyzed in the Draft PEIR.

approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof.

However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

(Wat. Code, § 13141.) Before a Regional Board can impose waste discharge requirements or condition water quality certification for discharges from irrigated lands, Porter-Cologne requires that the Regional Board “shall take into consideration” the following factors: “the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” (Wat. Code, § 13263.) Section 13241 in turn lists six “factors to be considered,” including “economic considerations” and “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.” (Wat. Code, § 13241.)

As discussed *supra*, while an economic analysis was conducted for the five Alternatives contained within the Draft PEIR and Final PEIR, no proper economic analysis has been conducted for Alternatives 6 and 7. The *brief* reference within the April 2011 Staff Report estimating the total costs of the Regulatory Framework Alternative is insufficient and does not comply with Porter-Cologne. Rather than a full analysis, the paragraphs within the April 2011 Staff Report consisted of conclusory statements which failed to properly acknowledge the total cost of an agricultural water quality control program and the potential sources of financing. Anticipated program implementation costs to the agricultural community include increases in potential fees, management practice implementation, monitoring costs, report preparation, and cost for education, as well as other costs. Given that the impacts of water quality regulations frequently take years to materialize, the Regional Board should analyze the economic costs and impacts within a dynamic structure taking into account the projected changes in the economic situation *over time*.

In addition to direct costs imposed on the agricultural community, the Regional Board should evaluate indirect costs, including the economic consequences that are transmitted via market interactions to other groups, such as consumers. Water quality regulation, such as the LT-ILRP, increases the average cost of production and has a direct negative effect on the producer and the consumer through the resulting increase in variable costs and the output price. The propagation of the impacts of a regulation, such as this, through the economy is well documented and can be quantified by economic analysis. Further, such analysis shall be conducted prior to adoption or implementation of any program. (Wat. Code, § 13141.) Thus, a proper economic analysis of the Staff Recommended Program Alternative and Regulatory Framework Alternative, which by its

very purpose is the implementing framework for the LT-ILRP, must be conducted immediately.

C. The Economic Analysis is Insufficient and Cannot Be Relied Upon By Alternatives 6 and 7 Since Underlying Assumptions Have Substantially Changed

As stated in the beginning pages of the Economic Analysis, “a change in the underlying assumptions ... could substantially alter the study results.” (Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program (July 2010) p. 1-3, (“Economic Analysis”).) This statement acknowledges that if the program alternatives change, the cost assumptions within the Economic Analysis will be altered. If new alternatives are developed, new cost assumptions will also have to be developed.

Here, Alternatives 6 and 7 propose dramatically different regulatory structures from Alternatives 1 through 5. For example, Alternative 6 consists of a tiering and prioritization system “where Tier 1 areas would be ‘low priority’, and Tier 2 would be ‘high priority’.” (BPA Staff Report, p. 7.) Alternative 7, on the other hand, consists of “a three-tiered approach to ensure regulatory requirements are appropriately tailored to the water quality conditions in the area.” (BPA Staff Report, p. 8.) Alternatives 1 through 5, *the only alternatives that received consideration within the Economic Analysis*, do not contain any type of “tiering” structure or “prioritization” scheme. Further, the economic evaluation of Alternatives 1 through 5 was limited to each discrete alternative. The evaluation did not separately evaluate components of each alternative, but rather only looked at each alternative, in its entirety, in order to estimate costs. Thus, attempting to rely upon the Economic Analysis for Alternative 6, which consists of a conglomeration of *some* elements presented in the five Alternatives as well as entirely new program elements and new combinations of existing elements, is improper. Further, Alternatives 6 and 7 were not existing alternatives at the time the economic evaluation was conducted.

Given the substantial deviations from Alternatives 1 through 5, “a change in the underlying assumptions” that “could substantially alter the study results” has occurred. (Economic Analysis, p. 1-3.) The fundamental “underlying assumptions” that were used to estimate the LT-ILPR economic costs do not and cannot apply to Alternatives 6 and 7. Without proper analysis of Alternative 6 and 7’s economic impacts, the true economic impact of the forthcoming LT-ILRP is unknown. Thus, the Economic Analysis cannot be relied upon for the Basin Plan Amendment in light of the fact that “staff’s current approach” is predicated upon Alternative 7.

Conclusion

Farm Bureau appreciates the opportunity to submit comments on the proposed Basin Plan Amendments to provide a cost estimate for the LT-ILPR. Farm Bureau urges the Regional Board to reassess the adequacy of Economic Analysis prepared for the LT-ILPR and refrain from amending the Basin Plan until the Economic Analysis is substantially revised to properly reflect the costs associated with the LT-ILRP.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari Fisher", written in a cursive style.

Kari E. Fisher

KEF:pkh