



AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS



April 4, 2011

Barbara Evoy
Deputy Director, Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

**Subject: Protest of Long-Term Water Transfer Petition, Application 17512,
Department of Water Resources (DWR) to Westlands Water District (WWD)**

Dear Ms. Evoy:

The California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance, and AquAlliance thank you for the extension of time Patricia Fernandez of the Division of Water Rights granted to us to respond to your February 16, 2011, letter. Our organizations did not receive the letter until March 3, 2011. The extension of time has given us sufficient time to evaluate your letter and prepare an appropriate response.

As we read the February 16th letter, we find the Division states the following points:

1. The State Water Project water proposed to be transferred by DWR is of higher quality than groundwater in the Westlands area that the petition states would be pumped in the absence of the transfer. The proposed transfer would therefore not result in additional drainage from the lands to receive water, as the transfer would not result in new lands being placed in agricultural production or additional irrigation of lands already in production.
2. DWR states in the petition that the lands to receive the water from this proposed transfer have not been shown to have selenium or drainage problems.
3. As a condition of a water transfer order, the State Water Resources Control Board would require Westlands to implement all reasonable measures to prevent subsurface drainage of poor quality water into the downslope area outside of Westlands' service area. DWR states in the petition that, in general, lands in Westlands have complete tailwater control within each field.
4. The District's pipeline distribution system and landowners irrigation systems in Westlands have been documented as some of the more efficient systems operating in California to minimize applying water to crops. The District has programs encouraging water conservation and drainage reduction.
5. Westlands' map, *Generalized Depth of Shallow Ground Water, April 2009*, indicates that irrigation of the areas intended to benefit from the transfer within Westlands have not been shown to cause drainage or selenium problems. These areas are also located such that they do not directly drain to the San Joaquin River.

Point by point, C-WIN, CSPA, and AquAlliance respond as follows:

1. Our organizations do not dispute that State Water Project water is of better quality than groundwater pumped within the WWD service area. The issue is that good quality water would be transferred for application to lands known to possess elevated levels of selenium.¹ Such application may be considered a wasteful use of water. In addition, environmental information accompanying the long-term transfer petition suggests that water application within WWD may increase. This would likely generate additional drainage that WWD must then manage. Page 4 of the Initial Study attached to the Environmental Information for Petitions for long-term transfer between DWR and WWD states: “Lands to receive *increased water deliveries due to this transfer* have not been shown to have drainage or selenium problems.” This sentence also appears on page 4 of the Petition narrative.

The italicized phrase in this sentence represents at least a tacit acknowledgement that the long-term transfer will increase water deliveries to the subject lands. It seems plausible since WWD has not received a full Central Valley Project allocation for many years. This statement is why our organizations indicated that the increment of increase was not described adequately in either the Initial Study or the Environmental Information accompanying the Petition for long-term transfer submitted by DWR. C-WIN, CSPA, and AquAlliance request that the petitioners prepare an analysis disclosing historic usage of delivered surface water to these farm operations. The sequence of annual temporary transfers between DWR and Westlands began in 2001. The transferred amounts generally increased as the years passed (see Table 1 below). The analysis should then project forward anticipated maximum water usage would be under the long-term transfer.

In addition, if there were years when the subject farm operations within Westlands irrigated with groundwater instead of surface water, the environmental analysis associated with the long-term transfer petition should show what the usage amounts were and what water quality was encountered, especially selenium concentrations. In short, through our protest, C-WIN, CSPA, and AquAlliance request that the petitioners *demonstrate* either why there is no additional application of water under the long-term transfer, or what the anticipated increment of applied water would be under the long-term transfer. At this stage, our organizations agree with the State Water Resources Control Board that there is ambiguity as to what the facts are associated with this aspect of the petition. Few such relevant facts have been disclosed in the petition.

2. Our organizations respectfully disagree that the lands to receive the water from this proposed transfer have not been shown to have selenium or drainage problems. This is asserted, not demonstrated from all information included with the long-term transfer petition. The State Water Resources Control Board states that DWR “recently clarified” that the Newton Farm lands lie within an area where selenium in shallow groundwater is between 0 to 5 parts per billion (ppb), and for Hansen Ranches/Vista Verde Farms and Brooks Farms ranges between 5 and 50 ppb. We request to see DWR’s documentation, in the form of written analysis of soil and groundwater quality. We also request the analysis be presented in writing and in mapped form for these sites. Again, to comply with CEQA, such analyses should have been performed in the Initial Study to demonstrate, rather than merely assert such findings. Our organizations observe too that the soil concentrations of selenium

¹ San Joaquin Valley Drainage Program, *A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley*, Final Report, California Department of Water Resources and US Bureau of Reclamation, September 1990.

from the 1990 Rainbow Report, which we included in our protest, are not contested by the Division of Water Rights in the February 16th letter.

3. C-WIN, CSPA, and AquAlliance are aware that WWD manages tailwater and drainage actively. While WWD deserves praise for their existing efforts, it does not seem relevant to the issues we raise concerning the environmental information submitted to support the long-term transfer petition. To us, the key question is whether WWD's management of tailwater and drainage effectively prevents or reduces selenium mobilization, transport, and discharge to water bodies belonging to the public? As we state in our protest,

“Long-term transfers are subject to the California Environmental Quality Act, and the lack of full disclosure of what occurs with selenium mobilization and irrigation drainage in relation to shallow and deeper groundwater resources in the Initial Study/Negative Declaration means that at present approval of the petition would be contrary to the California Environmental Quality Act.” (Protest, p. 6)

Drainage created by water applied under this long-term transfer will go somewhere, likely including deeper aquifers of the western San Joaquin Valley. Where does the Petitioner and its fellow responsible parties and beneficiaries believe percolating water will go? Well drilling in this area has perforated the clay layer that separates shallow from deeper aquifers in this region. The petitioners need to demonstrate, not just assert, that shallow and deep drainage associated with selenium mobilization does not have long-term impacts on the San Joaquin River, other surface water bodies, and municipal and drinking water quality in this area of the Valley.

4. Please disclose to C-WIN, CSPA, and AquAlliance and the public WWD's record with water conservation applications and drainage control programs within its service area.
5. Our organizations also disagree that WWD's *Generalized Depth of Shallow Ground Water* map of April 2009 indicates that irrigation of the areas intended for transfer within Westlands has not been shown to cause drainage or selenium problems. The contours of this map illustrate depth to shallow groundwater. To our knowledge, WWD measures only electrical conductivity (EC) in its groundwater monitoring program.² While selenium is typically assumed to be among constituents measured by EC, historic public health concerns associated with selenium are probably not adequately monitored in this instance. Our organizations request that the petitioners demonstrate, not simply assert, that shallow and deep drainage associated with selenium mobilization does not have long-term impacts on the San Joaquin River and municipal and drinking water quality in this area of the Valley.

² Westlands Water District, *Water Management Plan*, 2007, March 3, 2008, p. 170.

“1. Monitoring and Analysis: The District has monitored groundwater conditions for over 20 years. District staff will continue to monitor and analyze groundwater conditions in Westlands. Water user wells will be monitored each winter to determine static *groundwater elevations and salinity monitoring* will be performed during the periods of high groundwater pumped to ensure a representative sampling. The data will be analyzed by District staff to determine trends in groundwater elevation and quality. In addition, pumping estimates will be made along with estimates of the change in groundwater storage. In addition, the District will recommend to the landowners and water users that all new wells be equipped with an access tube to accommodate sounding of the well to monitor groundwater elevations.” Emphasis added.

Because of similar concerns about the fate of selenium discharges to aquifers, not just surface waters, C-WIN, CSPA and AquAlliance requested mandatory Waste Discharge Requirements and monitoring of selenium discharges to the confined and semi-confined aquifers in the southern, central, and northerly areas of Westland in a letter dated October 13, 2010, to the Central Valley Regional Water Quality Control Board (see Attachment 1).

Beneficiaries Newton Farms and Hansen Ranches/Vista Verde Farms have clearly grown accustomed to obtaining water made available through these transfers. From the list shown below in Table 1, there have been seven consecutive transfers (2005 through 2011), and a record of 10 transfers in the last 11 years. Except for transfers in 2007 and 2008 (two relatively dry years), the amounts of the annual short-term temporary transfer have increased steadily since 2001. Tulare Lake Basin Water Storage District's Initial Study Checklist states under Section XVII(b) that the proposed long-term transfer would not have cumulative impacts. The Checklist states that "the results of this environmental assessment indicate that there are no potential environmental impacts as a result of this project." Our organizations believe this is an erroneous statement, in part because "the results of the assessment" are not adequately disclosed as concerns cumulative impacts in order to verify correctness of the District's conclusion. On the other hand, the State Water Resources Control Board has annually approved the following cumulative short-term temporary transfers:

Table 1: Sequence of Short-Term Cumulative Water Transfers between California Department of Water Resources and Westlands Water District

Year / Water Rights Order	Transferor	Transferee	Acre-Foot	Benefitting Entities
2001-15-DWR	Dept of Water Resources	Westlands Water Dist	3,975	Vista Verde Farms, Venture Farms
2002-0007-DWR	Dept of Water Resources	Westlands Water Dist	5,000	Vista Verde Farms, Venture Farms
2003-0011-DWR	Dept of Water Resources	Westlands Water Dist	6,300	Vista Verde Farms, Newton Farms
2005-0015-DWR	Dept of Water Resources	Westlands Water Dist	6,000	Newton Farms, Hansen Ranches/Vista Verde Farms
2006-0012-DWR	Dept of Water Resources	Westlands Water Dist	6,000	Newton Farms, Hansen Ranches/Vista Verde Farms
2007-0014-DWR	Dept of Water Resources	Westlands Water Dist	5,000	Newton Farms, Hansen Ranches/Vista Verde Farms
2008-0031-DWR	Dept of Water Resources	Westlands Water Dist	4,000	Newton Farms, Hansen Ranches/Vista Verde Farms
2009-0026-DWR	Dept of Water Resources	Westlands Water Dist	8,000	Newton Farms, Hansen Ranches/Vista Verde Farms

Table 1: Sequence of Short-Term Cumulative Water Transfers between California Department of Water Resources and Westlands Water District

Year / Water Rights Order	Transferor	Transferee	Acre-Feet	Benefitting Entities
2010-0017-DWR	Dept of Water Resources	Westlands Water Dist	10,000	Newton Farms, Hansen Ranches/Vista Verde Farms
2011-0010-DWR	Dept of Water Resources	Westlands Water Dist	10,000	Newton Farms, Hansen Ranches/Vista Verde Farms
		Cumulative Total	64,275	

Source: State Water Resources Control Board, URL: http://www.swrcb.ca.gov/waterrights/board_decisions/adopted_orders/orders/index.shtml, accessed 4 April 2011.

Cumulatively, these transfers have resulted in receipt of up to 64,275 acre-feet to benefit lands owned by Newton Farms, and Hansen Ranches/Vista Verde Farms since 2001. These prior short-term transfers, while exempt from CEQA review themselves, are not disclosed in the environmental checklist or the environmental information associated with the long-term transfer petition. C-WIN, CSPA, and AquAlliance also suggest that this transfer sequence has induced growth in water use and crop production in Westlands Water District on these farms and must be analyzed as part of the long-term water transfer petition submitted by DWR. Did overall water use, whether of surface or groundwater supplies to the beneficiaries' farms in Tulare Lake Basin Water Storage District, Empire Westside Irrigation District, and Westlands Water District as a result of these prior transfers? Individually they may be small, but what has been the cumulative impact of these transfers?

Court interpretation of the California Environmental Quality Act's cumulative impact requirements reveal that an impact report analysis may be found inadequate if it does not include the elements listed in CEQA Guidelines Section 15130; specifically, either a list of closely related past, present, and reasonably foreseeable future projects, or a summary of projections contained in an adopted planning document that is designed to evaluate regional or area-wide conditions. This analysis must also include a discussion of projects under review by the lead agency and projects under review by other relevant public agencies.

C-WIN, CSPA, and AquAlliance are aware that Westlands Water District's primary sources of water are groundwater pumped by growers operating within the District, and the District's water service contract with the US Bureau of Reclamation for a relatively low-priority allocation from the Central Valley Project. Water transfers seek to circumvent effects of California's water rights priority system. This is true whether they cross the Delta (and thus involve pumped exportation) or are a relocation of water delivery between south-of-Delta contractors as is this sequence of transfers. Using the state's water transfer authority to irrigate lands known to contain higher concentrations of naturally-occurring selenium appears to our organizations to violate the California Constitution's prohibition of wasteful and unreasonable uses of water. Accordingly, we see this also as an inappropriate use of a water transfer to benefit essentially two private farming entities. If this is not the case, we look forward to a clear and full disclosure of the nature of this cumulative water

transfer arrangement between DWR and Westlands Water District on behalf of Newton Farms and Hansen Ranches/Vista Verde Farms.

In sum, C-WIN, CSPA, and AquAlliance request that the petitioner DWR prepare analyses that analytically support their contentions and that there either will be no selenium issues or will be mitigable selenium problems associated with tailwater, drainage, and shallow and deep groundwater percolation under the operation of this long-term water transfer between the Department of Water Resources and the Westlands Water District.

The protest issues identified by C-WIN, CSPA, and AquAlliance concerning this proposed long-term water transfer between DWR and WWD remain unresolved.

Again, thank you for the opportunity to respond to the Board in a timely fashion. C-WIN respectfully requests that the State Water Resources Control Board continue to keep all protestants in this matter punctually and fully informed of the next steps in this proceeding.

Sincerely,



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cc: Patricia Fernandez, Division of Water Rights, State Water Resources Control Board
Carolee Krieger, California Water Impact Network
Bill Jennings, California Sportfishing Protection Alliance

Attachment: Letter of C-WIN, CSPA, and AquAlliance to Kate Hart, Chairperson, Central Valley Regional Water Quality Control Board, October 13, 2010



AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

October 13, 2010

Ms. Kate Hart
Chairperson Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Subject: Follow up Investigation Request on Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins Addressing Selenium Control in the San Joaquin River Basin Adopted on May 27, 2010

Dear Ms. Hart:

The California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA) and AquAlliance write to express additional concerns with the adoption of Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins Addressing Selenium Control in the San Joaquin River Basin (BPA) by the Central Valley Regional Water Quality Control Board.

At the Regional Board's May 27, 2010 hearing, the need for an investigation of other sources of selenium pollution, specifically from Westlands Water District (WWD), was discussed. Rudy Schnagl, Senior Scientist for the Central Valley Regional Board explained that surface and subsurface drainage discharges from WWD flow northeast toward Mud Slough, to other tributaries and to the San Joaquin River. Because of this flow pattern, some of the water that Grassland Area Farmers manage actually originates in WWD. (Partial Transcript of Proceeding, Central Valley Regional Water Quality Control Board, Agenda Item No. 10, (May 27th, 2010) pp. 89-91, excerpt attached as Exhibit A.)

The meeting also included discussion of the potential for a selenium-related Water Code section 13267 investigation on WWD discharges because of continuing concerns regarding the dangerous amount of selenium pollution that may originate from lands within WWD, despite the progress of Grassland Area Farmers in controlling their discharges. (See Exhibit A.)

The Regional Board has the authority and obligation, in accordance with California Water Code sections 13267 and 13304, to locate and abate the impacts of waste

discharges that cause or threaten to cause a condition of pollution. Specifically, under Water Code section 13267:

“(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

The public record, consisting of both written and oral testimony, indicates that discharges and/or seepage from WWD threaten to cause a condition of pollution to surface waters and groundwater. Former Commissioner of Reclamation John Keyes testified that the 379,000 acres of drainage impaired lands in the San Luis Unit creates 97,000 acre-feet/year of contaminated drainage water.¹ In some cases selenium levels exceed drinking water standards (50 µg/l) and even reaching hazardous waste levels (1,000 µg/l). Where is all that toxic pollution going?

The above-cited sections of the Water Code, in combination with Water Code section 13243, which states that the Board may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted, indicates the Regional Board's authority and responsibility to investigate and stop the discharge or threatened discharge.

An investigation is needed to identify all of the sources of selenium that continue to contaminate the San Joaquin River, the receiving waters of the Sacramento San Joaquin Delta, as well as the confined and semi-confined aquifers of the western San Joaquin Valley. The fact that RWQCB may be working to eventually issue a “voluntary” Waste Discharge Requirement (WDR) to WWD does not obviate the need to conduct an investigation, and an investigation would inform the WDR process. Likewise, the Irrigated Lands Regulatory Program does not adequately address selenium contamination from WWD and other lands. We therefore request that the Regional

¹ Statement of John Keys, Commissioner, Bureau of Reclamation, U.S. Department of the Interior Before the Subcommittee on Water and Power, U.S. House of Representatives, July 28, 2005. <http://www.doi.gov/oc/2005/SanJoaquinDrainage.htm>, accessed 8/26/2010.

Board immediately commence an investigation for the southern, central and northern regions of Westlands Water District pursuant to its authority under the Water Code.

Please Tom Stokely of C-WIN at (530) 926-9727 for further information and documentation. Thank you for your attention to this matter.

Sincerely,



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Attachment: Exhibit A- Partial Transcript of Proceeding, Central Valley Regional Water Quality Control Board, Agenda Item No. 10, (May 27th, 2010) pp. 89-91

cc: Congresswoman Grace Napolitano
Congressman George Miller
Congressman John Garamendi
Senator Wes Chesbro
Assemblyman Jared Huffman
Tom Howard, Executive Director State Water Resources Control Board
Jared Blumenfeld, Regional Administrator, EPA Region 9
Alexis Strauss, EPA Region 9, Director Water Division
Janet Hashimoto, EPA Region 9, Standards and TMDL Office

1 MS. CREEDON: Ms. Hart, if I could ask Rudy
2 to address a couple of issues?

3 MS. HART: Rudy?

4 MS. CREEDON: There was a lot of discussion
5 about upslope and offsite discharges onto the grasslands
6 project or contributing -- can you elaborate for the
7 board so that they understand what other programs may be
8 in place or will be in place to take care of those
9 issues that are not related to this project, so they
10 know we're just not ignoring it?

11 MR. SCHNAGL: Of course. There were
12 mentions of two types of inflows to the grasslands area
13 that are related to this project. First, the
14 groundwater from the Westlands Water District is moving
15 from that area to the northeast, as I mentioned earlier,
16 and that would flow under the project area. And so that
17 is of concern and -- to the commenters and from our
18 standpoint, any of that water that's captured by the
19 Grassland Bypass Project farmers has to be managed by
20 them and be discharged within their load limits.

21 So they're responsible if they collect it in
22 their subsurface drainage systems and discharge it. So
23 that puts the responsibility on this project for any
24 groundwater that enters their area.

25 There's also surface water impacts in some

1 of the grassland waterfowl areas, the wetland areas.
2 From tile drainage to the east and west of the bypass
3 project area, and I'm thinking that a map might help
4 here.

5 MS. CREEDON: While he's setting that up, I
6 wanted to bring up to the board, we also did have a
7 request for report of discharge from the grasslands
8 water district. It's been difficult to get that
9 document because it's been difficult for them to define
10 their project in order for us to do the CVCWA
11 requirements. And so we've been working with them on a
12 parallel basis.

13 We have a long-term irrigated land program,
14 which is now moving into regulating groundwater. So
15 regardless of if we have an individual report of
16 discharge or not, grasslands -- or the Westlands Water
17 District area would be regulate -- is regulated and will
18 continue to be regulated under the irrigated lands
19 program, which we will then address both surface water
20 and groundwater and that will be captured under that
21 program. So it's not being ignored by the board, and
22 the selenium issues offsite are not being ignored by the
23 board as well.

24 MR. SCHNAGL: Now that I have a map to help
25 explain things, the red area is the Grassland Bypass

1 Project service area. The Westlands Water District is
2 to the south. It's not marked, but it's to the south of
3 that red area. Groundwater is moving to the northeast,
4 and so some of the water that's collected by the
5 Grassland Area Farmers may originate in the Westlands
6 Water District, but they're entirely responsible for
7 anything they collect and discharge through the bypass
8 project.

9 The other dischargers that have been
10 referred to in some of the comments from agricultural
11 subsurface drainage systems within this grassland
12 watershed, and it's mostly along the west side, where my
13 arrow is or along the east side. And that drains toward
14 the center of the watershed where the wetland areas are,
15 and Fish and Wildlife Service has repeatedly pointed out
16 their concerns about those drains and their impacts on
17 the wetlands.

18 Those areas, both farmers and the wetlands,
19 are participating in the irrigated lands regulatory
20 program, and we will be working with that group, in the
21 irrigation districts in the area, to address the fish
22 and wildlife concerns.

23 MS. CREEDON: So, Rudy, since you have this
24 up, let me ask you a couple more question to address the
25 board. There are a couple issues especially with the