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File No. 82231.00003

August 15, 2011

VIA EMAIL
BSTEVEN@WATERBOARDS.CA.GOV

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

**Re: COMMENTS ON AMENDMENTS TO THE TULARE LAKE BASIN, BASIN
PLAN ON ILRP COST ESTIMATES**

Dear Mr. Stevens:

The Southern San Joaquin Valley Water Quality Coalition (SSJVWQC) files these comments on what it regards as erroneous estimates of costs associated with the newly certified EIR and adopted ILRP, and representations it makes relative to the source of funds which pay for this program.

I. PRELIMINARY ISSUES.

A. TIMING

It seems strange to schedule a mid-October hearing on this topic, yet cut off comments August 15th, some 60 days before the hearing.

B. APPEAL TO STATE BOARD

The economic evaluation engaged for the ILRP EIR was defective and inaccurate. This Economic Analysis has been the target of appeals filed with the State Board by each the environmental plaintiffs and the agricultural coalitions. Unless the State Board overturns the ILRP EIR and sends it back for reconsideration, the ILRP, EIR and Economic Analysis will likely be the target of a legal challenge.

Consequently, it appears to be improper for the Regional Board to take a faulty Economic Analysis which is presently under direct challenge and propose to compound the problem by advancing it as a basin plan amendment in both of the Region's basin plans.



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II. SUBSTANTIVE PROBLEMS WITH THE JULY STAFF REPORT AND PROPOSED BASIN PLAN AMENDMENTS

A. THE STAFF REPORT ERRONEOUSLY (P. 3) IDENTIFIES THE EIR AS HAVING CONTAINED SIX ALTERNATIVES

Since first introducing the staff alternative as Exhibit A to the Draft EIR, it has become in the interest of the Regional Board staff to misrepresent the EIR as having a “sixth alternative.” However, this is completely false and is merely an attempt to camouflage the fact that the staff alternative, which was adopted by the Board, did not undergo environmental review or economic analysis. At this time, the same staff that promulgated the staff alternative and did not subject that alternative to the Economic Analysis now advances the July Staff Report seeking the Board to repeat this mistake.

Regional Board staff state in their July Staff Report:

“3. Irrigated Lands Long-Term Program Development

... This report evaluated six program alternatives for the long-term regulation of irrigated lands, including an Alternative 6 that was the Board staff recommended alternative when the Final PEIR was released to the public.”

* * *

“3.1 Final Program EIR Long-Term Program Alternatives

The six Long-Term Program alternatives are evaluated and presented in detail in the Final PEIR...”

These statements are completely false, and those contentions were directly refuted by the Economic Analysis itself as it states throughout the document that the Economic Analysis reviewed only five alternatives, not six, as staff alleges. (See, e.g., Economic Analysis, pp. 1-2.) Pages 7 and 8 of the staff report also falsely references a phantom sixth alternative. That false misrepresentation should be stricken in its entirety.

B. THE ECONOMIC ANALYSIS COULD NOT HAVE POSSIBLY EVALUATED THE STAFF ALTERNATIVE, WHICH HAD NOT BEEN PRODUCED UNTIL AFTER THE ECONOMIC ANALYSIS WAS RELEASED

The Economic Analysis evolved over many months. In addition to the research completed by the independent contractors, there were meetings with a number of stakeholders.



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Throughout this process, only the five alternatives were available and were in fact the specific target of the Economic Analysis.

The staff alternative was a completely new and novel alternative that was attached as Appendix A to the Draft EIR and which was labeled as the “Recommended Long-Term Irrigated Lands Program.” The staff alternative differed from the five other alternatives and did not undergo the multiple years of review that the five other alternatives had previously undergone. Only concurrently with the release of the Draft EIR, including the Economic Analysis, was the staff alternative first made publically available. The staff alternative was never mentioned in either the body of the Draft EIR or the Economic Analysis.

The staff alternative fails to satisfy the standards for both economic and environmental review. Although, the introduction of the staff alternative provides that it was developed from elements of the five alternatives included in the EIR, the staff alternative was not in and of itself evaluated to determine if it has significant environmental impacts. Moreover, the staff alternative was not evaluated to assess its economic impacts. Because the staff alternative is actually a conglomeration of new requirements and select elements of other project alternatives, neither the EIR nor the Economic Analysis are applicable. The staff alternative now alleges that parts of it trace back to select relevant pieces of Alternatives 2 and 4 which should allow an estimate of economic impact and cost. However, there is no indication that the independent economic analysis on which those estimates are based is supported by using pieces of other alternatives. Taking isolated figures from an economic analysis that was designed to summarize the ramifications of different alternatives in their entirety will not accurately reflect the true economic impacts of the staff alternative. To be adequate, the Draft EIR should, but failed to, contain a full economic impact analysis of the actual staff alternative adopted, not based only on the estimated costs of pieces assembled from the other five alternatives. Due to its failure, there is no basis on which to accurately calculate the economic impacts or costs of the staff alternative. As discussed below, the staff alternative had many additional components not analyzed whatsoever.

- C. THE ECONOMIC ANALYSIS CANNOT BE RELIED UPON AS HAVING ANALYZED THE PRESENT ILRP WHICH IS NOW BEING ADOPTED AS GUIDED BY THE FRAMEWORK DOCUMENT

The July Staff Report erroneously identifies the EIR as having a sixth alternative, which was not even drafted or available when the environmental or Economic Analysis were being finalized. (July Staff Report, p. 3.) The staff alternative, which was adopted by the Board, is presently being further amended as guided by a new Framework document. Like the staff alternative, the Framework was not environmentally or economically reviewed. Further, the Framework does not resemble any of the alternatives analyzed as part of the Draft EIR. The



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Framework document advances many new provisions and extends the staff alternative well beyond any alternative that was included and reviewed in the Draft EIR or Economic Analysis.

Specifically, major impacts, such as, but not limited to, a new system for imposing a mix of general order waste discharge requirements and conditional waivers, a new process for public input on surface quality management plans and groundwater quality management plans, nutrient management plans in nitrate impact areas, possible fertilizer application limits, drilling new groundwater monitoring wells, hiring thousands of certified crop specialists to qualify and develop farm plans, newly regulating millions of acres under a new Tier 2, which were not previously regulated, and are all new regulatory elements, and were never analyzed in the EIR or the Economic Analysis. These impacts may cost the agricultural community more than double the \$1.32 billion that was projected by the Economic Analysis, and which itself was defective in underestimating the costs of the alternatives it did analyze.

D. THE ECONOMIC ANALYSIS WAS DEFECTIVE AND IS UNDER CHALLENGE BY BOTH THE ENVIRONMENTAL AND AGRICULTURAL STAKEHOLDERS

The Regional Board's Economic Analysis is substantially deficient and fails to comply with the law. The Economic Analysis fails to satisfy either CEQA or the Porter-Cologne Water Quality Control Act, which both require the Regional Board to present and identify the economic impacts of the EIR, the Framework and the staff alternative. Water Code section 13141 requires that "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. The Framework document represents the beginning of implementation of an agricultural water quality control program, and the Regional Board has not yet provided an estimate of the total cost of the program or identified potential sources of funding for the program.

Secondly, the staff alternative combined with the Framework contains potentially costly and time-consuming additional requirements, such as the requirement that all irrigated agricultural operations in all tiered areas complete a farm-specific evaluation and identification of management practices for Regional Board inspection. The costs of such requirements and those addressed above in point C. were not analyzed in the EIR or accompanying Economic Analysis.

E. THE SECTION ON "POTENTIAL SOURCES OF FINANCING" IS NAÏVE/UNREALISTIC/AND A DEPARTURE FROM REALITY

The report indicates that there are seven potential sources of funding to pay the program costs which the analysis anticipated (although inaccurate when reported) and as indicated above,



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most of the elements which are now driving the real costs were not even available when analyzed.

Those reported seven funding sources are:

1. Private financing by individual sources.
2. Bonded indebtedness or loans from government institutions.
3. Surcharge on water deliveries to lands contributing to the water quality problem.
4. Ad Valorem tax on lands contributing to the water quality problem.
5. Taxes and fees levied by a district created for the purpose of drainage management.
6. State and federal grants or low-interest loan programs.
7. Single purpose appropriations from federal or state legislative bodies (including land retirement programs).

This is so inaccurate that it amounts to an insult to the farmers and coalitions that are actually paying for the ILRP, and will continue to be the only funding sources for this runaway new regulatory program. The only viable funding is Option 1, "Private Financing by Individuals", however, it is a deceptive title. That title should truthfully state "additional fees to be paid by the farm community".

There will be no bonds, taxes, grants, loans, or general fund appropriation. The Economic Analysis of \$1.32 billion of new costs to the agricultural community seriously underestimated the true costs of the alternatives available at that time. The belated staff program proposal, which was adopted by the Board and subsequently enhanced by the Framework document, will impose perhaps two to three times the costs of the program. Therefore, this new program, as imposed on Central Valley agriculture, may increase farm fees in the amount of \$3 to \$5 billion.

III. AMENDMENT OF BASIN PLAN LANGUAGE

Section 4.2 specifically addresses the Tulare Lake Basin Plan and clarifies that there is presently no similar section in this basin plan. The Tulare Lake Basin Plan does not presently have a section on estimated costs as does the northern basin plan, therefore, there is no compelling reason to make any such amendment.



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Our basin has functioned adequately since 2004 in administering the ILRP without any basin plan section addressing costs. Therefore, it is apparent that we can continue to operate under the ILRP without any reference to funding in the basin plan.

It is even more apparent that it is far more prudent to remain silent than it would be to include in the basin plan any language which is clearly incorrect, and therefore invite additional appeals and challenges. It should also be clear that nothing should be advanced in the basin plan which is presently under appeal and therefore likely to be amended.

1. As addressed above, the first proposed paragraph must be amended to omit any false reference to a sixth alternative.

2, Also as mentioned above, the section on “potential funding sources” also needs fundamental amendments.

The EQIP and conservation programs do not compensate farmers for complying with the ILRP. The State Board and DWR programs likewise do not compensate farmers for their regulatory compliance.

3. Lastly, the reference to the San Joaquin River programs are not applicable to the Tulare Lake Basin and should be stricken.

If the Board is compelled to place any amendment in the Tulare Lake Basin, Basin Plan, it should be amended as follows:

“4.2 Amendments to the Water Quality Control Plan for the
Tulare Lake Basin

Long-Term Irrigated Lands Regulatory Program

...While the Central Valley Water Board has not established the Long-Term Program yet, it will not be ~~based in whole or in part, on six alternatives described on any of the five alternatives evaluated in the EIR or economically analyzed in the Irrigated Lands Regulatory Program Final Environmental Impact Report (Final PEIR; ICF International 2011) certified by resolution \$56-2011-0017. It will instead be based on a staff alternative subsequently developed and adopted by the Board.~~ The cost estimate below was based upon ~~and encompasses the five full range of those alternatives.~~



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“The cost estimate for the Long-Term Program accounts for program administration (e.g., Board oversight and third-party activities), monitoring for groundwater and surface water quality, and implementation of management practices throughout the Central Valley. The estimated cost for the annual capital and operational costs to comply with the Long-Term Program range from \$216 million to \$1,321 million (2007 dollars) based on the five alternatives analyzed. This cost estimate ~~wasis~~ a cumulative total that includes costs from the Sacramento River and San Joaquin River Basin, and the Tulare Lake Basin. The ILRP which was adopted from the staff alternative will, however, result in substantially greater, but as now, yet undetermined costs.

Potential funding sources ~~include:~~ for the ILRP are from fees imposed on the Region’s farmers.”

~~1. The Federal Farm Bill, which authorizes funding for conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program.~~

~~2. Grant and loan programs administered by the State Water Resources Control Board and Department of Water Resources, which are targeted for agricultural drainage management, water use efficiency, and water quality improvement. These programs include:~~

~~——— a. Agricultural Drainage Management Program (State Water Resources Control Board)~~

~~——— b. Agricultural Drainage Loan Program (State Water Resources Control Board)~~

~~——— c. Clean Water Act funds (State Water Resources Control Board)~~

~~——— d. Agricultural Water Quality Grant Program (State Water Resources Control Board)~~

~~——— e. Clean Water State Revolving Fund (State Water Resources Control Board)~~



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~~f. Integrated Regional Water Management grants
(State Water Resources Control Board, Department of Water
Resources)~~

~~3. Those identified in the San Joaquin River Subsurface
Agricultural Drainage Control Program (see Water Quality Control
Plan for the Sacramento River and San Joaquin River Basins)."~~

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', with a long horizontal line extending to the right.

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg