

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

Response to Comments

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) has provided opportunities for the public to submit written comments on the proposed Basin Plan amendments described above. This document contains written responses to comments received pertaining to these proposed amendments.

The proposed amendments had a 45-day public comment period that ended on 15 August 2011. Written comments were received during this comment period from:

- A. California Rice Commission, East San Joaquin Water Quality Coalition, Sacramento Valley Water Quality Coalition, and Westside San Joaquin River Watershed Coalition
- B. Ms. Kari E. Fisher, General Counsel, California Farm Bureau Federation
- C. Mr. William J. Thomas, Best, Best & Krieger, counsel for Southern San Joaquin Valley Water Quality Coalition

Following are the responses to the comments.

California Rice Commission, East San Joaquin Water Quality Commission, Sacramento Valley Water Quality Coalition, and Westside San Joaquin River Watershed Coalition

- A1. *As a preliminary matter, the Central Valley Water Board members must understand the significance of the action being proposed. Specifically, Water Code section 13141 requires the Central Valley Water Board to estimate the cost of the Long-Term Irrigated Lands Program (LTILP) and identify potential sources of funding prior to adopting and implementing the program in part or whole. When Water Code section 13141 was adopted, the State Water Resources Control Board (State Water Board) clearly indicated the information would be a material consideration for any regional board. More specifically, the State Water Board stated in its Enrolled Bill Report to the Governor's office that "[t]his bill will not prevent implementation and enforcement of agricultural water quality control programs. It will require, however, that the State and Regional Boards consider, and include in the basin plans, an economic study of an agricultural water quality control program in terms of total cost estimate and potential sources of financing before implementing such a program." (See Attachment 1, Enrolled Bill Report to SB 904 from State Water Board at p. 1, emphasis added.) The purpose of this provision, and the State Water Board's reason for encouraging signature of the legislation, was further expressed as follows:*

This bill is consistent with existing SWRCB policy regarding regulation of agricultural wastewater discharges.

Agriculture is presently the largest user of the State's freshwater resources. The Board recognizes that in many instances discharges of agricultural wastewaters create water quality problems. However, the Board also recognizes that there are inadequate institutional, financial, and technological means at this time for the development and management of a comprehensive and effective agricultural water quality control program. While, in specific instances, agricultural discharges can and should be dealt with under existing law, long-term water quality problems, such as nonpoint source control and salinity control programs, represent more difficult problems and the costs associated with implementation of these programs can be enormous. Therefore, it is the Board's policy that any agricultural water quality control program must be carefully examined and formulated before it is implemented, and the costs and sources of financing would be a material consideration before any decision is made. (Attachment 1, Enrolled Bill Report to SB 904 from State Water Board at p. 2, emphasis added.)

Accordingly, the Central Valley Water Board is required to materially consider the estimated cost of this program before adopting or implementing the LTILP, or any of its individual elements.

Unfortunately, this has not occurred. Instead, the Central Valley Water Board was asked to evaluate and comment on the LTILP framework in advance of their consideration of these Draft Basin Plan Amendments. We contend that the Central Valley Water Board and its members improperly considered the LTILP framework because it did not properly consider costs prior to, or at the time of, consideration of the LTILP framework. Thus, any reliance that Central Valley Water Board staff place on the staff's LTILP framework is misplaced, including the use of the LTILP framework to estimate costs in the Draft Basin Plan Amendments.

Response to Comment A1.

It is questionable whether section 13141 applies to the upcoming orders that will constitute the long-term irrigated lands regulatory program. Porter-Cologne requires waste dischargers to submit reports of waste discharge and obtain waste discharge requirements or waivers. (Wat. Code, §§ 13260, 13263, 13269.) The 1999 amendments to section 13269 (Senate Bill 390) require waivers to be conditional and include specific fee provisions applicable to irrigated agriculture waivers.

The first sentence of section 13141 does nothing more than provide an effective date for various plans and policies to become part of the California Water Plan. The requirement to indicate the costs and financing sources of an “agricultural water quality control program” in a basin plan before “implementation” of the program could simply be an exception to the general provisions of the first sentence. The Regional Board concurs that section 13141 would most clearly apply when an “agricultural water quality control program” is established in a water quality control plan. Potentially conflicting statutes must be read in context. (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, ___, 128 Cal.Rptr.3d 658, 672.) Water Code section 13141 does not explicitly apply to the issuance or waiver of waste discharge requirements for discharges of waste from irrigated lands. Section 13141 is silent about the requirement that all waste dischargers, including dischargers from agricultural lands, must obtain WDRs or waivers. Section 13141 is also silent about the enforcement remedies available for unpermitted discharges. (See, e.g., Wat. Code §§ 13264, subd. (b); 13265.) This silence may signify that Section 13141 is not intended to apply to issuance of WDRs or waivers.

Section 13141 does not define “agricultural water quality control program.” The issuance of a waiver or waste discharge requirements does not necessarily constitute the adoption of a regulatory program. Section 13141 is part of Chapter 3 of Porter-Cologne, which authorizes the State Water Board to formulate state policy for water quality control and establishes related powers and duties of the State Water Board. The relevant powers and duties of the regional water boards, are in Chapters 4, articles 1-2 (general powers and duties), article 3 (basin plan requirements) and article 4 (waste discharge requirements and waivers).

Although it is questionable whether a regional water board’s issuance of a general waiver, one or more general WDRs, or site-specific WDRs for all dischargers constitutes the “implementation” of an “agricultural water quality control program” within the meaning of section 13141, the Central Valley Water Board staff has nevertheless proposed Basin Plan Amendments to update the existing description of potential costs and sources of financing already in the Basin Plan for agricultural water quality control programs created by Basin Plan Amendments. Inclusion of these estimates will provide a more complete and updated description of potential costs and sources of financing. Further, these estimates were designed and crafted to be consistent with the provisions of section 13141, should that section be deemed to apply to the implementation of orders contemplated by the Long Term Program.

The commenter incorrectly describes the staff-developed Long-term Irrigated Lands Regulatory Program Framework (Central Valley Water Board, March 2011, Recommended Irrigated Lands Regulatory Program Framework Staff Report) (Framework)¹ as “implementation” of a water quality control program for agriculture. The Framework was not a regulation or a Board order, but rather, described a proposed

¹ Central Valley Regional Water Quality Control Board. 2011. *Recommended Irrigated Lands Regulatory Program Framework Staff Report*. March. Rancho Cordova, CA.

approach for developing the orders that would collectively comprise the irrigated lands regulatory program. The Framework was considered for adoption at the April 2011 hearing, but ultimately was not adopted.

The commenter has also erred in stating that there was no consideration of cost associated with the Framework. The Framework Staff Report describes the estimated costs and potential sources of financing associated with adoption of the orders described in the Framework (see pp. 31-32 of the Framework Staff Report). As described in the Framework Staff Report, the estimated cost range was based on Economics Report. The higher end of the cost range described in the Framework Staff Report was identical to the high end cost estimate provided in the Economics Report. The lower end of the cost range identified in the Framework Staff Report was based on an adjustment to the cost estimate based on comments received. A member of the consulting team that authored the Economics Report provided a revised cost estimate based on assumptions that "... (1) the third-party framework will be successful in addressing identified water quality problems; (2) existing groundwater monitoring networks will be adequate; (3) irrigated pasture will not require 'hardware' management practices (e.g., tailwater recovery systems) to address any pasture-related issues; (4) the existing use of improved management practices on field crops in areas with constituents of concern is greater than assumed in the PEIR; and (5) for constituents identified as Tier 2, with an unknown contribution by irrigated lands, irrigated lands will be found not to cause or contribute to the identified water quality problem" (Framework Staff Report, pp. 31-32).

During the April 2011 hearing on the Framework, the Board indicated that staff should develop for Board consideration waste discharge requirements (orders) that will implement the long-term program. The Board also indicated that the Framework should be considered a starting point for drafting the orders. These orders are expected to fall within the range of programmatic alternatives considered in the *Final Irrigated Lands Regulatory Program, Program Environmental Impact Report (PEIR)*² and *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program* (hereafter "Economics Report")³.

Early on in the development of the long-term program, Stakeholder Advisory Workgroup (Workgroup) members and staff realized that agricultural operations vary significantly throughout the Central Valley and that not one regulatory option would easily fit for all agricultural operations. Consequently, it was decided to evaluate equally, a range of potential alternatives for the long-term program.

² ICF International. 2011. *Irrigated Lands Regulatory Program Final Program Environmental Impact Report*. Final. March. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA.

³ ICF International. 2010. *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. July. (ICF 05508.05.) Sacramento, CA. Prepared for Central Valley Regional Water Quality Control Board, Sacramento, CA.

Since the Board has preserved its flexibility and not selected a single program alternative, it is reasonable to expect that the Board will adjust its regulatory requirements based on the results of discharger efforts to protect and improve water quality. If efforts within the third-party structure described in Alternative 2 of the PEIR are successful, the costs will be at the lower end of the estimated range. If the Board determines that the third-party structure is not effective, direct regulation of growers will occur in a manner similar to that described in Alternative 5. In fact, the approach discussed with the Board at its April 2011 and June 2011 meetings included a flexible structure: staff will develop geographic/commodity-based orders that can be administered by third parties, as well as an order that would apply to individual dischargers in absence of a third party or sufficient progress to address water quality problems.

Based on this realistic assessment of the likely evolution of the program, it would not be accurate to assign a single cost to the long-term program. Instead, program cost will likely vary within the range of alternatives considered in the PEIR. The Framework is not the long-term program, but rather a staff assessment of a reasonable set of elements that the Board may include in the long-term program orders. The estimated range of total costs for the Framework discussed above are, therefore, appropriate as staff's best estimate for the potential total costs of the program.

The commenter also points to an enrolled bill report to suggest that the section 13141 cost estimates must "materially consider" estimated costs. In later comments, the commenter suggests that such "material consideration" includes indirect economic impacts of an agricultural water quality control program. As a threshold matter, the enrolled bill report is being introduced as an attempt to establish legislative intent as to the meaning of the phrase "estimate of total costs." However, under the plain meaning canon of statutory construction, legislative history is not to be consulted unless there is "ambiguity in the language" of a statute. *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000. There is no ambiguity as to the ordinary meaning of a cost estimate.

Even assuming the phrase is ambiguous, and that an enrolled bill report affords some insight into the Legislature's intent in comparison with other sources of legislative history (see *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19), the excerpted language is taken out of context and does nothing to suggest that the Central Valley Water Board's cost estimate is unreasonable. The cited sentence merely explains that agricultural water quality programs "must be carefully examined" and that cost is an important factor consider prior to reaching a decision. In developing the long-term program, including completion of a PEIR with cost estimates, and considering a Basin Plan Amendment providing updated cost estimates, the Central Valley Water Board has "carefully examined" many factors, including cost.

In fact, the enrolled bill report also states that, "there may be a small increase in administrative costs imposed by this bill. This can be absorbed within existing budget by existing staff." Here, considerable staff costs and consultants' fees were expended in preparing the Long-Term Program cost estimates. This extraordinary effort was

largely driven by stakeholder requests for a more robust evaluation of the potential economic impacts of any long-term irrigated lands program. Board staff has, therefore, far exceeded any anticipated level of effort and analysis described in the enrolled bill report.

A2. *As we, and many others, indicated in our September 27, 2010, comments on the Draft Program Environmental Impact Report, we are concerned that the economic analysis in the Technical Memorandum is inadequate and excludes substantial costs associated with practices compelled or prohibited by the various alternatives. Specifically, we are concerned that the Technical Memorandum underestimates the acreage for which new or additional management practices may be required once the general waste discharge requirements are adopted. Accordingly, the management practice costs in the Technical Memorandum, and therefore the Staff Report, are underestimated.*

Response to Comment A2.

Costs were developed for management practices and other compliance costs based on the best information available. Sources included technical service agencies, literature, governmental agencies, coalitions, and laboratories that provide monitoring services. The Economics Report relied on the most recent California Department of Water Resources land use survey to develop baseline agricultural acreage. Economic models were then used to estimate the acreage for which new or additional management practices may be required under the long-term program (LTP). The models assumed that agricultural lands in areas with multiple water quality problems would require more aggressive, and more expensive, source control measures.

Board staff recognizes that there is a lack of data regarding the status of implemented on-farm management practices. This source of uncertainty is acknowledged in the Economics Report. This uncertainty aside, staff and our consultants used the best available information and appropriate economic analysis to estimate agricultural acreage potentially affected by management practices.

Staff would consider alternative estimates developed by the Coalitions or other stakeholders; however, no alternative estimates, with any verifiable basis for the estimate, have been submitted. In addition, although some management practice information has been provided as part of the current irrigated lands regulatory program, the Coalitions did not provide comprehensive quantifiable/verifiable data on current management practice implementation. Such information could have provided a more up to date baseline and would have allowed the Coalitions to provide an assessment of which new practices (along with associated costs) would be implemented in response to the long-term program. However, no such data or assessment has been provided to support their contentions that the costs are underestimated.

The commenter also suggests that there are “practices compelled or prohibited by various alternatives.” The program alternatives considered in the PEIR do not prohibit or

require specific management practices. The Economics Report makes assumptions that growers will react to program alternatives by implementing a range of practices. However, it is clearly indicated that the program would not require these or any other specific practices. The program will require compliance with water quality objectives and comply with applicable antidegradation requirements. Selection of water quality management practices will be left to individual operators.

A3. *Further, and contrary to comments in the Staff Report, the Technical Memorandum does not include a cost estimate for staff's alternative 6. The Technical Memorandum evaluates alternatives 1 through 5 that were included in the Draft PEIR.*

Response to Comment A3.

Section 3.2, titled "Estimated Total Costs", of the July 2011 Staff Report erroneously states that the Economics Report contains cost estimates for Alternative 6. The statement should have indicated that a cost estimate for Alternative 6 was prepared based on the analysis contained in the Economics Report. This error has been corrected in the final Staff Report by including a statement that staff prepared cost estimates within the draft program EIR (Appendix A) that relied upon and were consistent with the approach described in the Economics Report.

A4. *Attached to the Draft PEIR was an appendix that included staff's preferred project alternative. Subsequent to circulation of the Draft PEIR and staff's preferred project alternative, the now referred to LTILP framework was released. The LTILP framework is significantly different from the five (5) alternatives contained in the Draft PEIR as well as staff's preferred project alternative, which was in the appendix of the Draft PEIR. In other words, the Technical Memorandum used to prepare the cost estimate for these Draft Basin Plan Amendments did not include or estimate costs associated with the LTILP framework, which will be the basis for future Central Valley Water Board actions. (See Staff Report, p. 8 ["Staff indicated that it would develop an approach modeled after a Recommended Irrigated Lands Regulatory Program Framework Staff Report (ILRP Framework Report), March 2011 While the staff's approach is subject to change, and is modeled after a staff report that was not adopted by the Board, it provides additional information upon which to estimate future costs of the Long-Term Program."].) Because the LTILP framework is actually a conglomeration of other project alternatives subject to change, the Technical Memorandum does not truly analyze the cost estimates or economic impacts of the proposed agricultural water quality control program. There is no indication that the cost estimates and economic analysis for the individual alternatives in the Technical Memorandum are applicable to the LTILP framework. Assumptions contained in the actual independent economic analysis may not remain true if variant pieces of each alternative are selectively taken out and subsequently reassembled, as is the case with the LTILP framework. Taking isolated figures from an economic analysis that was designed to summarize the*

ramifications of different alternatives in their entirety may not accurately reflect the true economic impacts. Before relying on the Technical Memorandum from the Draft PEIR, it should be revised to contain a full economic impact analysis of the LTILP framework not based exclusively on the estimated costs of pieces assembled from the other alternatives.

Response to Comment A4.

The commenter contends that the economic impacts and estimated costs of the Framework have not been considered and that the Economics Report should be revised to consider the economic impacts of the Framework. The reader is referred to response to comments A1 and B5.

It must be reiterated here that the Framework is not the long-term program, but rather a staff estimate for the requirements that the Board may adopt for long-term program orders. Section 13141, to the extent it is applicable to the long-term program orders, states that the estimated total cost be indicated in the Basin Plan. Contrary to the commenter's assertion, this section does not require that economic impacts be included in the cost estimate.

Contrary to the Commenter's suggestion, an estimate of costs for the long-term program can be constructed from components of the different alternatives. Estimates of costs were categorized based on expected management plan implementation; expected monitoring efforts; and expected administrative requirements. The costs associated with those categories were constructed as independent estimates, therefore, it is possible to construct a reasonably accurate picture of costs by assembling components of different alternatives. As stated previously, the estimated range of costs is based a program similar to Alternative 2 being successful (low-end cost range) versus a program similar to Alternative 5 being required (high-end cost range).

A5. *Moreover, by staff's own admission in the Staff Report, staff's approach may change after adoption and approval of the Draft Basin Plan Amendments. Thus, any reliance on the Technical Memorandum is useless considering the fact that none of us knows exactly what will be proposed in the future. Accordingly, it is inappropriate for the Central Valley Water Board to use it and its information to estimate costs for the Draft Basin Plan Amendments.*

Response to Comment A5.

See responses to comments A1 and A4. The Commenter in this instance appears to make statements in conflict with its other comments. The Commenter appears to be indicating that it is "useless" for staff to estimate costs at this time, since what staff proposes (and the Board adopts) in the future is not known. However, the Commenter also argues that prior to adopting the orders that will collectively comprise the long-term program, costs must be estimated and included in the Basin Plans. When taken together, such arguments suggest that the Board can neither adopt orders to regulate

agricultural discharges, nor provide estimates of costs prior to their adoption. As discussed in previous responses, Board staff believes the economic analysis provides a reasonable basis for estimating a range of potential costs associated with implementation of orders to regulate discharges from irrigated agriculture.

A6. *The Staff Report implies that six (6) alternatives were properly analyzed as part of the Central Valley Water Board's California Environmental Quality Act (CEQA) process. As explained previously, that is not the case. The Staff Report, which becomes part of the administrative record for the Basin Plan Amendments, must be modified to accurately reflect what alternatives were actually analyzed, and what were not.*

Response to Comment A6.

This is a comment on the adequacy of the analysis within the PEIR certified by the Board in April 2011. The comment is outside the scope of the proposed basin plan amendment.

A7. *More importantly, the Staff Report fails to include any discussion of economic impacts. The Staff Report provides only estimated costs of the program and does not provide the Central Valley Water Board members with material and relevant information with respect to the economic impacts that the five alternatives (and staff's subsequent amalgamation of these alternatives) may have on Central Valley agriculture and the Central Valley economy. Economic impacts are clearly part of the "total cost" of a program and should not be excluded here.*

Response to Comment A7.

See response to comment A4. As described in response to comment A1, the purpose of the Staff Report is to provide update the Basin Plan's cost estimates in a manner consistent with Water Code section 13141's provisions. As discussed previously and referenced in the comments, one of these provisions is to provide an estimate of total costs and potential sources of financing. This proposed amendment clearly provides cost estimates. Broader economic impacts (both positive and negative) are not a required part of a section 13141 total cost estimate, and staff are not aware of any instance in which such broader analysis was required to comply with this provision of Water Code section 13141.

Although not included in the July 2011 Staff Report for this amendment, the broader economic impacts were considered in the Economics Report and the economic impacts of agricultural production were considered as part of the Program EIR.

A8. *Moreover, the broad range of estimated costs presented in the Staff Report fails to provide the Central Valley Water Board members with any meaningful*

information in order to materially consider the costs of the proposed agricultural water quality control program (i.e., the LTILP framework), assuming that the agricultural water quality control program does not change substantially from what has been presented to date. The range goes from \$216 million to \$1.321 billion. The Staff Report does not articulate estimated costs associated with each alternative, or staff's LTILP framework. Instead, the Staff Report just states that the LTILP framework is likely to fall somewhere within this range. (See Staff Report, p. 10 ["Accordingly, the range of costs for staff's current approach are included in Table 1's range of Long-Term Program alternatives."].) Information this vague fails to provide the Central Valley Water Board members with useful information that they could use and consider in their decisions with respect to the LTILP framework as a whole, or for its individual parts. Further, by staff's own admission, the program may change further as it is implemented.

Response to Comment A8.

See response to comments A1, A2 and A5.

Providing a broad estimated cost range to account for uncertainties is consistent with other Board adopted Basin Plan amendments addressing estimated costs of agricultural water quality control programs (see section IV of the Sacramento and San Joaquin River Basin Plan). The broad range of cost estimates presented in the Staff Report accounts for the implementation of third-party oversight of the LTP (i.e., the Coalition option) and the individual permit option for regulating growers. The low-end cost estimate represents a scenario in which the Coalitions prove effective at administering the LTP on behalf of the growers; the high-end estimate represents a scenario in which the majority of growers require individual enrollment under a general permit with more direct oversight by the Board.

Neither the Board, nor its staff, can reliably predict which regulatory approach will ultimately be the most effective and most broadly employed in the long-term. Much of the ultimate costs will be determined by how effectively growers work within the third-party framework to address water quality problems and how effective the third-parties are in carrying out their responsibilities. It would be misleading to the Board members to present a single cost estimate given this uncertainty. Given staff's analysis that the regulatory requirements may vary over time, it is reasonable to provide the Board members and the public with a range and not a single cost estimate.

A9. *The Staff Report also fails to include a comprehensive discussion on the potential sources of financing. The information provided in the Staff Report is fairly generic and broad. It does not clearly explain how the agricultural community will actually pay for the increased costs of this program. Nor does it explain that the potential sources of financing are limited and that most, if not all, of the costs will be placed on individual growers with no public assistance. It does not provide any assessment at all of the availability or cost to private growers of financing for purposes of complying with the additional regulation nor*

of the incremental and cumulative effect on growers' ability to remain economically viable with the added regulatory burden. The potential sources of financing discussion also fail to explain how farmers are "price-takers," in that they are unable to pass on increased costs to consumers. By not including this type of information, Central Valley Water Board members cannot properly and materially consider the Draft Basin Plan Amendments.

Response to Comment A9.

Consistent with the provisions of section 13141 of the Water Code (should they apply to Long-Term Program), potential sources of financing have been identified in the Staff Report and this Basin Plan amendment. The plain language of the Water Code does not specify the level of detail for identification of financing sources and, in fact, the details provided are greater than has been provided previously in the Basin Plan. The proposed Basin Plan Amendment is consistent with the provisions of section 13141 even without additional analysis and discussion suggested by the Commenter. In addition, it would not be reasonable for the Board to evaluate the capability of acquiring financing for each of the over 30,000 individual farmers.

The Board recognizes that program costs will be the responsibility of individual operators. Individuals will have the responsibility for applying for any available grants and loans to try to offset any increased costs associated with program requirements. Text has been added to the Staff Report that indicates that program costs will be generally be borne by Central Valley agricultural operators, who are discharging wastes that could affect the quality of waters of the State. The commenter also asserts that financing costs have not been considered. This assertion is in error, as Table 1 costs are annualized total costs that include real costs associated with financing capital improvements (e.g., management practices, monitoring wells, etc.). Clarifying text has been added to the Staff Report to address this concern. In summary, the Board has sufficient information in the Staff Report and supporting documents to consider whether the cost estimates are reasonable and sources of financing reasonably described.

A10. *Like with the information contained in the Staff Report, the Draft Basin Plan Amendments inadequately address or explain the costs and economic impacts of the LTILP, and fail to provide a clear discussion with respect to potential sources of funding. The cost estimate language merely parrots the range of costs, which varies to such a degree as to be meaningless. And the language for potential sources of funding is only a list of grant and loan programs. There is no meaningful analysis with respect to the economic implications of the Central Valley Water Board's potential actions. There is also no meaningful analysis as to how much financing or funding is available from other sources as compared to what individual growers may be required to spend to implement the LTILP framework. Clearly, based on the material presented in the Staff Report and the Draft Basin Plan Amendments, Central Valley Water Board staff are merely putting forward language in an effort to state that the Central Valley Water Board complied with Water Code section 13141. However, the Staff Report and the*

Draft Basin Plan Amendments collectively fail to satisfy the requirements of Water Code section 13141, which requires the development of meaningful information so that it can be part of the Central Valley Water Board's material considerations. Due to the lack of clear and material information, the Central Valley Water Board should reject the Draft Basin Plan Amendments.

Response to Comment A10.

See responses to Comment Nos. A8 and A9 above. Water Code section 13141, should it be deemed to apply to the Long-Term Program, requires estimated total costs and potential sources of financing to be identified. The information put forward in this proposed amendment clearly provides estimated total costs and potential financing sources. Further, none of the commenters have provided verifiable alternative cost estimates or potential funding sources beyond those already indicated in the proposed amendments.

A11. *Overall, the Staff Report, the Draft Basin Plan Amendments, and their reliance on the Technical Memorandum are insufficient to comply with the mandates of Water Code section 13141. As explained, the information is vague and nebulous. To be meaningful, the Staff Report and the Draft Basin Plan Amendments need to collectively explain the costs for implementing the LTILP framework as the chosen regulatory program, and staff's intended implementation of that framework. Without this information, the Central Valley Water Board members cannot properly and materially consider costs and economics in their future actions for implementing the LTILP.*

Response to Comment A11.

See responses to comments A1, A4, A9, and A10.

Ms. Kari E. Fisher, General Counsel, California Farm Bureau Federation

B1. *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 Analysis 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.*

Response to Comment B1.

See response to comment A1, A2, and C6.

- B2. *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"). 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.*

Response to Comment B2.

This comment was previously addressed in responses to comments A1, A3, A4, A9, and A10. Moreover, the comment does not provide any specific examples of shortcomings of the economic analysis. Staff therefore cannot specifically respond to these claims.

- B3. *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 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.

Response to Comment B3.

See response to comment A1 regarding the applicability of 13141 with respect to issuance or waiver of waste discharge requirements.

See response to comment A11 with regards to whether appropriate cost and economic information has been considered in this proposed amendment. The commenter describes that the requirements of Water Code section 13263 and its reference to section 13241 apply to this proposed amendment. This application of 13263 is not correct, as the section clearly states that the requirements apply to Board consideration of waste discharge requirements. This action does not include Board consideration of waste discharge requirements.

In response to the comment that the estimates of costs of the non-adopted Framework are insufficient, please see response to comment A1. In regards to the sufficiency of the cost estimates for Alternative 6 in the Program EIR, please see response to comments A3 and B5. The Commenter provides no evidence to support that statement and, in fact, the specific costs mentioned (i.e. fee increases, management practice implementation, monitoring costs, report preparation, and costs for education) were estimated and are reflected in the proposed amendments (see the Economics Report; Draft PEIR Appendix A; and Framework Staff Report).

B4. *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.

Response to Comment B4.

See response to comment A1. The cost estimates provided by the proposed Basin Plan Amendments are consistent with the provisions of Water Code section 13141 (should they apply) even without the broader economic analysis suggested by the Commenter. It is not necessary to perform the suggested level of analysis for the Basin Plan Amendments. However, such an analysis has been conducted as part of development of the program EIR in the Economics Report referenced by the Commenter.

This comment suggests that in addition to estimating total regulatory program costs, Water Code section 13141 compliance would require that increased costs of products be considered (e.g., potential cost increase to consumer in reaction to increased product costs). It must be noted here that other comments received indicate that agricultural operators are “price takers,” and cannot pass along increased costs to the consumer (see comment A9). Regardless, effectually passing costs along to consumers does not change the total program costs, only the distribution of the costs. If, for example, operators can pass costs along to consumers, then the cost impacts on agricultural operations would be lessened. In this case, consumers would take on some of the financial burden of program requirements. However, total program cost would not change in this example.

B5. *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.

Response to Comment B5.

See response to comment A11 in regards to whether the Economics Report can be relied upon for this proposed amendment. As stated previously, Alternative 6 described in the program EIR and the non-adopted Framework were both composed of elements described by the five alternatives prepared by the Stakeholder Advisory Workgroup and included in the Economics Report. The draft program EIR (Appendix A) and the Framework Staff Report both included estimates of costs that relied upon and were consistent with the approach described in the Economics Report.

The Commenter has also erred in the characterization of the purported absence of a tiering structure or prioritization approach associated with Alternatives 1-5. The Commenter uses this mis-characterization to assert that underlying assumptions regarding the analysis have been changed.

Alternative 4 prescribes a three-tier prioritization structure. Also, Alternative 2 prescribes a low-threat, management practices-based approach, which is based on lowering the water quality threat by ensuring practices are in place. The prioritization schemes for Alternatives 2 and 4 were in fact the basis for the systems given in Alternative 6 and the Framework (see section X of the Draft PEIR for additional discussion).

The Commenter also incorrectly states that only total costs were calculated and not separate cost components. In fact, the Economics Report provides a breakdown of cost elements, by type and region. This can be seen, for example in Tables 2-18 through 2-22 of the report. In these tables, costs are broken down into components (e.g., fees, local administration, tier analysis and administration, farm planning, inspection, education, etc.). Contrary to this concern, the report was designed with the express purpose of being useful in estimating the cost of an alternative constructed from the elements of Alternatives 1-5. The reader is referred to response to comment A1.

Mr. William J. Thomas, Best, Best & Krieger, counsel for Southern San Joaquin Valley Water Quality Coalition

C1. *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.*

Response to Comment C1.

The public and stakeholders have been provided 45-days to review and comment on the proposed amendment per Water Code requirements. The Commenter did not indicate a need for additional time beyond what is legally required to prepare comments.

C2. *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.

Response to Comment C2.

Board staff believes that the estimates of total costs and the technical analysis supporting those estimates are consistent with the cost estimate provisions of Water Code section 13141, should they apply to the implementation of the Long-Term Program. To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendment.

- C3. *Substantive Problems with the July Staff Report and Proposed Basin Plan Amendments*: *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.

Response to Comment C3.

The Commenter has erred in stating that the Board adopted a staff alternative as part of the program EIR, since the Board has not taken such an action. In addition, staff disagrees with the Commenter’s assertion that there were only five alternatives analyzed in the program EIR. To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendments. Regarding the reference to six alternatives analyzed in the Economics Report, staff has corrected that statement in the final Staff Report by including a statement that staff used the Economics Report to estimate costs of the recommended program alternative since the recommended program alternative fell within the range of the five alternatives.

- C4. *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. 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.

Response to Comment C4.

As stated previously, the total estimated cost provided in these proposed Amendments represents the range of costs reflected in the Economics Report. The range of costs is a reasonable reflection of the potential costs of the long-term irrigated program - see responses to comments A6 and A11 for more information. Although staff believe the Commenter has mischaracterized the placement of the staff recommended alternative in the program EIR, those comments are not material to the content or substance of the proposed amendments. With respect to the consideration of the staff recommended alternative in the Economics Report, please see response to comment A3.

- C5. *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.

Response to Comment C5.

To the extent that the comment addresses the adequacy of the environmental review of the staff recommended alternative found in Appendix A of the Program EIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendment. In regards to the sufficiency of the economic analysis of the staff recommended alternative, see responses to comments A11, B5, and C4.

C6. *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 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.

Response to Comment C6.

See response to comment A11 in regards to whether the Economics Report (commenter refers to this as the “Economic Analysis”) can be relied upon for this proposed amendment. In regards to adequacy of environmental review of the non-adopted Framework, the Central Valley Water Board did not adopt staff’s proposed Framework. As such, the non-adopted Framework is not a “project” within the meaning

of the CEQA,⁴ and was not required to undergo environmental review by the Central Valley Water Board.

The Commenter's specific assertions regarding "major impacts" that have not been previously analyzed are either incorrect, are not attributable to any alternative contained in the program EIR or staff proposal, or have no clear cost impact. The Commenter also provides no analysis of how the alleged impacts of the purported unexamined costs would lead to a doubling of the high end estimate. The Commenter's statements regarding potential unconsidered costs are discussed below:

- *"...a new system for imposing a mix of general order waste discharge requirements and conditional waivers..."* The Commenter is referred to Alternative 2 in the program EIR, which states that "Implementation mechanisms for this alternative could include conditional waivers of waste discharge requirements, waste discharge requirements, or conditional prohibitions of discharge," as well as the staff recommended program alternative. Alternative 2 was analyzed in the Economics Report and there was no identified cost impact from having a mix of general WDRs and conditional waivers. Also, there were no comments provided at the time suggesting that Alternative 2 would have a higher cost based on having multiple implementation mechanisms.
- *"...a new process for public input on surface quality management plans and groundwater quality management plans..."* Staff agrees that a process for public input on water quality management plans is not described in the program EIR alternatives. However, it is not anticipated that gathering public comments on these plans will move program costs outside the current range of cost estimates.
- *"...nutrient management plans in nitrate impact areas..."* This element has been analyzed as part of Alternative 4 (see page 3-23 of the Draft PEIR) and as a general requirement for Alternative 5.
- *"...possible fertilizer application limits..."* None of the alternatives have provisions that would directly impose limits on fertilizer application. Growers might choose to reduce their application of fertilizers to comply with requirements to protect groundwater quality.
- *"...drilling new groundwater monitoring wells..."* This element has been analyzed as part of Alternative 5 (see page 3-28 of the Draft PEIR).
- *"...hiring thousands of certified crop specialists to qualify and develop farm plans..."* This element has been analyzed as part of Alternative 3 as development and approval/certification of individual farm plans (see page 3-15 of the Draft PEIR).
- *"...newly regulating millions of acres under a new Tier 2, which were not previously regulated..."* The additional program acreage has been considered as part of Alternatives 2-5 (see pages 2-4 and 2-5 of the Economics Report) and was considered in the estimate of costs for Alternative 6. The additional acreage is not attributable to tiering or prioritization, rather it is the result of the inclusion of

⁴ See Public Resources Code section 21065.

groundwater protection in the program. In the Framework document, “Tier 2” was used to describe areas where further investigation was needed to determine whether irrigated agriculture was contributing to water quality problems. In the Economic Analysis, those areas had been assumed to require implementation of management practices due to identified water quality problems attributable to irrigated agriculture. Therefore, the Economic Analysis cost estimates were conservative (i.e., high) for areas that were subsequently classified as “Tier 2” in the Framework document.

C7. *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.

Response to Comment C7.

See response to comments A1, A4, A9, and A10 regarding whether the Economics Report may be relied upon for this proposed amendment and whether the Framework can be considered “implementation” of the long-term program. See also response to comment C6. To the extent the comment challenges the adequacy of the analysis within the PEIR certified by the Board in April 2011, the sufficiency of the PEIR is outside the scope of the proposed basin plan amendment.

The commenter provides that the Framework and Alternative 6, combined, contain costs not evaluated in the Economics Report. Specifically, the comment references the following:

- *“...all irrigated agricultural operations in all tiered areas complete a farm-specific evaluation and identification of management practices for Regional Board*

inspection.” While Alternatives 1-5 do not specifically require a “farm-specific evaluation,” the requirement for a farm-specific evaluation is covered by the analysis of farm plan water quality management plan (FWQMP) requirements of Alternatives 3, 4, and 5. While, full-fledged FWQMPs would likely cost more than farm-evaluations, the estimated cost provides a high-end estimate.

- C8. *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, 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 under-evaluated 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.

Response to Comment C8.

See response to comment A9 in regards to consideration of potential sources of financing and costs borne by individual growers. See response to comment A2 regarding estimation of costs. The Commenters' statement regarding funding outside of financing by individuals is inaccurate. There are currently, and have been, both State and federal programs that have either provided outright grants or loans for growers to implement improved management practices. The Commenter provides no basis for the assertion that "farm fees" will amount to \$3 billion to \$5 billion.

C9. *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.*

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 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 R5-2011-0017. It will instead be based on a staff alternative subsequently developed and adopted by the Board. The cost estimate below was based upon the five alternatives.

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 was 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 for the ILRP are from fees imposed on the Region's farmers."

Response to Comment C9.

Board staff agrees that Porter-Cologne does not necessarily require an estimate of cost and identification of sources of financing as a precondition to the issuance of waivers or waste discharge requirements to regulate discharges from irrigated agriculture. However, there are such estimates in the Sacramento River and San Joaquin River Basins Water Quality Control Plans. Although those estimates were prepared as part of Basin Plan Amendments, inclusion of these estimates will provide a more complete and updated description of potential costs of agricultural water quality control programs.

Staff cannot recommend the Commenter's proposed changes to the Basin Plan amendment. In general, the proposed changes are not supported by any information provided for in the record or are not accurate. It is not accurate to state that the program will be based on a staff alternative adopted by the Board, since the Board did not adopt a specific alternative. There was no evidence to support the statement that the costs will be substantially greater than described. Finally, it would be inaccurate to state that the only sources of financing are "fees" imposed on farmers, since there are other sources of financing besides fees.