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SUBSTRATUM

AND STOCKTON AREA COALITION PARTNERS

November 26, 2019

Transmitted via email: Ashley.Peters@waterboards.ca.gov

Ashley Peters
Central Valley Regional Water Quality Control Board (Region 5)
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Subject: Comments on Tentative Waste Discharge Requirements for San Luis & Delta-Mendota Water Authority and United States Department of the Interior Bureau of Reclamation, Surface Water Discharges from the Grassland Bypass Project, Merced and Fresno Counties

Dear Ms. Peters:

We, who represent community organizations of Stockton concerned with water and environmental justice matters, write to respectfully request that the Regional Water Quality Control Board for the Central Valley deny the proposed Tentative Waste Discharge Requirements for surface water discharges from the Grassland Bypass Project in Merced and Fresno counties.

This letter incorporates by reference in its entirety the letter of Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Institute for Fisheries Resources (IFR) and their other signatories, dated November 5, 2019, submitted via email.

Environmental Justice Law and Policy

Environmental justice law and policy require consideration by state and federal agencies of whether environmental justice (EJ) communities bear disproportionate environmental impacts and risks from new developments or policies. EJ communities are defined along three lines: race and ethnicity, poverty level, and degree of language

isolation, all characteristics that are measurable from U.S. Census and American Community Survey data.

The State of California defines “environmental justice” as: “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”¹ The State Attorney General’s office states that “fairness in this context means that the benefits of a healthy environment should be available to everyone, and the burdens of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects.” The State Attorney General adds, “environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development.”²

California’s anti-discrimination policy states:

*No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.*³

The State Attorney General’s office states that this policy does not expressly include the phrase “environmental justice,” but in certain circumstances it can require agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens called for in the state’s definition of environmental justice. In addition, the State Attorney General’s office notes that agencies “should evaluate whether regulations governing ‘equal opportunity to participate’ and requiring ‘alternative communication services’ (e.g., translations) apply.”⁴ Given federal involvement with the California WaterFix project, they do.

Disproportionate impacts to minority, low-income, and tribal communities—as well as communities facing language barriers—should be fully mitigated or avoided. “Addressing” impacts on human health and environmental effects on environmental justice communities must be substantive and not simply window dressing.

The Bay-Delta’s Environmental Justice Communities

In the five-county region of the Bay-Delta Estuary:

¹ Cal. Gov. Code Sec. 65040.12, subd.(e).

² California Department of Justice, Fact Sheet: Environmental Justice at the Local and Regional level, Legal Background, updated 7/10/2012, p. 1. Accessible at <https://oag.ca.gov/search-results/?query=environmental+justice+fact+sheet>.

³ *Ibid.*, p. 2. See Cal.Code.Reg., tit.22, secs. 9801, 98211.

⁴ *Ibid.*

Percent Non-White Populations Greater than County or U.S. Percentages	Percent Impoverished Residents Greater than County or U.S. Percentages	Percent Language-Isolated Residents Greater than County or U.S. Percentages
Antioch, Pittsburg, Fairfield, Suisun City, Lathrop, Stockton, Sacramento, West Sacramento	Antioch, Pittsburg, Clarksburg, Stockton, Sacramento, West Sacramento	Antioch, Pittsburg, Lathrop, Fairfield, Tracy, Stockton, Sacramento, West Sacramento

- Delta region residents of color and low-income residents, including those facing language barriers, live in quantifiably distressed areas.
- San Joaquin County, making up 40 percent of Delta region geography, has the highest level of distress among Delta counties. 43 percent of the county’s population lives in distressed zip codes. Stockton ranked sixth nationally among the most distressed large cities, and 70 percent of its residents face economically distressed conditions.
- Sacramento, Antioch, and Pittsburg also are sites of significant economic distress in the Delta region. Antioch and Pittsburg are in the western Delta portion of the Region 2 selenium impairment designation.
- Economic distress manifests in the spread of food deserts in the Delta region. US Department of Agricultural Economic Research Service mapping data reveal that Stockton, Manteca, Lodi, Pittsburg, Antioch, Suisun City, Fairfield, Vacaville, Davis and south Sacramento have numerous low-income census tracts whose residents face low access to grocery stores and healthful fresh food. Of the five Delta counties’ census tracts, 54 percent are low income and have low access to grocery stores serving healthful fresh food.⁵
- Bay-Delta environmental justice community members cope with poverty partly through subsistence fishing. Restore the Delta estimated that annually as many as 65 to 110 people may engage in subsistence fishing daily from licensing and creel survey data—in the tens of thousands annually.⁶ The fish species they catch are often the subject of contamination advisories intended to limit consumption for public health reasons, including for pregnant women.

⁵ For greater detail on this summary of environmental justice communities in the Bay-Delta region, see Restore the Delta, *The Fate of the Delta: Impacts of Proposed Water Projects and Plans on Delta Environmental Justice Communities*, 2018, pp. 20-26, and appendices 1 through 4. Accessible at <https://www.restorethedelta.org/wp-content/uploads/The-Fate-of-the-Delta-final.pdf>.

⁶ Testimony of Barbara Barrigan-Parrilla to State Water Resources Control Board, 8 December 2016, pp. 37-38. Accessible at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/RTD_20.pdf

- The San Francisco Regional Water Quality Control Board (Region 2) Basin Plan has declared the northern San Francisco Bay, including Suisun Bay to the Western Delta, as impaired for selenium, and considers that changes to Delta flow regimes could lead to greater selenium loading and bioaccumulation in impaired areas.⁷ While the two-bore California WaterFix tunnels project is presently no longer under consideration, a single-tunnel option is, and so the Region 2 finding of selenium impairment for the Delta is of serious concern to our communities.

Selenium Concerns

- Adequate amounts of selenium are necessary for and found in a well-balanced diet. But if ingested to excess, selenium can substitute for sulfur in the building blocks of proteins (amino acids), creating pathways to toxicity, gene mutations and embryonic defects, and ecological damage.
- Changes in proteins of immune system antibodies can make organisms more susceptible to disease.
- In the hills and soils of the western and southern San Joaquin Valley, high selenium levels occur naturally. Geologists confirm that there are unlimited reservoirs of selenium and salts stored in these areas. They will be available to pollute water and soils for the next few centuries to millennia, depending on how much irrigation water is applied to these soils.
- This selenium reservoir occurs upslope of irrigating crop lands in the Grasslands Water District, Panoche Water District, Westlands Water District, and others. They are all located together along Interstate 5 between Gustine and Kettleman City.
- Between 1977 and 1983, irrigation return flows drained high concentrations of selenium to Kesterson Reservoir near Los Banos. In 1983, biologists found horribly disfigured bird embryos and a dramatic absence of many fish and other bird species from the reservoir, which was located within a national wildlife refuge. The reservoir was closed and drained, and is now physically sealed and managed as a hazardous waste site. More recent studies have found bird and mammal problems as well.
- Irrigation drainage water contaminated with selenium still accumulates in western San Joaquin Valley groundwaters. These waters continue to drain to the Delta via

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https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/northsfbayselenium/SeTMDL_DraftReport_PublicReview_July24-2015.pdf, p. 3.

the San Joaquin River, and dissolved selenium in those waters continues to be a problem downstream of Mud Slough (north) and the Grassland Bypass Project.

- North San Francisco Bay and the Delta are impaired for selenium. An abundant invasive clam in Bay-Delta sediments bio-accumulates selenium in its tissues and affects birds and fish preying on it. Anglers are warned regularly not to catch fish from these waters when the potential for selenium contamination is high. This ecological effect of selenium contamination can increase when selenium loading rises and flows decrease. Slower flows in summer and fall, or during drought can cause selenium to become more available to clams and to their predators. This toxicity can bloom in just a matter of weeks.
- An important result of selenium contamination in the Valley is retirement of about 100,000 acres of croplands from reliance on irrigation water. Such lands can be put to other uses, including dry-farming, solar farms, and agro-industrial uses such as cold storage, warehousing, and equipment supply. Retired lands help reduce selenium activation into groundwater and surface water flows into the San Joaquin River and the Delta.
- The proposed tentative waste discharge requirements to extend operation of the Grassland Bypass Project fail completely to evaluate the environmental justice impacts of the proposed action. An appropriate remedy for this fatal omission is at a minimum to delay its authorization by Region 5 while the Bureau and San Luis Delta-Mendota Water Authority prepare an Environmental Impact Report that complies with the California Environmental Quality Act.
- Nor do the tentative waste discharge requirements address cumulative impacts of their renewal (since the approval would be good for 25 years) and the impacts of continued operation downstream of the Grassland Drainage Area, such as the Delta and the portion of Region 2 that is also already designated as impaired for selenium
- The Office of Inspector General (OIG) of the United States Department of the Interior released a report finding that the United States Bureau of Reclamation (the Bureau) did not effectively manage the San Luis Demonstration Treatment Plant.⁸
- In particular, the OIG found that the plant did not provide agricultural drainage services that are required by law and in planning documents for the plant. It was

⁸ United States Department of the Interior, Office of Inspector General, The Bureau of Reclamation Did Not Effectively Manage the San Luis Demonstration Treatment Plant, November 13, 2019. Accessible at <https://www.doioig.gov/reports/bureau-reclamation-did-not-effectively-manage-san-luis-demonstration-treatment-plant>.

supposed to remove salts and selenium from agricultural drainage in the western San Joaquin Valley, but failed. The OIG further found that it had only vaguely-defined performance goals that it did not meet. Finally, they found that the Bureau failed to provide effective oversight of the cooperative agreement for the plant, a failure that stemmed from the Bureau's failure to contract properly for operation and maintenance services, no clear work statement (like a detailed scope of work), and insufficient cost reviews of invoices resulting in inappropriate billing. This follows on the 2017 indictment of several Panoche Water District employees for similar mismanagement and criminal embezzlement of District resources. Panoche Water District is the contractor for operating the Plant.

- OIG has made seven recommendations, only one of which the Bureau has begun to comply with.

These factors, and the reasoning provided to Region 5 in the PCFFA/IFR letter (which we have incorporated into this letter) give us no confidence that the tentative waste discharge requirements will protect all beneficial uses that will be affected by these requirements.

Alternatives Must Be Studied

Among the alternatives that must be carefully considered in the framework of a new environmental impact report is land retirement from irrigation. Permanent land retirement from irrigation will end the application of water in sufficient quantities that mobilize and activate selenium in irrigation drainage water. It will reduce irrigation drainage flows, which will arrest selenium discharges significantly. While eliminating irrigation as a source of water to the area where the lands are the most toxic, it will not prevent economic use of these lands for some other purpose, such as dry farming, solar energy production, or in certain areas, habitat restoration. Some lands have already been retired, but more such retirement is called for.⁹

The public—including Stockton's environmental justice communities—demand greater clarity on the scope, components, history, economics, and environmental impacts of continued operation of the Grassland Bypass Project and the Demonstration Treatment Plant that the OIG has severely criticized just this past week.

The tentative waste discharge requirements are incomplete and inadequate. They are a significant environmental justice matter, which the requirements ignore for lack of proper environmental review. We urge the Region 5 Board to deny this waste discharge permit, and the petitioners (San Luis Delta-Mendota Water Authority and the Bureau) should instead prepare a comprehensive environmental impact report on extending Grassland Bypass Project operations.


⁹ ECONorthwest. 2015. *Estimated Costs to Retire Drainage Impaired Lands in the San Luis Unit*, July 14.. Accessible at http://www.econw.com/media/ap_files/San_Luis_Unit_Land_Retirement_Final_Report_071415.pdf.

Thank you for considering our views. We look forward to attending the December 5, 2019 Board deliberations on this important matter.

Sincerely,



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Restore the Delta



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