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News Advisory:

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Groups Sue Feds to Stop Selenium Poisoning of Bay-Delta—Plaintiffs Denounce Deception Causing Continued Water Pollution of the River, Delta Estuary and Bay

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Fishing and conservation groups filed suit today (Nov. 9) to make the federal government do its job of protecting California's water supply. The U.S. Department of Interior, along with its partner the San Luis Delta Mendota Water Authority¹ (also named in the suit), are allowing polluted groundwater to be pumped into tributaries that flow into the San Joaquin River, the Delta Estuary and San Francisco Bay without legally required pollution controls.

Following Clean Water Act procedures, the groups warned the government this summer to meet the requirements of the Act or be sued to comply. Today [Nov. 9], with toxic chemicals still flowing into public waterways, they take legal action.

The U.S. Department of the Interior (Interior) mission is to 'protect America's natural resources and heritage. And yet, Interior's Bureau of Reclamation (USBR) and Western San Joaquin Valley irrigators have circumvented the law for over a decade. Since 1996, the federal government, partnering with irrigators of toxic fields in the Western San Joaquin Valley, discharge polluted groundwater to the San Joaquin River, the Delta Estuary and San Francisco Bay. Despite warnings from its own scientists, USBR has been a partner to waiving water-quality laws and disseminating misleading information about the costs to taxpayers, the environment and jobs. They have participated in diverting water to irrigate toxic soils, which then sends selenium, arsenic, boron, uranium, chromium, molybdenum and sodium sulfates back to pollute the Bay Delta and its tributaries. Armed with charts developed by the dischargers,

federal officials have downplayed the impacts of polluting vast quantities of ground and surface water. USBR has not acted as a steward of the public trust.

This cozy relationship between the polluters and regulators has sanctioned the discharge of pollutants from these toxic soils to the San Joaquin River, San Francisco Bay and Delta and some of the polluted water—no one knows how much—is routinely discharged into the California Aqueduct, which carries drinking water to over 15 million people living in Los Angeles and other parts of Southern California.

Law enforcement is going to have to do the job, not just for wildlife, but for humans as well. Like the Wall Street bailout, this pollution mess will cost taxpayers a bundle to reverse the damage. Diverting already over-allocated water to irrigate what has been dubbed, “killing fields”, will demand billions of dollars to mount an enormous cleanup. Treating millions of gallons of this agricultural wastewater still remains an unrealistic mirage and is economically infeasible, even after millions of taxpayer dollars have already been spent in search of a magic treatment solution.

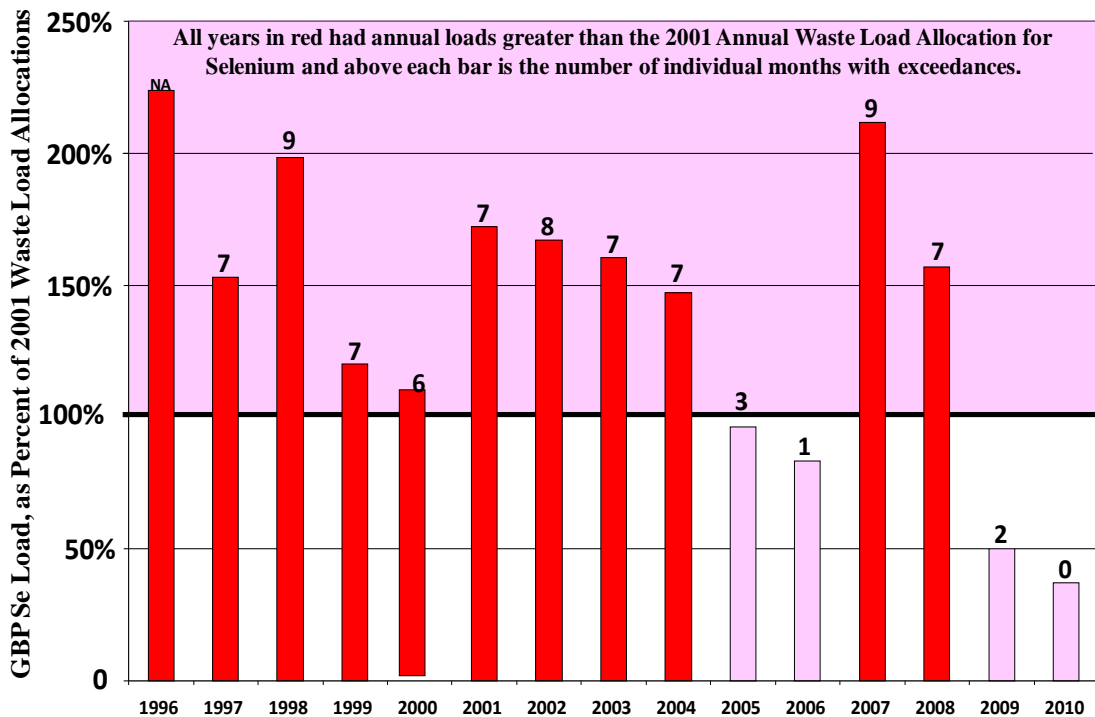
Through deception, misleading analysis, hiding impacts, and banning public participation, the USBR and irrigators have controlled monitoring and disclosure of the project impacts. Through this process, they have justified the transfer and cost of this continued pollution to downstream users. Some recent examples include:

- 1. October 28th Plaintiffs obtained photos of deformed embryo photos from the GBP’s selenium drainage “reuse site”, that confirm classic selenium-caused deformities at concentration levels exceeding those found at Kesterson. The polluters denied public access to these photos claiming they did not have them despite the fact photos were taken by their monitoring contractor. Plaintiffs were successful in obtaining these government records. [See attached] For over a decade, USBR in partnership with the polluters has served up selenium concentrations in bird eggs at the project reuse area that exceeded all geometric mean selenium concentrations in shorebird eggs collected at Kesterson Reservoir from 1983 to 1985.² Government scientists and reports of these violations of the Federal Migratory Bird Treaty Act have been ignored or buried.**
- 2. September 2, 2011, USBR barred the public from the GBP’s data and technical review monitoring committee while conducting closed door meetings with the polluters. The arbitrary action seems designed to exclude those most impacted by project’s pollution—the conservation, fishing and community groups advocating for water quality downstream from the discharge and adequate monitoring of the pollution.³**
- 3. Deemed “innovative” by USBR and others, the collection of polluted ground water that is put in a pipe and discharged through a federal drain to the river, where it exceeds federal and state water quality standards, is not innovative or new. It is clear the less water applied to these toxic soils the less pollution produced. The**

polluters make their case with charts that rely on a single year or even average year comparisons that do not account for droughts, land retirement, or market prices that shift cropping patterns, all of which have a huge impact on the amount of pollution produced.⁴ Clearly, the less water applied to these toxic soils the less pollution produced. Simplistic comparisons to 1995 when polluters discharged huge amounts of selenium, received 100% of water supplies, and also used the San Luis Drain to flush historical selenium deposits, are anecdotal at best. Scientific peer reviewed studies documenting the mass balance changes in selenium have not been done, but that is what is needed. The polluter charts mask the pollution, minimize violations, and bamboozle Congress and the public.⁵

- The following chart, using USBR data documents the failure of the project to meet river protection standards by year, month and water year type adopted by both federal and state regulators and then not enforced. These water quality violations, if enforced, occurred for every year, but one.

Grasslands Bypass Project (GBP) never met the 2001 Annual Waste Load Allocations until after Broadview W.D. was retired.*



*Specific Water Year Waste Loads under Waste Discharge Requirements NO 05-2001 for the SJR were not enforced until 2005 and 2010. Loads were relaxed to allow greater pollution discharge to the San Joaquin River (SJR) and San Francisco Bay Delta Estuary Data Source: USBR [C.Eacock] and CVRWQCB [R. Schnagl]

Red and Pink Bars Indicate Years with Monthly Violations-Blue Bar there are no violations.
Broadview W.D. Retired
 1,500 lbs/yr Se reduction

ENDNOTES

¹ SLDMWA consists of Westlands Water District and 28 other Western San Joaquin Valley federal water contractors some of which discharge pollutants to the San Joaquin River using the federal San Luis Drain and

Grassland Bypass Project. The Grassland Drainers include Panoche Drainage District along with six water and drainage districts including Broadview W.D. bought by Westlands. Water originally delivered to Broadview now is delivered to Westlands, although Broadview [Westlands Water District] continues as a member of the drainers.

² http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=4826 pg 90 USFWS 2009 BO

<http://pubs.usgs.gov/of/2008/1210/> pg 24

<http://www.c-win.org/news/selenium-goes-unregulated-major-pollutant.html>

³ <https://www.c-win.org/selenium-press-room.html> USBR Bars Public From Monitoring Meetings

⁴ http://www.lloydgcarter.com/files_lgc/Drainage%20letter.pdf Also prices for upland cotton declined sharply from 1999 to 2001—about 50%. The drought from 1999 to 2004, made water scarce and previous cotton acreage that uses 3.72 acre feet per acre likely was not irrigated. See <http://www.cotton.org/econ/prices/monthly.cfm>
http://www.ccgga.org/cotton_information/summary_info/acreage_upland/acre_upland.html
http://www.ccgga.org/cotton_information/summary_info/acreage_pima/acre_pima.html

⁵ For example from August 2009 through January 20, 2010, levels of selenium at Hills Ferry on the San Joaquin River consistently exceeded safe fish and wildlife protection averaging 15.65 ppb, with spikes above safe drinking water standards. See <http://www.sfei.org/gbp/reports/monthly>

Concentrations of the pollutants in the San Joaquin River and tributaries violated water quality standards and remained high over the past decade. see <http://www.pcl.org/files/finalcomments.pdf>

<http://www.pcffa.org/SWRCBSeleniumWaiverCommentLetter.pdf>