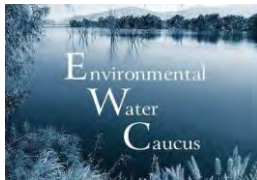




**AQUALLIANCE**  
DEFENDING NORTHERN CALIFORNIA WATERS



**CA Save Our Streams Council**



July 27, 2021

Mr. Joseph C. McGahan, Drainage Coordinator,  
San Luis & Delta-Mendota Water Authority,  
P.O. Box 1122, Hanford, CA, 93230  
Email: [jmcgahan@summerseng.com](mailto:jmcgahan@summerseng.com)

**Re: Comments on the Initial Study/Mitigated Negative Declaration for the Mud Slough Restoration Project, SCH # 2021060585**

The San Luis & Delta Mendota Water Authority (Water Authority) has made available a draft Initial Study and CEQA Checklist and Proposed Mitigated Negative Declaration (IS/MND) on the Mud Slough Restoration Project. Copies of these documents were made available at CEQAnet<sup>1</sup> and the Water Authority's website<sup>2</sup>. We also requested from the Water Authority a cd with the referenced Appendices to these CEQA documents (Appendix A: Project Drawings; Appendix B: Biological Resources Report;

<sup>1</sup> See: <https://ceqanet.opr.ca.gov/2021060585>

<sup>2</sup> See: <https://sldmwa.org/mud-slough-restoration-project/>

Appendix C: Cultural Resources; Appendix D: Paleontological Technical Memorandum; and Appendix E: Hydrology Study).

After careful review of these documents, we find the IS/MND is woefully inadequate and focuses largely on impacts of construction to restore pre-1995 hydrology as required under previous environmental and CDFW [previously CDFG] agency agreements, but ignores the potential contaminant issues the project will cause in surface water and potential discharge of contaminated sediment in the Project Area. Critical information with respect to water and sediment quality is lacking and therefore the environmental analyses for this project are incomplete. The documents fail to accurately provide a complete definition of the project. An accurate, stable, and finite project description has been described as the “sine qua non” of a legally sufficient CEQA document. (*County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977).) The analysis fails to accurately describe the project and thus, fails to inform the public about the project’s likely effect on the environment and ways to mitigate any significant impacts caused by the discharge of these waters to the China Island wildlife refuge and Lake Newman.

The MND fails to meet CEQA standards for mitigation measures and accurately disclosing impacts that must be mitigated. Reliance upon mitigation measures involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations. (*Id.* at 1108; *see also Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal.App.4th 1165, 1198-1200 (1997) [E.G. Operation and minor alteration of existing landfill was not exempt, despite mitigation measures addressing leaking of pollutants].)

Further, consultations with CDFW and USFWS under CESA and ESA on impacts to listed threatened and endangered species are not included with IS/MND leaving the public in the dark about the extent of these impacts to protected species. A complete description with data is necessary. For example, a detailed discussion of any special-status species and their habitat located on or in the vicinity of the site, as well as any wetlands or other protected waters that exist and may be impacted by the project are needed. The project description with regard to the full impacts of the discharge of these contaminated surface waters to these sensitive species significant areas is absent. We recommend therefore, that IS/MND be rescinded. A full EIR is required to analyze these significant impacts to the wildlife refuges and this migratory bird corridor including the Pacific Flyway. This critical information and effects analyses is required and the environmental analysis must be re-released for public comment.

## **Background**

The objective of the Mud Slough Restoration Project (Project) is to restore and enhance wildlife habitat on the China Island Unit of the North Grasslands Wildlife Management Area (China Island) and on the Newman Land Company property by reestablishing Mud Slough flows to portions of those lands that were isolated from Mud Slough as a result of implementation of the Grassland Bypass Project (GBP). The Proposed Project would replace the water supplies (currently provided by groundwater) to Newman Lake through the restoration of the hydrologic connection between Mud Slough and the Lake. Natural erosion effects of flow in Mud Slough have caused the normal water level to drop, and it is currently approximately four feet below the Newman Lake water level. Therefore, hydraulic modification is required to allow Newman Lake to receive Mud Slough water deliveries.

The undersigned organizations, have a long-standing interest in the GBP because contaminants in agricultural drainage discharges from the Grassland Drainage Area (agricultural lands served by the GBP) have had profound adverse effects on the environment, including effects to downstream waterways, aquatic life, and migratory birds. We include our previous comments on the 2020 Drainage Management Plan, 2019 Draft Environmental Assessment on a 10-Year Use Agreement of the San Luis Drain, the 2019 Tentative WDRs for the GBP, the GBP Stormwater Plan EIR Addendum, the USEPA’s proposed

water quality criteria for selenium in California, and the 2009 GBP EIR/EIS and the Basin Plan Amendment by reference.<sup>3</sup>

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<sup>3</sup> Coalition comments to the Central Valley Regional Water Quality Control Board on the Grassland Bypass Project Drainage Management Plan, Including Components of the Westside Regional Drainage Plan, and the Long-Term Stormwater Management Plan. February 1, 2021.

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.

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.

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. <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. [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. <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. <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. <http://calsport.org/news/wpcontent/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. <http://calsport.org/news/wp-content/uploads/2011/09/Opposition-To-Grassland-Bypass-MonitoringReductions.pdf>

CSPA, CWIN and AquAlliance submit Comments to State Water Board Regarding Grassland Bypass Project and Basin Plan Amendment. September 22, 2010. <http://calsport.org/news/cspa->

As denoted in our previous comments on the GBP's 2019 Stormwater Management Plan and 2020 Drainage Management Plan, we recommended that a full Environmental Impact Report/Statement (EIR/EIS) be prepared for the continued use of the San Luis Drain for stormwater discharges into Mud Slough (north), the San Joaquin River and the Delta. In those comments we detailed our concerns in several areas and recommended what we believe is the only reliable and cost-effective solution—order the cessation of this polluted discharge.<sup>4</sup>

## Specific Comments

### Drainage Discharges to Mud Slough after 2019

On page 1-2 of the IS under background it states, “By December 31, 2019, all agricultural drainage was managed within the Grassland Drainage Area such that it was no longer discharged to Mud Slough, in accordance with water quality objectives and Waste Discharge Requirements (WDRs). Only stormwater flows (no agricultural drainage) will continue to be routed to Mud Slough from January 1, 2020, through December 31, 2035 under new WDRs.” This language stating that no agricultural drainage will be routed to Mud Slough after December 2019 is misleading. Although the GBP Stormwater Plan does implement several actions to reduce drainage discharges into the San Luis Drain, it will not eliminate those discharges during stormwater runoff events. During these rainfall events, stormwater can commingle with drainage water and those flows could be discharged into the San Luis Drain and if that system is

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[cwin-and-aqualliance-submit-commentsto-state-water-board-regarding-grassland-bypass-project-and-basin-plan-amendment/](#)

Sierra Club et. al. Comments: Grassland Bypass Project & San Joaquin River Selenium Basin Plan Amendments September 22, 2010.

[https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/docs/sjr\\_selenium/comments092210/jim\\_metropulos.pdf](https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/sjr_selenium/comments092210/jim_metropulos.pdf)

Comments of California Sportfishing Protection Alliance and California Water Impact Network on the draft environmental impact report for the Irrigated Lands Regulatory Program and related documents. Also attached are several comments prepared by three expert consultants September 27, 2010. <http://calsport.org/doclibrary/pdfs/207.pdf>

Environmental Coalition Comments on Draft Staff Report for Grasslands Bypass Project Basin Plan Selenium Amendments to The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, April 26, 2010 available at:

[https://www.waterboards.ca.gov/centralvalley/water\\_issues/grassland\\_bypass/grasslands\\_bpa\\_coalition\\_ltr.pdf](https://www.waterboards.ca.gov/centralvalley/water_issues/grassland_bypass/grasslands_bpa_coalition_ltr.pdf)

<sup>4</sup> [The San Joaquin Valley Drainage Program \(SJVDP\) A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley, also known as the “Rainbow Report” \(September 1990\); see also USGS Technical Analysis of In-Valley Drainage Management Strategies for the Western San Joaquin Valley, California Open-File Report 2008-1210 By: Theresa S. Presser and Steven E. Schwarzbach https://pubs.er.usgs.gov/publication/ofr20081210:: USBR Final Environmental Impact Statement for San Luis Drainage Feature Re-evaluation \(May 2006 and Record of Decision \(ROD\) \(March 2007\) \(selecting the “In-Valley/ Water Needs/ Land Retirement Alternative.”\).](#)

overwhelmed, then can be discharged into the Grassland wetland supply channels.<sup>5</sup> The language in the IS/MND should be changed to acknowledge that during heavy rainfall events drainage can be commingled with stormwater discharges from the GBP that could affect downstream water quality including Mud Slough (North) China Island, and Newman Lake. The effects of these discharges on downstream water quality, fish and wildlife, endangered species and species of special concern need to be disclosed, analyzed and mitigated in the CEQA for this project.

### **Water Quality Objectives in the WDR for the GBP are Not Protective of Beneficial Uses For China Basin and Newman Lake.**

Both the Initial Study on page 1-2 and the Biological Resources Report (pages 1-2) concluded the following: “*With the successful completion of the GBP in 2019, selenium levels in Mud Slough have been reduced below thresholds of concern, and Mud Slough flow can now be returned to Newman Lake and the historic Mud Slough channel north of Newman Lake.*” Yet those thresholds of concern are not described in the IS or MND. Like the project description, CEQA requires the environmental setting provide a complete and accurate description of the project setting, *i.e.*, the existing environmental conditions and surrounding uses, to establish the baseline for measuring environmental impacts resulting from the project. (14 CCR § 15125; *see also San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus*, 27 Cal.App.4th 713, 729 (1994) [finding EIR inadequate without “accurate and complete information pertaining to the setting of the project and surrounding uses”]). The failure of the analysis to provide this baseline data is a fatal flaw with regard to the proposed mitigation and findings of no significance. This document must identify the environmental impacts likely to result from the project development, followed by mitigation measures or project alternatives that will avoid or reduce these impacts. To determine whether mitigation is required, or if mitigation can reduce an impact to a level of insignificance, SLDMWA must compare a project’s impacts to thresholds of significance. (14 CCR § 15064.)

The MND is virtually silent with regard to the impacts of this project development. These impacts must be disclosed, analyzed and mitigated otherwise it is likely that grotesque selenium-induced deformities and severe biological and reproductive problems to federally-protected species and migratory birds (as was found in the neighboring Kesterson National Wildlife) could result from this project. The MND document appears to rely upon standards and objectives for the Grassland Bypass Project's new 2020 Drainage Management Plan (Drainers' Plan). This Drainers' Plan and the GBP (actions or methods currently being or to be implemented by Grassland Area Drainers and individual Water Districts) will not protect downstream water quality including Mud Slough (North) from causing significant impacts to endangered species, species of special concern and sensitive wetland and estuary habitats. This plan proposes standards that are not protective of the beneficial uses of Mud Slough much less, protective of lake, wetland or estuary waters. The Drainers' Plan’s intention is to meet water quality objectives specified in the 2019 Waste Discharge Requirements (2019 WDRs) in Mud Slough (North) and the San Joaquin River. Yet the water quality objectives for Mud Slough (North) and the San Joaquin River specified in the 2019 WDRs do not protect downstream beneficial uses including fish and wildlife resources or migratory birds. The Numerical Water Quality Objectives for selenium are described in Table 5.2 on page 32 of Attachment A of the 2019 WDRs:<sup>6</sup>

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<sup>5</sup> See pg 7 of Attachment A to Order R5-2019-0077:  
[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>6</sup> See: [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)

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**Table 5.2: Selenium Numerical Objectives**

4-day Average	Maximum	Location
5 µg/L	20 µg/L	Mud Slough (north) and the San Joaquin River from the Mud Slough confluence to the Merced River
5 µg/L	12 µg/L	San Joaquin River, mouth of the Merced River to Vernalis

The 2019 WDRs for the GBP require compliance with the selenium water quality objectives specified in the 2010 Basin Plan Amendment (5 µg/L, 4-day average). However, the GBP WDRs are lax, allowing for acute spikes of selenium (as described in Table 5.2 above and ranging from 12 to 20 µg/L depending on location) that will bio-accumulate throughout the ecosystem. These water quality objectives will result in harm to fish and aquatic-dependent wildlife. Short term spikes of selenium in a waterway can have longer lasting effects in an ecosystem. Beckon (2016) noted that when a bioaccumulative substance such as selenium is introduced into or removed from the environment, the processes by which it is assimilated into upper trophic levels of the ecosystem may be complex and prolonged.<sup>7</sup> These processes include several levels of trophic transfer, each entailing the time required to consume food, assimilate the substance of interest, and the time span during which the organism continues to survive before being eaten by a member of the next higher trophic level. Beckon noted that for some species of piscivorous fish the lag time for selenium exposure to bioaccumulate in the upper trophic level of fish is over 1 year from the initial exposure. Thus, short-term exceedances of the 5 µg/L selenium objective can continue to have deleterious effects to the upper trophic level species several months to over a year after the event.

The 2019 WDRs for the GBP effectively sanction continued excessive pollution discharge, especially during stormwater events, of Mud Slough (North), the San Joaquin River, and ultimately the Sacramento-San Joaquin Delta and San Francisco Bay, by failing to enforce science-based protective water quality standards for selenium and allowing the continued contamination of these water bodies. These discharges, under the proposed project operations, will impact China Island and Newman Lake fish and wildlife resources. These impacts have not been disclosed, analyzed or addressed under the proposed MND.

Excess selenium in streams kills or deforms fish and other aquatic life and is a human health concern in drinking-water supplies. Under the 2019 WDRs, selenium (and other harmful drain water pollutants, such as salt, sulfates, boron, molybdenum, and mercury) will continue to be discharged from the federally owned San Luis Drain directly into Mud Slough (North). These stormwater discharges will impact the quality of water provided to China Island and Newman Lake associated with this Project. These impacts must be disclosed and analyzed. Further, alternatives such as other sources of water to replenish these critical wildlife areas must be considered.

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<sup>7</sup> See: <https://www.sciencedirect.com/science/article/abs/pii/S0166445X16301230>

## **The MND Relies Upon Outdated Water Quality Protection Standards That Are Inconsistent with USEPA National Criteria Revision for Selenium**

On July 13, 2016, the USEPA published a Notice of Availability announcing the release of a Final updated Clean Water Act (CWA) section 304(a) recommended national chronic aquatic life criterion for the pollutant selenium in fresh water. The USEPA's 2016 federal register notice identified revised chronic selenium criteria in water for lentic waters (e.g., meaning of, relating to, or living in still waters, such as lakes, ponds, or swamps) and lotic waters (e.g., rivers and streams). The final criterion supersedes EPA's 1999 CWA section 304(a) recommended national acute and chronic aquatic life criteria for selenium. The 2016 recommended criterion reflects the latest scientific information, which indicates that selenium toxicity to aquatic life is primarily based on organisms consuming selenium-contaminated food rather than direct exposure to selenium dissolved in water. Draft versions of the criterion underwent public review in 2014 and 2015 and external peer review in 2015. EPA considered all public comments and peer reviewer comments in the development of the 2016 final selenium criterion document. EPA's water quality criterion for selenium provides recommendations to states and tribes authorized to establish water quality standards under the CWA.<sup>8</sup> The EPA's 2016 final revised Section 304(a) guidance for selenium makes clear that retaining the current state standard of 5 µg/L will not protect aquatic life and wildlife designated uses and therefore would bring the state out of compliance with the requirements of Section 303(c)(2)(B) of the Clean Water Act (CWA). Thus, the reliance of the MND upon these outdated standards is not protective and will cause significant environmental impacts.

Further, the USEPA did not include an acute selenium criterion in their July 13, 2016 Notice of Availability announcing the release of a Final updated Clean Water Act (CWA) section 304(a) recommended national chronic aquatic life criterion for the pollutant selenium in fresh water under Item IV: "*The criterion document does not include an acute criterion (based on water-only exposure) because selenium is bioaccumulative and toxicity primarily occurs through dietary exposure.*"<sup>9</sup> So the MND reliance upon the 2019 GBP WDRs inclusion of acute selenium objectives (12 to 20 µg/L depending on location) is inconsistent with Final national criteria and will have to be updated during the next triennial review in 2021.

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<sup>8</sup> See: <https://www.federalregister.gov/documents/2016/07/13/2016-16585/recommended-aquatic-life-ambient-water-quality-criterion-for-selenium-in-freshwater>

<sup>9</sup> Ibid.

Comparison of Final 2016 Selenium Criterion to 1999 Criteria

Criterion version	Chronic					Short-term
	Egg-Ovary <sup>1</sup> (mg/kg dw)	Whole Body <sup>1</sup> (mg/kg dw)	Muscle <sup>1</sup> (mg/kg dw)	Water, <sup>1</sup> Lentic (µg/L)	Water, <sup>1</sup> Lotic (µg/L)	Water (µg/L)
2016 Final Update	15.1	8.5	11.3	1.5 (30 d)	3.1 (30 d)	Intermittent exposure equation.
1999 Selenium Criteria	N/A	N/A	N/A	5 (4 d)	5 (4 d)	Acute Equation based on water column concentration.

<sup>1</sup> A note on hierarchy of table: when fish egg/ovary concentrations are measured, the values supersede any whole-body, muscle, or water column elements except in certain situations. Whole body or muscle measurements supersede any water column element when both fish tissue and water concentrations are measured, except in certain situations (see examples in text above). Water column values are derived from fish tissue concentrations.

The EPA's 2016 final revised Section 304(a) guidance for selenium makes clear that retaining the current state standard of 5 µg/L will not protect aquatic life and wildlife designated uses and therefore would bring the state out of compliance with the requirements of Section 303(c)(2)(B) of the Clean Water Act (CWA). As per the EPA's 2014 "Water Quality Standards Handbook, Chapter 6: Procedures for Review and Revision of Water Quality Standards", @ page 7:<sup>10</sup> "It is important to note that, although a state or tribe may have fully complied with the requirements of Section 303(c)(2)(B) previously, states and tribes may be required to adopt new toxic criteria in the following situations:

- The EPA publishes new Section 304(a) criteria recommendations for a priority pollutant.
- New information on existing water quality and pollution sources indicates that a toxic pollutant for which a state or tribe had not previously adopted criteria could now be reasonably expected to interfere with the designated uses adopted by the state or tribe.

EPA's revised chronic selenium criterion for lentic waters of 1.5 µg /L on a monthly basis is the criterion that should be applied to protect fish and wildlife beneficial uses in Newman Lake and China Island. The CEQA documents for this Project should be revised to include analysis of water quality impacts and compliance with this selenium water quality criterion for lentic waters.

<sup>10</sup> See: <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>



### **The CEQA Analysis should Consider Effects of Contaminants in Sediments.**

The IS on page 1-28 describes construction-related impacts on water quality: “*Construction-related activities would involve site preparation, cofferdam installation and removal, clean riprap rock placement, removal of the existing Los Banos Creek spillway structure and restoration of the channel, and Newman Lake dam reinforcement. Each of these activities has the potential to disturb soils and discharge or resuspend sediments and increase turbidity in the immediate vicinity and downstream of the construction site.*” Yet there is no consideration or discussion of potential contaminant loads in the sediments that have accumulated from decades of drainage discharges into Mud Slough (North) associated with the GBP. No data on contaminant concentrations in the sediments where the construction is going to take place is provided in the CEQA for this Project.

Construction-related activities associated with this Project can mobilize drainage contaminants in the sediments that may contain loads of selenium and other toxic constituents such as salt, sulfates, boron, molybdenum, and mercury. The CEQA analysis for this Project should be revised to include contaminant concentrations in the sediments, an analysis of the effects of construction-activities on contaminant mobilization into the water column, and associated water quality impacts to fish and wildlife resources.

### **The CEQA Analysis completed in the 2009 GBP EIR/EIS and 2019 GBP Stormwater Addendum do not Support the Proposed IS/MND for the Mud Slough Restoration Project.**

Under CEQA a supplemental EIR is required if, as defined in CEQA Guidelines Section 15162(a)(1): (a) there have been substantial changes to the Project; (b) new significant environmental effects have been identified; or (c) there has been a substantial increase in the severity of previously identified significant effects. The 2009 EIR/EIS was based on the premise that all drainage discharges into the San Luis Drain would cease by the end of 2019. Thus, the 2019 GBP Stormwater Plan and associated WDRs include both a substantial change and environmental effects not included in the 2009 GBP EIR/EIS.

Under the current GBP WDRs, contaminated discharges would continue adding stormwater commingled with subsurface agricultural drainage into the San Luis Drain for an additional 25 years. This is a substantial change and should have been analyzed in a full EIR/EIS. There are numerous impacts from this extension of the use of the San Luis Drain for stormwater that are significant and are relevant to this Project, including: (1) cumulative impacts to downstream beneficial uses; (2) the failure to meet protective water quality standards; (3) impacts to endangered and listed species; and (4) migratory bird impacts. All of these impacts warrant a full EIR/EIS analysis to adequately inform decision makers of the risks posed by continuing these discharges without proper permits and compliance with the Clean Water Act, including state and federal non-degradation policies. The Water Authority’s proposed adoption of a MND for the Mud Slough Restoration Project is likewise not supported by the draft IS/MND for this Project nor the 2019 GBP Stormwater Plan and associated WDRs.

Another consideration to take into account are the CEQA Guidelines pertaining to “mandatory findings of significance.” (14 CCR § 15065(a).) These Guidelines specifically refer to impacts to biological resources and specify that an EIR must be prepared in the event certain biological resources are impacted, subject to certain specific requirements. Admittedly this project is likely to impact endangered species and specifically "substantially reduce" the number or restrict the range of the Giant Garter Snake and endangered and migratory birds, shore birds, marsh and water birds. The long term cumulative impacts of the discharges from this project are also likely to impact the federally threatened Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*),

threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*), and any of the critical habitat designated for these listed species.

### **Memorandum of Understanding with CDFW should be included with the CEQA for this Project.**

The IS on page 1-21 references a Memorandum of Understanding (MOU) with CDFW and the Water Authority: *“The Proposed Project will fulfill the commitment to restore Mud Slough to its pre-GBP condition as described in the 2010 Memorandum of Understanding between the California Department of Fish and Game and the San Luis and Delta-Mendota Water Authority Regarding the Grassland Bypass Project (CDFW and SLDMWA, 5/26/2010).”* Yet this MOU is not included with the CEQA documents or appendices for this Project. A search of CEQAnet provided this description of the MOU: *“The DFG is executing a Memorandum of Understanding (MOU) with the San Luis and Delta-Mendota Water Authority for the Authority's use of Mud Slough (North) through the China Island Wildlife Area. The purpose of the Project is to allow the Authority to continue its discharge of saline agricultural drain water from the Grassland Drainage Area to the San Joaquin River via the Mud Slough. The northern portion of Mud Slough flows through the China Island Wildlife Area, which is owned by the DFG. The DFG entered into a MOU for use of Mud Slough (North) and to ensure that appropriate monitoring of Mud Slough and the San Joaquin River will occur, that water quality objectives will be met, and that Mud Slough will be restored to its pre-1995 condition after the Project is terminated. The project period is from the execution of the MOU through December 31, 2019, or until Mud Slough is restored, whichever is later.”*<sup>11</sup>

A copy of this MOU should be included with the CEQA for the Mud Slough Restoration Project. To fulfill the Project objective to restore and enhance wildlife habitat at Newman Lake and China Island, the water quality objectives for this Project should be based on the most recent EPA USEPA National Criteria Revision for selenium for lentic waters of 1.5 µg /L on a monthly basis.

### **Conclusion**

Critical information with respect to water and sediment quality is lacking from the IS/MND and therefore the environmental analyses for this Project are incomplete and the public has been denied access to critical information regarding the impacts of the project and its operations. Further, the project's reliance upon existing water quality objectives from the 2019 WDRs for Mud Slough (North) are not protective of aquatic fish and wildlife, not based on the best available science, and will result in significant environmental harm to fish and wildlife resources at Newman Lake and China Island. We therefore recommend that these CEQA documents be rescinded and a full EIR be commenced to include and disclose this critical information along with the environmental affects impacts and then be re-released for public comment.

Specifically, we recommend the following impacts be analyzed and disclosed and alternatives less damaging to the environment be considered:

- Disclose the impacts from heavy rainfall events where drainage discharges can be commingled with stormwater discharges from the GBP that likely will impact downstream water quality including Mud Slough (North) China Island, and Newman Lake.

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<sup>11</sup> See: <https://ceqanet.opr.ca.gov/2007121110/5>

- Updated selenium water quality objectives for this Project should be based on the EPA's USEPA chronic National Criteria Revision for selenium for lentic waters of 1.5 µg /L on a monthly basis. No acute exceedences of this selenium objective should be allowed under this Project.
- Sediment contaminant concentrations should be measured, disclosed and analyzed for the impacts from construction related activities with regard contaminant mobilization into the water column, and associated water quality impacts to fish and wildlife resources. Operational impacts of from stormwater discharges mobilizing sediments must be analyzed and disclosed and alternatives considered.
- The IS/MND should include copies of the consultations with CDFW and USFWS on effects to threatened and endangered species along with shorebirds, water birds and migratory birds.
- A copy of the MOU between CDFW and the Water Authority should be provided with the CEQA for this Project along with the baseline analysis to ensure this project will result in the successful adherence to mitigations promised for over two decades.

Thank you for your consideration of these comments.



Jonas Minton  
Senior Water Policy Advisor  
[Planning and Conservation League](http://PlanningandConservationLeague.org)  
[jminton@pcl.org](mailto:jminton@pcl.org)



Mike Conroy  
Executive Director  
[Pacific Coast Federation of Fishermen's Asso.](http://PacificCoastFederationofFishermen'sAsso.org)  
[mike@ifrfish.org](mailto:mike@ifrfish.org)



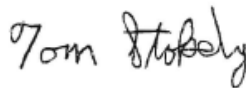
Bill Jennings  
Chairman Executive Director  
California Sportfishing Protection Alliance  
[deltakeep@me.com](mailto:deltakeep@me.com)



Barbara Vlamis,  
Executive Director  
AquAlliance  
[barbarav@aqualliance.net](mailto:barbarav@aqualliance.net)



Brandon Dawson  
Policy Advocate  
Sierra Club California  
[brandon.dawson@sierraclub.org](mailto:brandon.dawson@sierraclub.org)



Tom Stokely  
Director  
Save California Salmon  
[tgstoked@gmail.com](mailto:tgstoked@gmail.com)



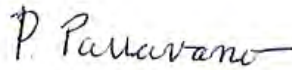
Stephen Green  
President  
Save the American River Association  
[gsg444@sbcglobal.net](mailto:gsg444@sbcglobal.net)



Lloyd G. Carter  
President, Board of Directors  
California Save Our Streams Council  
[lgeorgecarter@gmail.com](mailto:lgeorgecarter@gmail.com)



Caleen Sisk  
Chief and Spiritual Leader of the  
[Winnemem Wintu Tribe](#)  
[caleenwintu@gmail.com](mailto:caleenwintu@gmail.com)



Pietro Parravano  
President  
Institute for Fisheries Resources  
[pietro15@comcast.net](mailto:pietro15@comcast.net)



Dr. C. Mark Rockwell, D.C.  
President & Conservation VP,  
Northern California Council,  
Fly Fishers International  
[mrockwell1945@gmail.com](mailto:mrockwell1945@gmail.com)



Conner Everts  
Executive Director  
Southern California Watershed Alliance  
[Environmental Water Caucus](#)  
[connere@gmail.com](mailto:connere@gmail.com)



John Buse  
Senior Counsel  
Center for Biological Diversity  
[jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)



Carolee Krieger  
Executive Director  
California Water Impact Network  
[caroleekrieger7@gmail.com](mailto:caroleekrieger7@gmail.com)



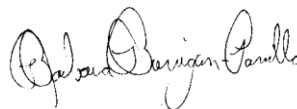
Frank Egger  
President  
North Coast Rivers Alliance  
[fegger@pacbell.net](mailto:fegger@pacbell.net)



Ron Stork  
Senior Policy Advocate  
Friends of the River  
[rstork@friendsoftheriver.org](mailto:rstork@friendsoftheriver.org)



Larry Collins  
Senior Advocate  
Crab Boat Owners Association  
[papaduck8@gmail.com](mailto:papaduck8@gmail.com)



Barbara Barrigan-Parrilla  
Director  
Restore the Delta  
[Barbara@restorethedelta.org](mailto:Barbara@restorethedelta.org)