



**California Sportfishing  
Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*



**BAYKEEPER®**

*Defending Our Waters—from the  
High Sierra to the Golden Gate*

30 May 2008

Mr. Joe Karkoski  
Ms. Susan Fregien  
California Regional Water Quality Control Board  
Central Valley Region  
[jkarkoski@waterboards.ca.gov](mailto:jkarkoski@waterboards.ca.gov)  
[SFregien@waterboards.ca.gov](mailto:SFregien@waterboards.ca.gov)

VIA: Electronic Submission  
Hardcopy if Requested

RE: Scoping Comments; Long-term Irrigated Lands Regulatory Program and Associated  
Programmatic Environmental Impact Report

Dear Mr. Karkoski and Ms. Fregien;

The California Sportfishing Protection Alliance and San Francisco Baykeeper (CSPA/Baykeeper) have reviewed the scoping document for the Central Valley Regional Water Quality Control Board's (Regional Board) Long-term Irrigated Lands Regulatory Program (Program) and submit the following comments on the Program and Programmatic Environmental Impact Report (EIR). We incorporate, by reference, the excellent comments submitted by the California Rural Legal Assistance Foundation, Clean Water Action and Community Water Center.

The 19 March 2008 Scoping Document characterizes the proposed EIR as a programmatic document. However, we understand that Regional Board staff intends to bring forth specific regulatory proposals concurrently or immediately following adoption of the EIR. If the EIR is to be employed to buttress specific regulatory program elements that will be considered for implementation in the near-term, it must include considerably more specificity that is generally found in programmatic documents. This means that the EIR and Program must include specific goals, milestones, measures of success, financial assurances that the program is implementable, consequences for failure and mitigation measures to ensure that the Program will be successfully implemented and water quality standards will be achieved.

CSPA/Baykeeper appealed the Regional Board's adoption of the July 2006 Irrigated Lands Waiver to the State Water Resources Control Board (State Board). The State Board's regulatory compliance, groundwater and non-point source units were directed to review the appeal and administrative record. In a series of draft reports, State Board staff found that petitioner's claims were accurate, that the adopted waiver failed to comply with the Porter-Cologne Water Quality Control Act. The State Board staff Draft No. 4 is attached as Exhibit No. 1 and incorporated in these comments. The staff review found that: 1) discharges from irrigated lands have violated water quality standards, 2) coalitions have failed to comply with conditions

of the waiver, 3) the Regional Board cannot or will not enforce fundamental waiver conditions, 4) the monitoring and reporting program is deficient, 5) the waivers lack specific time schedules for key elements of the program, 6) waiver conditions do not ensure pollution reductions by individual farms, 7) the size of coalitions is unmanageable, 8) the waiver should address groundwater protection, 9) the waiver is not consistent with the state's Non-point Source Program and 10) the waiver should be remanded to the Regional Board to include specific recommendations made by staff. State Board staff was then informed that the Executive Director did not wish the waiver to be remanded and prepared a subsequent draft, attached as Exhibit No. 2. Even though the final report did not recommend remand of the waiver, it retained the majority of the findings of the previous drafts. The Program and EIR must address the conclusions of State Board technical staff and detail how the new Irrigated Lands Program will achieve water quality standards and comply with Porter-Cologne and the Non-Point Source Control Policy (including the specific essential "control elements" of the NPS policy). The EIR must discuss and analyze the likelihood of the program achieving compliance with water quality standards and specific consequences for failure to achieve compliance.

On 21 March 2003, CSPA/Baykeeper and other environmental groups submitted comments on the Notice of Preparation of the EIR for the Irrigated Lands Program. Those comments address specific requirements of any defensible environmental review document and are incorporated and attached as Exhibit No. 3.

The EIR must include a detailed and accurate baseline report of conditions currently existing on Central Valley agricultural lands. Among other things, the EIR should breakdown the Valley's agricultural lands into logical zones and provide a detailed discussion of the acreages involved, number of farms, types of crops, seasonal changes in cropping patterns, existing BMPs employed on the farms, percentages of farms with no BMPs in place, the types and locations of pollutants being discharged from farms, the effectiveness of BMPs to reduce or prevent discharges of expected pollutants, a summary of data collected in the various zones and a discussion of likely sources of those pollutants. The baseline also should discuss information about all of the farms that has been collected by the Regional Board, submitted by the various coalition groups as well as submitted directly to the Regional Board by individual dischargers. It must identify and discuss specific biological resources, including sensitive species and habitats, the proximity of discharge points to those resources, the kinds and quantity of pollutants discharged and the potential impacts of pollutant loading on specific biological resources. It cannot rely on information collected far downstream to adequately address and mitigate upstream adverse impacts to sensitive biological resources, i.e., it must identify localized impacts in the vicinity of actual discharge locations.

The EIR must evaluate all existing and potential BMPs that might be required pursuant to any regulatory program ultimately enacted by the Regional Board. All technically feasible BMPs that could be employed by farms in the Central Valley should be discussed, including their efficacy at reducing pollutants in irrigation return flow discharges to surface and groundwater.

The Program and EIR must contain a full and defensible antidegradation analysis that addresses continuing cumulative impacts, potential impacts of changing cropping patterns, adverse impacts on listed species and the environmental and human costs of failing to achieve

compliance with water quality standards. It must include a comprehensive socio-economic analysis. As we have previously stated, on numerous occasions, the environmental baseline for the antidegradation analysis should be 1968.

Porter-Cologne requires that the Regional Board protect groundwater. Serious impairment of groundwater by agricultural activities has been amply documented. CSPA/Baykeeper believes that any irrigated lands program must include and prioritize protection of groundwater. A defensible groundwater protection program must include groundwater monitoring, implementation of BMPs and assessment of BMP effectiveness, milestones, timelines and consequences for noncompliance. In addition, the potential impacts to groundwater of BMPs to be implemented by dischargers pursuant to the surface water discharge requirements also must be evaluated in the EIR.

In July 2007, the Regional Board released a landmark draft report presenting the first region-wide assessment of data collected pursuant to the Irrigated Lands Program since its inception in 2003. Data collected from some 313 sites throughout the Central Valley revealed that: 1) toxicity to aquatic life was present at 63% of the monitored sites (50% were toxic to more than one species), 2) pesticide water quality standards were exceeded at 54% of sites (many for multiple pesticides), 3) one or more metals violated criteria at 66% of the sites, 4) human health standards for bacteria were violated at 87% of monitored sites and 5) more than 80% of the locations reported exceedances of general parameters (dissolved oxygen, pH, salt, TSS). While the adequacy of monitoring (i.e., frequency and comprehensiveness of monitoring) varied dramatically from site to site, the report presented a dramatic panorama of the epidemic of pollution caused by the uncontrolled discharge of agricultural wastes. The Program and EIR must specify and evaluate how, and under what timeline, the new Irrigated Lands Program will directly address and eliminate these violations of water quality standards in light of the fact that, under the present program, the Regional Board cannot know who is actually discharging pollutants, what specific pollutants are being discharged, what are the localized water quality impacts in the vicinity of the discharge, who has or has not implemented best management practices (BMPs) and whether any reductions in pollutant loading or improvements in water quality have occurred. It must discuss and analyze the likelihood of achieving compliance and specific consequences for failure to achieve compliance.

Since adoption of the 2003 and 2006 waivers, a catastrophic decline of pelagic species in the Sacramento-San Joaquin Delta has been documented. Delta pelagic species include Delta smelt, threadfin shad, American shad, striped bass and longfin smelt. Pollutants have been identified by the Pelagic Organism Decline (POD) workgroup as one of three principle causes of the decline. Further, populations of various runs of Chinook salmon and steelhead that utilize the Delta and Central Valley waterways for migration, spawning and rearing have recently plummeted to dangerously low levels. The Program and EIR must specify how and under what timeline the new Irrigated Lands Program will identify and eliminate adverse impacts from pollutants discharged from irrigated lands to these pelagic and salmonid species and their critical habitats, especially the localized impacts in sensitive spawning and/or rearing habitats in the vicinity of agricultural discharges. It must further discuss and analyze the likelihood of achieving compliance and the specific consequences for failure to achieve compliance.

CSPA/Baykeeper believe that Reports of Waste Discharge and individual farm-based management plans (similar to pollution prevention plans under the industrial or construction stormwater permits) are fundamentally necessary for any meaningful program addressing discharges from irrigated lands. The Regional Board must know who is actually discharging pollutants, the pollutants being discharged, the localized impacts of discharges, whether BMPs are being used and if BMPs that have been implemented are effective. Every successful iterative program (as opposed to end-of-pipe control) has been predicated upon pollutant identification, BMP implementation, BMP evaluation and application of additional BMPs where problems remain. The Program and EIR must discuss and analyze how, and by what yardsticks, timetables and measures of success any new irrigated lands program will achieve compliance with water quality objectives in the absence of Reports of Waste Discharge and farm-based management plans.

Any defensible EIR must include identification and evaluation of a reasonable range of alternatives. CSPA/Baykeeper believes the range of alternatives, beyond the no project alternative, must include: 1) individual WDRs, especially where intensive chemical application occurs near critical habitat areas or serious and repeated violations of water quality standards have been documented and 2) general WDRs addressing similar agricultural practices and/or similar discharges and/or sub-watersheds. Staff has developed a model general order that has already been presented to the Regional Board for review that could serve as the basis for a general WDR alternative.

As Regional Board staff has previously testified, waivers require greater staff effort to be successful. The Program and EIR must discuss, propose and evaluate a revenue scheme sufficient adequately to implement and enforce the program at a level that will ensure success.

In closing, the Regional Board cannot document any quantifiable improvement in water quality that has occurred as a result of the irrigated lands program. It cannot point to a single specific BMP that has been implemented or any resulting reduction in localized pollutant loading or improvement in water quality. It cannot identify the locations of critical habitat or sensitive biological life, the proximity of discharges, the specific type or volume of pollutants being discharged or the potential adverse effects of those discharges on sensitive habitat and species. Without this basic information, there is no way an EIR or Program purporting to regulate discharges from irrigated agriculture can establish an adequate baseline to evaluate any regulatory program.

Increasing water quality degradation and disappearing fisheries require a program that demands far more of dischargers than simply joining a coalition or contributing to generalized monitoring efforts. A successful and legally defensible irrigated lands program must identify sensitive habitat and species. It must mandate and ensure that individual dischargers actually implement BMPs and that implemented BMPs actually work. Simple educational programs are insufficient. The program must include clear quantifiable yardsticks and timelines to document improvement. It must include enforceable penalties to ensure compliance by all dischargers.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" being more prominent.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3535 Rainier Avenue  
Stockton, CA 95204  
209-464-5067

A handwritten signature in black ink, appearing to read "Sejal Choksi". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

Sejal Choksi  
Program Director and Baykeeper  
San Francisco Baykeeper  
785 Market St., Suite 850  
San Francisco, CA 94103  
415-856-0444x107