



California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

June 23, 2008

Hon. Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

On behalf of the California Water Impact Network (C-WIN) and the California Sportfishing Protection Alliance (CSPA), we wish to recognize your leadership toward resolving the present and future agricultural, environmental, and water-use needs specific to the San Luis Contractors and San Joaquin Valley drainage issues. The complexity and gravity of these issues require stakeholders to work collaboratively in revealing all the facts required in forming knowledgeable and judicious decisions and solutions. With this in mind, C-WIN and CSPA have put together the following observations and recommendations related to your letter to Bureau of Reclamation Mid-Pacific Regional Director Donald Glaser dated June 10, 2008.

Related to your query concerning the optimal land retirement acreage, we have the following interpretation from various agencies who have been studying this issue. The Executive Summary of the USGS Admin Report, specifically states, "***Land retirement is a key strategy to reduce drainage because it can effectively reduce drainage to zero if all drainage-impaired lands are retired.***"¹ The US Fish and Wildlife Service previously recommended the land retirement of 379,000 acres including the "northerly area" would result in the greatest financial, water quality and supply benefits as compared to the lower acreage alternatives.² The USGS and the FWS documents repeatedly caution that all of the proposed drainage treatment technologies are unproven, and the costs unknown, hence their conclusion that land retirement is the most effective deterrent to salt and selenium pollution of land and water. C-WIN and CSPA submits that retiring nominal acreages of less than 379,000 acres would be extremely risky to the immediate and downstream watersheds, including the Delta and San Francisco Bay. In fact, the California State Water Resources Control Board has identified irrigation of the west side of the San Joaquin Valley, including the Bureau of Reclamation's San Luis Unit, as the single largest cause of salinity violations in the San Joaquin River.³

¹ USGS, Technical Analysis of In-Valley Drainage Management Strategies for the Western San Joaquin Valley, Administrative Report May 2008

² US Fish and Wildlife Service, Fish and Wildlife Coordination Report on San Luis Drainage PFR EIS

³ SWRCB D-1641 states on page 83 "The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit." "The SWRCB finds that the actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. The salinity problem at Vernalis is the result of saline discharges to the river, principally from irrigated agriculture, combined with low flows in the river from upstream water development."

Your question to the Bureau of Reclamation concerning the development of benchmarks, monitoring and incentives to meet them is astute in a scenario where a knowledgeable decision to implement the drainage plan has actually been made. Unfortunately, the science is too uncertain for a rational decision to implement the bio-treatment and solar evaporation techniques to be made. This is not due to the lack of inquiry, as numerous studies costing millions of dollars producing tens of thousands of pages of reports have been conducted concerning Integrated Farm Drainage Management (IFDM) systems. The USGS makes clear that there is no lack of study on the subject and states the inability to implement is due to ***“a lack of decision analysis tools to enable meeting the combined need of sustaining agriculture, providing drainage service, and minimizing impacts to the environment”⁴***. C-WIN and CSPA believes with your strong leadership, supported by the scientific findings of these agencies, that a truly rational decision to retire these toxic lands is possible. An environmental approach based on simple precautionary principals would negate the inherent risks as outlined in all the studies of Se and TDS exposure to wildlife and the environment, as well as save the taxpayers money and water for California’s future.

Your concerns and questions related to the elevated toxic levels of selenium beyond the 10 ppb threshold for substantive risk, is also of great worry to C-WIN and CSPA and many environmental managers. You wisely pose the question of how the Bureau intends to ensure that wildlife is not exposed to toxic Se levels and whether their proposals are sufficient to alleviate the warnings highlighted in the USGS and other reports. Additionally we believe there is a great deal of uncertainty as to whether the Ecological Risk assessment found in appendix G of the San Luis Drainage Final EIS is pertinent to the settlement 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. Included in this uncertainty is the 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. Excess Se exposure to wildlife may result in a repeat of the environmental disaster experience at the Kesterson Reservoir. In a testing of IFDM systems by the U.S. Fish and Wildlife Service, fifteen species of migratory birds were documented to nest at the IFDM study sites. Avian nests were located in every habitat component of IFDM plots, including agro forestry trees, indicating that these sites are capable of attracting both foraging and nesting birds⁵ that can be exposed to selenium.

C-WIN and CSPA pose to you a strategic question about the original intent of the drainage proposal - to alleviate the federate government from intensive man power and financial responsibilities. Unfortunately, it seems that the onerous monitoring and compliance responsibilities are being re-assigned to the federal agencies. This dichotomy may be in part due to the level of confidence (or lack thereof) we collectively have with assigning these highly technical and complex tasks to landowners whose advantage it is to avoid reporting and being responsible for failure. Is it possible

⁴ USGS, Technical Analysis of In-Valley Drainage Management Strategies for the Western San Joaquin Valley, Administrative Report May 2008

⁵ USFWS. 2006. Assessment of Avian Selenium Exposure at Agro forestry Sites in California Final Report, Project ID 10003.1

that this resource intensive proposal employing unproven risky technologies will ultimately become an albatross around the federal government's neck?

Your next question to the Mr. Glaser involves the pumping of 400,000 acre-feet of groundwater in an attempt to lower water table and thereby reduce the risks of producing more concentrated TDS (including Se) areas of surface water. Again your concerns are well founded, but we request that you also ask Reclamation if they support this extraction of groundwater, and if they believe that it provides an opportunity to both reduce contaminated groundwater levels and reduce contract deliveries to the San Luis Contractors, and would allow Reclamation greater flexibility in meeting both its contractual as well as environmental water commitments by reducing demand?

Another question pertains to the NEPA process and whether it is being properly administered with these settlement proposals and pending submittal of legislative action. As you may be aware NEPA requires full analysis and disclosure of legislative proposals (NEPA Section 102(2) (C) requires that all federal agencies "include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, an [EIS]"). If additional information is available on a major federal action that alters the results of the initial analysis, a supplemental EIS is required.

C-WIN and CSPA do not believe that the current proposal is similar enough to the original San Luis Drainage EIS and the Record of Decision to eliminate the requirement for a Supplemental EIS, as specified in NEPA. There is clearly additional information now available which was not available at the time of the final San Luis Drainage PFR EIS and ROD, In particular, both the sprinkler/gravel bed technology and the USGS report recommending groundwater pumping of up to 400,000 AF, is new technology and new information which was not disclosed or analyzed in the existing San Luis Drainage EIS and ROD. The lack of analyzing an alternative which would retire 379,000 acres, as suggested in the USFWS Coordination Act Report on the SLDPFR EIS is another major omission which should be rectified through an SEIS process.

C-WIN has also requested the long-promised feasibility study and peer review on the San Luis Drainage PFR ROD. We ask that you request those reports from Reclamation because they do not appear to be forthcoming in giving it to C-WIN.

On the subject of disclosure, C-WIN and CSPA's Boards have been involved with these drainage issues for years and we appreciate your efforts to jointly develop a solution. We have over the years asked many of the same questions you pose to the Regional Director. To our consternation, neither our organizations nor the dozens of other concerned organizations representing tens of thousands members throughout California have received any response to our collective comments on the Conceptual Monitoring, Compliance, and Adaptive Management Plan for the San Luis Unit Drainage Management Plan 2nd DRAFT 2/29/2008 submitted in March. This lack of due diligence begs the question of whether Reclamation intends to provide a response to the tens of thousands of concerned Californian citizens?

Therefore, C-WIN and CSPA believe that is appropriate for you, as our elected representative, to request that Reclamation initiate a Supplemental EIS process (SEIS) in order to ensure that all information is publicly disclosed and that there is an opportunity for all comments to be responded to. In the absence of a SEIS, it's likely that important information will continue to be held back, and there will not be meaningful responses to comments. Ultimately, the lack of full public disclosure will result in continued faulty decision making related to long-term solutions for San Luis drainage problems that are not in the best interests of the public.

I thank you again for your strong and consistent leadership on these issues and look forward to working closely with you and your staff in finalizing a timely and rational solution to this difficult environmental problem. On behalf of the Boards of Directors of C-WIN and CSPA, we look forward to hearing your response to our concerns and comments.

Sincerely,



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Interested Parties