

**CA Save Our Streams Council**



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**Re: Lack of CEQA & NEPA Compliance for San Luis & Delta-Mendota Water Authority DWR Grant Agreement No. 460001384 [Westlands Water District's Agricultural Aquifer Storage and Recovery (ASR) Project at Broadview Water District]**

Dear Director Nemeth, Executive Director Sobeck, Mr. Pulupa, Mr. Rogers, Mr. Albright and Mr. Higgins:

We write regarding the failure of Westlands' Broadview ASR project to comply with state and federal environmental laws. Despite assurances of compliance by Westlands Water District (Westlands), the Grantee has failed to comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Under the Grant Agreement and DWR grant rules the Grantee and local project sponsors must demonstrate compliance with all applicable requirements of CEQA and, if applicable, NEPA. DWR is the agency responsible for ensuring compliance with CEQA for each individual project included in the grant agreement. We urge DWR not to concur with Westlands' CEQA compliance claims. The \$809,263 grant awarded in August 2021, with construction scheduled by December 2021, violates state law in that it fails to meet the CEQA and NEPA requirements and lacks the required California Endangered Species Act (CESA) and Endangered Species Act (ESA) consultations.

As background, in 2020 the California Department of Water Resources (DWR) announced final State grants for Round 1 Integrated Regional Water Management (IRWM) Implementation. Included with the State grants awarded in the San Joaquin River funding area is the aforementioned grant to Westlands Water District (Westlands) for the Broadview Aquifer Storage and Recovery (ASR) Project.<sup>1</sup> In August 2021, Westlands, through the San Luis Delta Mendota Water Authority, secured the grant to design and construct facilities for the injection of water into the upper and lower aquifers within Broadview WD.<sup>2,3</sup>

On June 24, 2021, Westlands notified DWR that the Broadview ASR project has CEQA coverage under the Westlands WD ASR Mitigated Negative Declaration (MND). Westlands adopted a MND for an ASR program within the district October 4, 2019 (SCH # 2019089109).<sup>4</sup> Modeling used to support the MND for the Westlands ASR program, however, did not include any wells in Broadview WD (as depicted in Figure 3 of the MND on page 13) and did not consider potential hydraulic and surface water impacts of an ASR program in Broadview. Moreover, the modeling in the MND did not include analysis of mobilization of existing contaminated shallow groundwater present in the upper aquifer to adjacent lands, aquifer zones, drainage systems, or surface waters as a result of injection into the upper aquifer.

In addition, the Westlands ASR MND references the Water Quality Control Plan for the Tulare Lake Basin, yet the Broadview ASR, because of its potential to impact downstream surface waters, should be governed by water quality requirements in the San Joaquin River Basin Plan, not the Tulare Lake Basin Plan. We also note that Westlands received State IRWM grant funding for the Broadview ASR project from the San Joaquin River funding area, not the Kern Tulare funding area. Finally, the Westlands ASR MND only considered drinking water MCLs in extracted water, including a 50 µg/L selenium objective which will not be protective of fish, wildlife, nor migratory birds.

Compounding the lack of environmental review for this specific project, Westlands submitted a technical report of waste discharge that also failed to analyze these significant nuisance, pollution, and water quality concerns. The Central Valley Regional Water Board (RWQCB) issued a Monitoring and Reporting Program (MRP) on March 18, 2020, for the Westlands ASR (R5-2020-0809). No CEQA review has been completed for the MRP program that covers impacts from injecting water into the Broadview WD well site established in January 2021 under the DWR grant. Further, the MRP fails to require monitoring of changes in the water table in shallow wells in Broadview ASR project and changes in flows into the tile drains, downslope lands, and surface water. Injecting water into the upper aquifer is predicted by Westlands to increase hydraulic pressure by an average of 60 ft near the base of the upper aquifer. This injection-caused increase in pressure in the deeper parts of the upper aquifer may cause movement of contaminants known to exist in the shallow part of the upper aquifer into downslope drains, canals and/or surface water supplies, including those supplied to public and private wetlands in the Grasslands Ecological Area. The monitoring program ignores these potential impacts of injecting water into the upper aquifer underlying these drainage impacted lands of Broadview WD.

In addition, the MRP monitoring requirements for extracted water from the Westlands ASR focuses solely on drinking water impacts, does not require selenium monitoring to ensure fish and wildlife beneficial uses are protected, and does not ensure protection of existing surface waters from the discharge of this groundwater back into the California Aqueduct or Delta Mendota Canal or other canals.

Westlands, the largest federal irrigation contractor in the nation, proposes as part of this project to discharge contract water into the Broadview ASR project. And, at some later date, Westlands proposes to extract this groundwater for discharge in either the Delta Mendota Canal or California Aqueduct or some other canal for transfer to irrigate crops within Westlands. In the Westlands' 2019 MND, the California Department of Fish and Wildlife commented that NEPA and ESA consultation are needed due to the diversion of these waters that are ecologically critical to fish and wildlife.<sup>5</sup> We could not locate any federal NEPA compliance or ESA consultation for this project. In addition, we also could not locate any federal EPA injection well permit for this project or NEPA analysis for this injection project.

The undersigned organizations have long-standing interests in the agricultural drainage problems on the west San Joaquin Valley because contaminants in drainage discharges have profound effects on the San Joaquin River, San Francisco Bay Delta Estuary and the environment, including effects to downstream waterways, aquatic life, and migratory birds. Further, Westlands' Broadview District lands have historically contributed to this drainage discharge through participation in the Grassland Bypass Project (GBP). We hereby include our comments on the GBP and related projects by reference.<sup>6</sup>

### **Background on Broadview WD**

Broadview, which is now owned by Westlands, is located on the west side of the San Joaquin Valley and approximately five miles west of Firebaugh, in Fresno County, adjoining and just north of Westlands Water District. According to the San Luis Drainage Feature Re-evaluation

EIS (SLDFR), the entire Broadview WD is drainage impaired.<sup>7</sup> Broadview WD participated in the GBP until 2005. Broadview WD was effectively retired from irrigation in 2005 when Reclamation approved the Central Valley Project Assignment of Broadview's water contract to Westlands (USBR 2006). Prior to the contract assignment, Reclamation reported that lands within Broadview had shallow water tables, with groundwater averaging 5-10 feet below ground surface. About 6,500 acres of tile drain systems have been installed in Broadview WD.<sup>8</sup> Tile water generally contains high concentrations of dissolved salts and high concentrations of other substances of concern, particularly selenium (USBR 2006). Water quality data for shallow groundwater in Broadview, which feeds the drains when they are active, was described by Reclamation (USBR 2006) as:

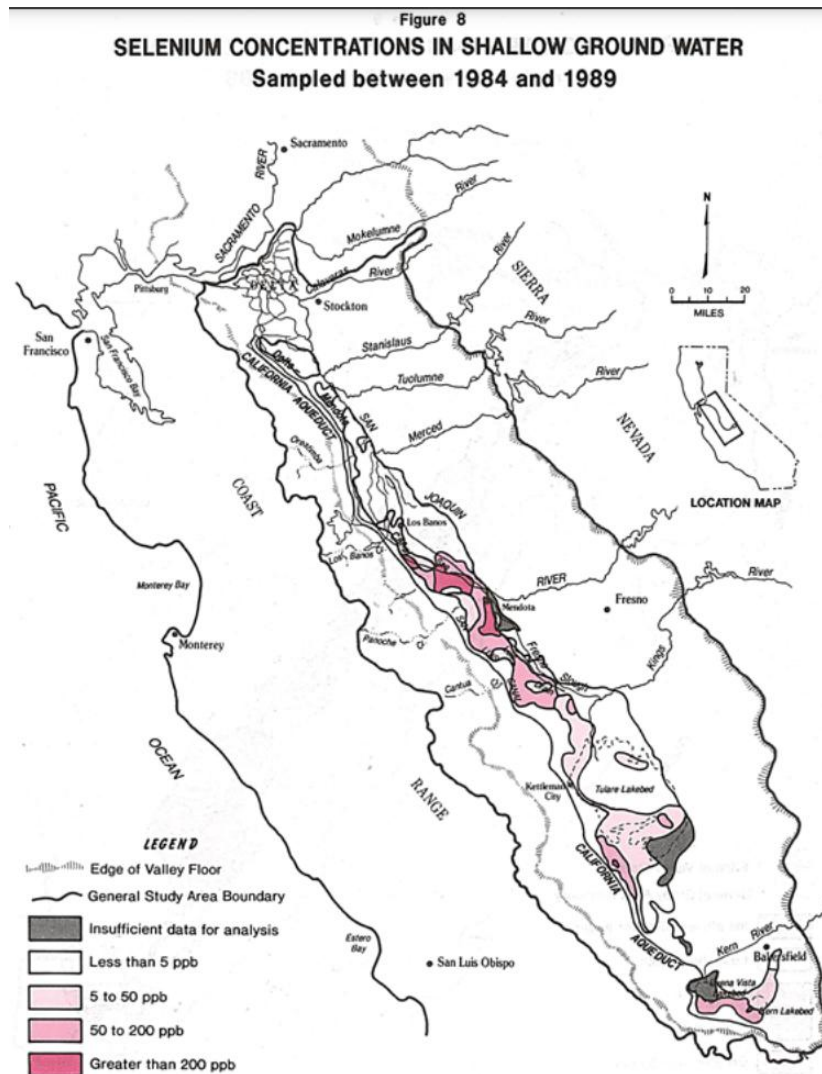
- Salinity: 5,000 to 10,000 dS/m
- Selenium: concentrations greater than 200 µg/L

The USBR's 2004 Broadview Water Contract Assignment Draft Environmental Assessment cited Summer's Engineering as predicting a load reduction of 17,000 tons of salt, 1,500 pounds of selenium, and 52,000 pounds of boron to the San Joaquin River each year from the cessation of irrigation on 9,200 acres of agricultural land in Broadview Water District as per Table 4-1 below (USBR 2004). This amounts to a per acre reduction of 0.28 AF of drainage, 1.85 tons of salt, 0.16 pounds of selenium and 5.65 pounds of boron. The retirement of Broadview WD from irrigation likely accounted for much of the reductions in selenium loading, and most of the reductions in drainage volume, boron, and salt reported by Summers Engineering.<sup>9</sup>

**TABLE 4-1  
DRAINAGE AND WATER QUALITY EFFECTS OF PROPOSED ACTION ON THE  
SAN JOAQUIN RIVER**

	Existing Conditions	Under Proposed Action Conditions	Estimated Reduction Attributable to Proposed Action
BWD Drainage to San Joaquin River (afy)	3,700	1,100	2,600
BWD Estimated Salt Production (tons/yr)	24,300	7,300	17,000
BWD Estimated Selenium Production (lbs/yr)	2,140	640	1,500
BWD Estimated Boron Production (lbs/yr)	74,000	22,000	52,000

Source: Summers Engineering, 2003



See Federal Drainage Rainbow Report that documents how hydraulic pressure from lower areas in the upper aquifer can mobilize contaminants.

(See <https://esrp.csustan.edu/projects/lrdp/documents/rainbowreport.pdf> )

**Downslope effects of Broadview ASR were not evaluated in Westlands ASR MND or MRP**

Numerous Bureau of Reclamation documents have noted downgradient groundwater flows that could adversely impact areas downslope of Westlands.<sup>10,11</sup> Further, in written testimony to the SWRCB on the effect of the shallow drainage problem upslope of the Firebaugh and CCID on downslope drainage conditions (Deverel 1998), Dr. S. Deverel noted that, *“Continuing water conservation measures that reduce loads throughout the western Valley will reduce the deep percolation and flow to drains in some areas. However, this results in storage of salts in the subsurface that slowly move downwards and to the northeast. The rate of downward movement of water is about 1 foot per year. Groundwater flows laterally at rates of about 10 to 1000 feet per year.”*

*“The increasing hydraulic gradients cause increasing volumes of the higher salinity water to move towards the drain laterals, thus increasing the loads and concentrations.”*

*“The flow to drains and residence time in groundwater of drainage water influences how changing water management practices will change the salt load in the drainage water. Because it often takes groundwater several years to several decades to flow to drainage ditches and laterals, the effects of changing the concentration of the salinity of the irrigation water takes a long time to show up in the drainage water. However, the hydraulic effects are immediate...”*

Westlands’ ASR MND and the RWQCB MRP requirements do not consider the impacts from injecting surface water supplies into drainage prone areas in Broadview WD, including movement of existing contaminants in the shallow groundwater and flow into nearby and downslope drains and surface water. Also not identified in the Westlands ASR MND are locations of wells to be used in Broadview, where extracted water from the Broadview ASR will be used.

Injection into these contaminated areas with documented drainage contaminant issues may have significant impacts on downstream surface water supplies, and fish and wildlife resources. This action by Westlands threatens to degrade good quality surface water (that is injected), create downslope pollution and a condition of nuisance, and violate the State’s Antidegradation Policy, SWRCB adopted Resolution 68-16.<sup>12</sup> The MRP ignores the impact that injecting water will likely move existing contaminated groundwater to surface supplies, drains and canals.

### **Selenium Drinking Water Objective is not Protective of Fish and Wildlife**

The Westlands ASR MND includes the MCL for selenium of 50 µg/L in Table 5, Water Quality Objectives and Current Groundwater Quality which is derived from California Code of Regulations Title 22 §64651.50. As the undersigned organizations noted in comments submitted to the RWQCB on the Triennial Review of the Water Quality Control Plans for the Sacramento and San Joaquin River Basins and the Tulare Lake Basin,<sup>13</sup> *“Because selenium bioaccumulates in aquatic ecosystems to levels that are harmful to fish and their predators, the Title 22 selenium objective is not protective of the fish and wildlife beneficial uses...”* The State has adopted a water-quality objective for selenium of 2 ug/L for the Grasslands wetland supply channels in the Sacramento and San Joaquin Rivers Basin Plan and the USEPA recommended an objective for selenium of 1.5 ug/l for lentic aquatic environments. The U.S. EPA’s recommended 1.5 ug/L for lentic waters was set at an 80% protection level, so a substantial number of U.S. waters (20%) will require even lower selenium concentrations for protection of designated fish and wildlife uses. (<https://www.epa.gov/system/files/documents/2021-08/selenium-freshwater2016-2021-revision.pdf>). For example, EPA determined in 2016 that the freshwater upper Bay/Delta, (downstream of potential Broadview WD drainage discharges) would require a selenium water quality standard of 0.2 ug/L (a site-specific standard far below the generic 1.5 ug/L recommendation; <https://www.federalregister.gov/documents/2016/07/15/2016-16266/water-quality-standards-establishment-of-revised-numeric-criteria-for-selenium-for-the-san-francisco> ).

The MRP for the Westlands ASR fails to include any monitoring requirements for selenium in groundwater or extracted water. Injecting water into drainage impacted groundwater aquifers will create increased hydraulic pressure and will likely cause movement of contaminants in the upper aquifer into downslope drains, canals and/or surface water supplies.

## Conclusion

DWR should not concur with Westlands' proposed CEQA compliance documents. These grant funds should be rescinded until a full EIR and EIS are completed. Proceeding to construct this project in December 2021 would fail to consider a full range of alternatives, including prohibition of discharge into the upper aquifer. Alternatives should also include strict restrictions on the quality of water being injected. Drinking water MCLs will not protect beneficial uses of these aquifers in the future.

Compliance with CEQA and NEPA demand that the Westlands Broadview ASR project fully evaluate and mitigate the effects of well injection of surface water on shallow groundwater conditions in Broadview WD along with impacts to downslope districts and waterways. The 2019 MND failed to consider cumulative impacts and impacts from other projects. For example, the GBP CEQA/NEPA, SLDFR FEIS and GBP WDRs all assumed that lands within Broadview WD would be retired from irrigation. Before implementing the Westlands Broadview ASR project, impacts from the injection of surface water to the water table and hydraulic pressure to downslope lands and surface waterways should be modeled and assessed. If the water table rises and such flows are increased because of increased pressure at depth of injection, then adverse effects on surface water quality would result due to the high levels of salinity and trace elements, including selenium, in the shallow groundwater. Detailed monitoring should be required of shallow ground water levels in the vicinity of the injection wells and of flow and water quality in any drains or surface waters.

In addition to an EIR and EIS to fully evaluate these potential environmental impacts, we recommend that the SWRCB and RWQCB meet with USGS, USFWS, and university selenium and drainage experts to discuss implications of the Broadview ASR project and the cumulative impacts of Westlands proposed ASR project on other drainage impaired lands.

Thank you for your consideration.

Sincerely,



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## Endnotes

<sup>1</sup> See: [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/IRWM-Grants/Files/Prop-1-Implementation/Final-Awards/Final-Awards-List-San-Joaquin-River\\_ay20.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/IRWM-Grants/Files/Prop-1-Implementation/Final-Awards/Final-Awards-List-San-Joaquin-River_ay20.pdf)

<sup>2</sup> The San Luis and Delta Mendota Water Authority's Westside-San Joaquin Integrated Regional Water Management Plan (IRWMP) did not include a Broadview ASR Project. See: <https://sldmwa.org/integrated-regional-water-management-plan/> The only project identified in the IRWMP in Broadview WD was a Broadview Water District Drainage Water Treatment Project, described in Appendix D page 5 of the IRWMP.

<sup>3</sup> In the application for the IRWM State grant (page 1-1), the SLDMWA acknowledged that the Broadview ASR Project was being submitted under a different name from that used in the Westside-San Joaquin IRWMP project list, and referred to the Westlands ASR. Westlands applied for \$750,000 of State funding for the Westlands ASR in the Tulare/Kern funding area but was not awarded a grant See @ page 1: [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/IRWM-Grants/Files/Prop-1-Implementation/Final-Awards-List--Tulare-Kern\\_ay20.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/IRWM-Grants/Files/Prop-1-Implementation/Final-Awards-List--Tulare-Kern_ay20.pdf)

<sup>4</sup> For the NOD see: <https://ceqanet.opr.ca.gov/2019089109/3/Attachment/UMymrt>  
For the MND see: <https://ceqanet.opr.ca.gov/2019089109/2/Attachment/QdGzdr>

<sup>5</sup> <https://ceqanet.opr.ca.gov/Project/2019089109> See CDFW comment letter September 30, 2019 pg 20.

<sup>6</sup> Coalition comments on the Grassland Bypass Project's Technical and Monitoring Report Pursuant to California Water Code Section 13267. September 10, 2021. See:

Coalition comments to Governor Newsome on the Discharge of Contaminated Groundwater Using Loopholes Created by Emergency Executive Order 1 Likely to Harm Downstream Beneficial Uses and Drinking Water Supplies--Arsenic and Selenium Concerns \_\_ Objection to Proposed CEQA Exemption for Westlands Water District's Groundwater Pump-ins into the California Aqueduct. May 25, 2021. See:

Coalition scoping comments on the Notice of Preparation of an Environmental Impact Report for Westlands WD's proposed Groundwater Pumping and Conveyance Project. April 10, 2021. See:

Coalition comments on the Triennial Review of the Water Quality Control Plan for Sacramento River and San Joaquin River Basins and the Tulare Lake Basin. May 10, 2021. See:  
<https://calsport.org/news/wp-content/uploads/CVRWQCB-Triennial-Review-Cmts-CSPA-et-al-05-10-21.pdf>

Coalition comments on Grassland Bypass Project Drainage Management Plan, Including Components of the Westside Regional Drainage Plan and the Long-Term Stormwater Management Plan. February 1, 2021. See:  
[https://calsport.org/news/wp-content/uploads/PCL-PCFFA-et-al-Cmts-to-the-CV-Regl-Bd\\_GBP-Drainage-Mgmt-Plan\\_2-1-21-.pdf](https://calsport.org/news/wp-content/uploads/PCL-PCFFA-et-al-Cmts-to-the-CV-Regl-Bd_GBP-Drainage-Mgmt-Plan_2-1-21-.pdf)

Coalition comments on Westlands pump-in project, 9.30.2020: See: [https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020\\_WWD-SLC-Pump-in-2020-IS\\_ND\\_Cal-Aqueduct-Corrected.pdf](https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020_WWD-SLC-Pump-in-2020-IS_ND_Cal-Aqueduct-Corrected.pdf)

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Coalition comments on USBR's Draft Environmental Assessment on a 10-Year Use Agreement for the San Luis & Delta-Mendota Water Authority Long-term Storm Water Management Plan for the Grasslands Drainage Area. December 23, 2019. See:

[https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=41925](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41925)

Comments of Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Institute for Fisheries Resources (IFR), and the signatory organizations Re: Comments on Tentative Waste Discharge Requirements (WDRs) for Surface Water Discharges from the Grassland Bypass Project in Merced and Fresno Counties. November 5, 2019. See: <https://calsport.org/news/wp-content/uploads/Fishing-Conservation-Grps-Cmt-Letter-CVRWQCB-WDRs-for-Federal-SLD-Grassland-Drainers-Discharge-11-6-19-1-2.pdf>

Coalition comments on Grassland Bypass Project Long-Term Storm Water Management Plan EIR Addendum and Initial Study--A Full EIR-EIS is Required. September 9, 2019. See:

<https://calsport.org/news/wpcontent/uploads/PCL-et.-al-Cmt-Letter-GBP-Stormwater-Plan-CEQA-09-09-2019-3.pdf>

Coalition comments of environmental, fishing and environmental justice organizations opposed U.S. EPA's proposed federal water quality criteria for selenium applicable to California. March 28, 2019. See: <http://calsport.org/news/wp-content/uploads/PCL-et.-al-Cmt-Letter-EPA-Ca-Selenium-Criteria-Doc-No.-EPA-HQOW-2018-00....pdf>

Comments of the Pacific Coast Federation of Fishermen's Associations Requesting Denial of Proposed Waste Discharge Requirements for Surface Water Discharges from the Grassland Bypass Project, Stephan C. Volker, June 22, 2015. See:

[https://www.waterboards.ca.gov/centralvalley/water\\_issues/grassland\\_bypass/wdrs\\_development\\_archive/2015may/2015\\_05\\_gbp\\_com\\_pcffa.pdf](https://www.waterboards.ca.gov/centralvalley/water_issues/grassland_bypass/wdrs_development_archive/2015may/2015_05_gbp_com_pcffa.pdf)

Re: Land Retirement Benefits to Grasslands Bypass Project and Draft Waste Discharge Requirements, Coalition Letter to CVRWQCB Follow-up on Grasslands WDR, September 8, 2014. See: <http://calsport.org/news/wp-content/uploads/Coalition-response-letter-to-Longley-re-gbp-land-retirement.pdf>

Coalition Comments Re Draft Waste Discharge Requirements for the Grassland Bypass Project, June 30, 2014. See: <http://calsport.org/news/wp-content/uploads/Final-coalition-comments-on-Draft-GBP-WDR-6.30.14.pdf>

Coalition Comments: Grasslands Bypass Project -- Violations of the Endangered Species Act and Reduced Monitoring Threaten Endangered Species and Public Health, November 27, 2013. See: <https://calsport.org/news/wp-content/uploads/2013/12/Coalition-Letter-on-GBP-ESA-Violations-Monitoring-Reductions-LTR.Corrected-.pdf>

Coalition Comments: Opposition to the Proposal to Curtail Monitoring at the Grassland Bypass Project. August 11, 2011. See: <https://calsport.org/news/wp-content/uploads/2011/09/Opposition-To-Grassland-Bypass-Monitoring-Reductions.pdf>

CSPA, CWIN and AquAlliance submit Comments to State Water Board Regarding Grassland Bypass Project and Basin Plan Amendment. September 22, 2010. See:

[https://calsport.org/cspa\\_files/CSPA\\_CWIN-SJR%20SeleniumCont.pdf](https://calsport.org/cspa_files/CSPA_CWIN-SJR%20SeleniumCont.pdf)

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<sup>7</sup> See Table C1-3, Current Projections of Area Needing Drainage Service: Northerly Area, SLDFR FEIS Appendix C, page C-3, at this link: [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=2234](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=2234)

<sup>8</sup> SLDFR FEIS @ page 12-16, available at this link:

[https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=2232](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=2232)

<sup>9</sup> See Figure 6 on page 13 of WDR R5-2019-0077, Grassland Drainage Area – Selenium Discharge and Targets derived from Summers Engineering, Inc. Grassland Bypass Project Surface Water Monitoring. Order R5-2015-0094, Annual Monitoring Report 2018, available at this link:

[https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2019-0077.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2019-0077.pdf)

<sup>10</sup> See SLDFR FEIS @ page 6-26, available at this link:

[https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=2234](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=2234)

<sup>11</sup> See San Luis Unit Long Term Contract Draft Supplemental EIS dated 2006, Appendix B @ pg 11, available at this link: [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=2143](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=2143)

<sup>12</sup> See: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/1968/rs68\\_016.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf)

<sup>13</sup> See: Coalition comments on the Triennial Review of the Water Quality Control Plan for Sacramento River and San Joaquin River Basins and the Tulare Lake Basin. May 10, 2021.

<https://calsport.org/news/wp-content/uploads/CVRWQCB-Triennial-Review-Cmts-CSPA-et.-al.-05-10-21.pdf>

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