



California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"



4 April 2008

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Comments Opposing Proposed San Luis Drainage Resolution Act and Settlement Process

Senator Feinstein:

The California Water Impact Network (CWIN) and the California Sportfishing Protection Alliance (CSPA) are submitting these comments to you and the U.S. Bureau of Reclamation on the proposed discussion draft "San Luis Drainage Resolution Act." **We unconditionally object to the process and the proposed legislation.** The proposal will in no way be sustainable, cost effective, environmentally responsible or successful. It is guaranteed to fail and cost the taxpayers literally hundreds of millions of dollars. The proposal will also enrich a small number of landowners within the San Luis Unit by giving them a perpetual water contract that they can then market to urban areas at an incredible profit, once these untested drainage solutions inevitably fail.

Continued irrigation of these saline and seleniferous lands is a violation of the Public Trust and Article X, Section 2 of the California Constitution prohibiting wasteful and unreasonable use of water. Resolution of the drainage problem clearly lies with massive land retirement in the Western San Joaquin Valley. No other viable or cost effective solution has yet to be presented, and the proposed settlement is clearly not viable from a technical or financial perspective.

The proposed "solution" is actually no solution at all. The "real solution" was never even considered in the San Luis Drainage Final EIS, but the US Fish and Wildlife Service put it very clearly in their Fish and Wildlife Coordination Act report on the San Luis Drain Feature Re-Evaluation Project (SLDFR) EIS as follows:

"We believe the Service's Preferred Land Retirement Alternative (full retirement) [379,000 acres] for the San Luis Drain Feature Re-Evaluation Project would release Reclamation from any future obligation to provide drainage service to the SLU while maximizing avoidance of adverse environmental effects. Our contention is that a full retirement alternative represents the most logical and least risky option to finally solve the drainage problem from the perspective of protecting and enhancing regional fish and wildlife resources. This land retirement alternative is compatible with CALFED and

CVPIA goals and objectives by reducing project water demand, increasing available supplies, enhancing fish and wildlife habitat, and reducing contaminants reaching the Delta. It is an approach that appears most compatible with both the Service and Reclamation's respective missions, since the goal is to find a drainage solution for the study area which includes measures to preserve, protect, restore, and enhance fish and wildlife resources affected by water deliveries to the SLU."

Clearly, the best solution is to retire as much drainage-problem land as possible within the San Luis Unit, which is a **minimum of 379,000 acres** and return the water to the environment. This is the least cost alternative and the most likely to succeed. It could also provide water for environmental, wildlife and fishery purposes without costly new dams and conveyance facilities.

The proposed settlement and legislation poor public policy for the following reasons:

- The amount of acreage to be retired is less than 1/3 of the amount identified as the most cost effective alternative in the Bureau's own Final EIS and Record of Decision for SLDFR (Appendix N), and is clearly inadequate to address all the potential problems raised by a 9(d) repayment contract that Westlands et al would get in perpetuity. The linkage between the drainage proposals and the rest of the Westlands "package" above remain a serious concern, and the setting of such a precedent would have dire implications for water contracts statewide. **CSPA and CWIN unconditionally oppose this so-called "solution"**.
- The biological treatment effectiveness is unproven, and likely to turn selenium into a more biologically active form, whereas land retirement has proven benefits to reduce toxic drainage, reduce wildlife exposure, and lower contaminated groundwater levels
- The solar evaporator mitigation process is incomplete and based on non-scientific assumptive reasoning, particularly related to water ponding risks.
- Water quantity needs for mitigation exceed contractual amounts available.
- The proposed 9(d) repayment contract jeopardizes availability of water for environmental uses and protection of ecosystems and species already listed as stressed and endangered, thereby further corrupting the CVPIA's mandate to restore fisheries and water quality in the Central Valley and the Trinity River.
- The amount of contaminated drainage water, as well as economic costs/losses will be much larger than envisaged in the Bureau's Final EIS because of the lower amount of land retirement, requiring more treatment and disposal actions than were addressed in the Bureau's preferred alternative.
- The decision making process for reducing land retirement totals is not identified or justified.

- There is uncertainty as to whether the Ecological Risk assessment found in appendix G of the Final EIS is pertinent to the alternative proposed. There are simply too many outstanding uncertainties associated with the SLDFR to safely predict successful, cost-effective implementation of a drainage management strategy; manageable wildlife risks; and, therefore, adequate and feasible mitigation.
- There is a complete lack of any contingency plans to cease water deliveries to drainage-impaired land and close solar evaporator complexes should treatment, compensation, and/or mitigation efforts fail.
- There is a lack of compliance with the Fish and Wildlife Coordination Act (FWCA) related to concentration of Se, TDS, and heavy metals.
- There is a negative benefit to cost analysis for implementation of the project. From an investor standpoint, investment of this enormous amount of money and resources into a project with so much uncertainty would be reckless.

The cost ineffectiveness of this proposal alone makes it ludicrous and we wonder how it has gotten as far as it has, except for obvious political influence peddling by the San Luis contractors. The National Economic Development Alternative for the San Luis Drainage EIS clearly showed that the closest alternative to that being proposed in this “settlement” by Westlands and Interior would LOSE \$15.603 million/year in 2050 dollars (\$780 million totally). However retiring the maximum amount of land considered (308,000 acres), would be a net benefit of \$3 million/year for the next 50 years (\$182 million totally). This amounts to a public subsidy of nearly a billion dollars that is virtually guaranteed to fail. It is clear that retiring 379,000 acres would result in even greater cost savings and environmental benefits.

We unconditionally oppose the proposed legislation, the proposed settlement, the proposed 9d water contract and the proposed Mitigation and Monitoring Plan. Reclamation has refused to respond to virtually any of the comments on the process and pretends that there is not opposition to the proposal as a whole. We cannot disagree more strongly with the method and substance of this so-called settlement process.

This letter notifies you and Reclamation that our organizations oppose this process. It should be abandoned, and the NEPA process for the SLDFR should be reinitiated as a Supplemental EIS to consider any new alternatives, including the new evaporation proposal, as well as an alternative to fully retire the 379,000 acres, as identified by the U.S. Fish and Wildlife Service in their Fish and Wildlife Coordination Act Report on the SLDFR EIS. Failure to do otherwise would be a severe breach of the Public Trust, Article X, Section 2 of the California Constitution, and a violation of the National Environmental Policy Act.

Sincerely,



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Interested parties