

**Friends of Trinity River * Pacific Coast Federation of Fishermen's Associations
Environmental Working Group * California Trout, Inc.
Northern California Council Federation of Fly Fishers * Public Trust Alliance
Friends of the River * Planning & Conservation League
Public Employees for Environmental Responsibility * Friends of the Eel River
California Save Our Streams Council * Butte Environmental Council
Clean Water Action * Dan Bacher, Editor Fish Sniffer Magazine
Northcoast Environmental Center * Trout Unlimited of California
P. O. Box 2327
Mill Valley, CA 94942-2327
415 383 4810**

April 18, 2008

Mr. Federico Barajas
Assistant to Regional Director
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way, MP-100
Sacramento, CA 95825-1898

**RE: Draft San Luis/Westlands Drainage Contract, Drainage Documents and Draft
Legislation**

Dear Mr. Barajas:

These are comments of the above organizations on the Drainage Working Group Discussion Draft and related documents that you provided the chair of Friends of Trinity River, on April 11, 2008.

We are supportive of developing a solution to the San Luis District Unit drainage problems that would incorporate sustainable agricultural practices with effective environmental management. We also are supportive of solutions that would achieve positive cost/benefit ratios, while safeguarding a safe and healthy environment. We also support assigning responsibility for costs to those benefitting from the proposals. In reviewing the proposal and proposed legislation, we see none of these included in the draft documents.

Some specific reasons for our judgments are based upon the following:

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Land Retirement

The acreage proposed for land retirement has been reduced to levels that will result in minimal or no benefit in solving the basic and central problems related to irrigating toxic saline and seleniferous lands with rising water tables. In fact, the working draft of March 12, 2008 does not even mention land retirement.

The proposed acreage for land retirement in the July 2007 document on Implementation of Drainage Service notes that ***“Westlands initial land retirement plan would be 100,000 acres, at a minimum.”*** Yet, both the July 2007 and March 2008 drainage working drafts identify drainage management components and acreages consistent with the Water Needs Alternative in the San Luis Drainage District Draft Feature Re-Evaluation Environmental Impact Statement (SLDFR DEIS), upon which many of us commented on August 31, 2005.

The Water Needs Alternative included retirement of 194,000 acres. There is a huge discrepancy in acreage proposed for retirement. It is unclear how drainage from the remaining 94,000 acres that would have been retired under the Water Needs Alternative would be managed by Westlands Water District. The land retirement/drainage management facilities proposed by the contractor (and identified in the SLDFR In-Valley Water Needs Alternative) clearly would be insufficient to manage contaminated drainage volumes within the District if just 100,000 acres of drainage impacted land is retired.

Retirement of as much as 394,000 acres has been identified as required to provide a solution to contaminated drainage problems associated with irrigation of land in the Western San Joaquin Valley. From the United States Geological Survey’s Professional Paper 1646 and its superseded Open File Report 00-416, one could conclude that the Western San Joaquin Valley will become a Superfund Site by mid-century. Major land retirement is required in any proposed solution to Western San Joaquin contaminated drainage problems.

Water Delivery Contract

The annual contract delivery volume of 1,000,000 acre-feet of water or more in perpetuity is excessive and will exacerbate major environmental degradation as a result of continued irrigation of much of the land in the Western San Joaquin Valley. There is no reason to believe that this amount of water will or can be used for sustainable agricultural practices. This is because of significant unknowns related to the unproven, small scale testing of the technical feasibility of proposed solutions and their effectiveness in the proposed drainage management plan (see next Section).

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In the event these unproved solutions do not work, contractor (or contractors) clearly should not be allowed to transfer the water to others or to other uses. The water should revert to the Central Valley Project and to the environment, including the collapsed (or collapsing) Delta and the Trinity River from which the water originates.

Contaminated Drainage Solutions

Thus far, science and technology have not yielded any “final solutions” for even remotely safe and effective contaminated drainage treatments, reclamation of commercial salts, that is, and contaminated drainage disposal. Biotreatment for removal of selenium is problematic because it is not complete and, as was described in Appendix B of the SLDFR FEIS, can yield much more biologically available and toxic organic forms of selenium in the treated effluent.

In Appendix B, page B-3 of the SLDFR FEIS – Pilot Studies, the Bureau of Reclamation states the following: ***“The pilot test has also encountered and identified numerous design and operational deficiencies that have impaired the performance of the bioreactors during the first half of 2004. Selenium concentrations in the treated effluent during this period have been variable but generally range between 15 and 100 ppb.”*** Accumulation of residues at various steps in drainage treatment could result in contaminated wastes which simply re-locate the contaminated drainage problem.

We agree with the U. S. Fish & Wildlife Service’s recommendation in the Conceptual Monitoring Plan from December 2007, that the Precautionary Principle should be used to assess the environmental impacts associated with implementing a drainage management plan. As defined in the Wingspread Consensus Statement on the Precautionary Principle (<http://www.sehn.org/wing.html>), ***“when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof.***

“The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.” Given the degree of uncertainty associated with full scale implementation of In-Valley Drainage treatment and disposal options and associated environmental effects, the Precautionary Principle should be incorporated into the Drainage Settlement Process. Using such an approach, management actions can be developed that address these risks and uncertainties and appropriate pilot testing, scale-up, monitoring and mitigation can be identified and implemented accordingly.

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Performance Standards

Water allocations to San Luis Unit contractors should be contingent upon clear drainage performance objectives and should require continued oversight, monitoring, and assessment as well as contingency plans to revisit terms of the drainage agreement and the delivery of water amounts. The monitoring plan and proposed contract submitted thus far provide none of these.

We believe it is essential to establish specific benchmarks for accomplishment of results from the drainage management plan that are tied to receiving water in the quantities anticipated. Strict and severe penalties through water delivery reductions for not attaining these milestones should be specified in the agreement. The issuance of performance bonds should be required.

Financial Obligations

Financial obligations of the contractor are vague and incomprehensible as set forth in the proposed legislation. The repayment of all costs borne by the United States government for projects involving drainage problems and related interest charges are, as written, a taxpayer obligation. Instead, all costs should be fully reimbursable and at market interest rates. These costs should be the financial obligation solely of the contractor(s). Energy purchased by Westlands (or contractors) also should be at market rates instead of from the Central Valley Project at a highly subsidized cost of about 10 percent or less of what the public is charged for power.

There is, at a minimum, a negative benefit to the cost of \$780 million for implementation of the drainage management settlement as proposed. If the plan is implemented, this financial obligation SHOULD belong to the contractor with no bail out possible from federal taxpayers through any governmental agency.

Central Valley Project Improvement Act Compliance and National Environmental Policy Act

The proposed 9(d) repayment contract further jeopardizes availability of water for environmental uses and protection of ecosystems and species already listed as stressed or endangered. This corrupts the Central Valley Project Improvement Act's (CVPIA) mandate to restore fisheries and water quality in the Central Valley and various California watersheds.

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The Settlement Proposal as presently drafted ignores the CVPIA (b)(2) environmental water provision by preventing that water being used to double salmon populations with primary purpose water. Given the current collapse of the Delta ecosystem and the recent low numbers of Central Valley salmonids, there is absolutely no rational or legal basis for constraining use of (b)(2) primary purpose water.

The benefit of the CVPIA's dedication of (b)(2) primary purpose water is that it allows the flexible use of this water in perpetuity to meet changing environmental needs in the Delta and its watershed. Therefore, we can not support the drainage settlement proposal unless both the San Luis Unit contract documents and the enabling legislation are redrafted to ensure that (b)(2) water will be used for primary purposes.

We strongly recommend that in the future you develop a more effective method of notifying the public and various concerned organizations of proposals and activities to ensure that all stakeholders have a meaningful opportunity to express their opinions. The National Environmental Policy Act (NEPA) provides a clear and consistent method of disclosing a "project description," the collection of input with defined deadlines for comments, and for clearly responding to all comments before any final decision is made.

It is clear to us that all of this new information requires a Supplemental EIS, as required by the National Environmental Policy Act (NEPA). The new information which triggers additional NEPA analyses includes, but is not limited to the following:

- The Pelagic Organism Decline (POD)
- The Central Valley Salmon Collapse
- Listing of green sturgeon and longfin smelt under the Endangered Species Act and/or California Endangered Species Act
- The ongoing inability to find a technically proved, workable and real solution to deal with contaminated drainage water. The San Luis Drainage FEIS executive summary includes the following project objective that was used (with other objectives) to develop the alternatives in the EIS: ***"Drainage service must be technically proven and cost effective."*** Neither criteria has been met with either the Preferred Alternative or this potential drainage settlement solution
- NEPA should be required prior to any legislative changes. Clearly any solution will require amendment of the San Luis Act because the authorization ceiling has been reached. Additionally, the proposed settlement is different from the alternatives analyzed in the San Luis Drainage EIS

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- The proposed drainage solutions being presented through the so-called settlement process are beyond any alternatives that were considered in the San Luis Drainage FEIS
- The most cost effective and reliable alternative was not fully considered in the San Luis Drainage EIS: retirement of 379,000 acres, as proposed by the U.S. Fish and Wildlife Service in its Fish and Wildlife Coordination Act Report.

We thank you for providing copies on Tuesday of comments received thus far. We request that you develop an internet website for tracking proposals, comments and activities. Please also include our organizations and contacts in all future correspondence related to San Luis Drainage issues.

Our intention with these comments is to be helpful in developing legislation that provides a real and a genuine solution to contaminated drainage problems in the Western San Joaquin Valley. We also want to encourage the incorporation of provisions in any legislation for sustainable agricultural practices based upon best methods of environmental management together with sound economic and financial principles. Thus far, the proposals have not come close to achieving such objectives.

We await your response to our comments and thank you for that in advance.

Yours very truly,

Friends of Trinity River **Pacific Coast Federation of Fishermen's Associations**
s/Byron W. Leydecker, Chair s/Zeke Grader, Executive Director

Environmental Working Group **California Trout, Inc.**
s/Bill Walker, Vice President/West Coast s/Brian Stranko, Chief Executive Officer

Northern California Council Federation of Fly Fishers
s/Mark Rockwell, Conservation Director

Planning & Conservation League **Friends of the River**
s/Mindy McIntyre, Water Program Manager s/Steve Evans, Conservation Director

California Save Our Streams Council **Public Trust Alliance**
s/Lloyd Carter s/Michael Warburton, Executive Director

Public Employees for Environmental Responsibility **Clean Water Action**
s/Karen Schambach, California Director s/Jennifer Clary, Policy Analyst

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Northcoast Environmental Center
King, Executive Director

Butte Environmental Councils/Greg
s/Lynn Barris, Water Policy Analyst

Friends of the Eel River
s/Nadananda, Executive Director

Fish Sniffer Magazine Editor
s/Dan Bacher

Trout Unlimited of California
s/Stan Griffin, Conservation Chair

cc: The Honorable Dianne Feinstein
The Honorable Barbara Boxer
The Honorable Jeff Bingaman
The Honorable Nancy Pelosi
The Honorable Nick Rahall
The Honorable George Miller
The Honorable Mike Thompson
The Honorable Grace Napolitano
The Honorable Don Perata
The Honorable Mike Machado
The Honorable Darrel Steinberg
The Honorable Karen Bass
The Honorable Patty Berg
The Honorable Lois Wolk
The Honorable Jared Huffman
Mr. Dennis O'Connor
Ms. Carol Baker
Mr. Alf Brandt
Mr. Steve Thompson
Congressional Research Service
State Water Resources Control Board
Fresno Office Regional Water Quality Control Board
Environmental Protection Agency
U. S. Geological Survey
Mr. John McCamman
Mr. Lester Snow