May 25, 2021

Honorable Gavin Newsom
Governor
1303 10th Street, Suite 1173
Sacramento, CA, 95814

RE: 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.

Governor Newsom:

On Friday May 21, 2021 Westlands Water District (Westlands) held a special meeting to exempt from CEQA a groundwater pump-in project into the California Aqueduct (pump-in project) that in previous drought years had significant impacts to downstream beneficial uses including fish and wildlife, refuge water supplies and human health[2], as well as significant subsidence impacts to critical State water infrastructure (the California Aqueduct).[3] Of particular concern are the constituents selenium and arsenic.[4]

---

[1] https://www.gov.ca.gov/2021/05/10/governor-newsom-expands-drought-emergency-to-klamath-river-sacramento-san-joaquin-delta-and-tulare-lake-watershed-counties/

[2] See Coalition comments on Westlands pump-in project, 9.30.2020: https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020_WWD-SLC-Pump-in-2020-IS_ND_-Cal-Aqueduct-Corrected.pdf

[3] See DWR comments on Westlands pump in project 10.1.2020: https://calsport.org/news/wp-content/uploads/DWR_10-1-2020-Pump-in-Comment.pdf

Westlands justified the CEQA exemption for these groundwater pump-ins citing your May 10th Proclamation of a State Drought Emergency[5] and approval from DWR. The CEQA exemption for the Westlands pump-in project for 2021 is not appropriate without additional assurances, monitoring and enforcement actions to protect the public and fish and wildlife resources that use water from the Aqueduct downstream of Westlands. Governor Newsom, did you know that this CEQA Exemption would arbitrarily benefit one use (Westlands) while harming other beneficial uses?

Background

Westlands Water District (Westlands) has participated in groundwater pump-ins into the California Aqueduct to augment District water supplies during drought years. In April 2020, and then again in September 2020, Westlands released a draft Initial Study/Negative Declaration for public comment on the Pump-in Project (State Clearinghouse #2020050434)[6] for a five-year Warren Act Contract (for the years 2020-2025) to allow Westlands to pump-in up to 30,000 acre-feet per year (AF/y) (and up to 150,000 AF over the five-year life of the project) of potentially highly contaminated non-Central Valley Project (CVP) groundwater into the California Aqueduct-San Luis Canal (SLC). Such pump-ins occur in years in which Westland's CVP allocation is 20% or less. Non-CVP water introduced into the SLC would either be directly delivered to agricultural users or wildlife refuges located downstream of the points of introduction or operationally exchanged with Reclamation for a like amount, less conveyance losses, of Westlands' available water supplies in San Luis Reservoir. The delivery of non-CVP water to wildlife refuges is a critical aspect to evaluate because of the sensitivity of the refuges and wetland ecosystems to selenium contamination. In response to comments on the draft IS/NDs, in March 2021 Westlands issued a Notice of Preparation (NOP) of an EIR for the Pump-in Project.[7] The EIR for this project has not yet been completed or released to the public for review and comment.

Key Documents Missing from Westlands Board Packet--Public Participation Precluded.

The Westlands Board Packet that was distributed to the Westlands Board members for the Friday May 21, 2021 Special Board Meeting included several outdated documents in support of the CEQA Exemption including:

1. An expired Warren Act Contract (2016-2019) between Reclamation and Westlands authorizing non-project water inputs in the Federal/State San Luis Canal/California Aqueduct. The Warren Act Contract referenced an Exhibit D which identifies minimum water quality standards for monitoring the non-project water introduced into the Aqueduct. Exhibit D was missing from the CEQA Exemption materials.
2. An expired Agreement between DWR and Westlands (SWPAO 16007, expired 2016) authorizing introduction of local groundwater into the Aqueduct. This Agreement references Attachment 1 which establishes water quality standards to be adhered to. Attachment 1 was not included with the CEQA Exemption materials.

---

[4] Selenium & Arsenic concentrations in the California Aqueduct at Check 29, downstream of where groundwater has been pumped into the canal increased markedly in 2015 and in the case of Arsenic were approaching the Maximum Contaminant Level for drinking water of 0.010 mg/L.
See: http://www.water.ca.gov/waterdatalibrary/waterquality/station_group/index.cfm

[5] https://www.gov.ca.gov/wp-content/uploads/2021/05/5.10.2021-Drought-Proclamation.pdf

[6] See: https://ceqanet.opr.ca.gov/2020090040/2

[7] See: https://wwd.ca.gov/wp-content/uploads/2021/03/notice-of-preparation.pdf

Without a current a Warren Act Contract that includes an Exhibit D, and a current Agreement between DWR and Westlands that includes an Attachment 1, the public is left in the dark on the water quality requirements for these groundwater pump-ins into the Aqueduct.

Groundwater inputs into the Aqueduct Likely To Adversely Impact Downstream Fish and Wildlife Beneficial Uses.

The Westlands pump-in project can affect refuge water supplies at Mendota WA[8] and Kern NWR. The September 2020 IS/ND for the Pump-in Project acknowledged that groundwater from the Pump-in Project would comingle with refuge water supplies. The September 2020 IS/ND assumed the wellhead MCL of 2 µg/L selenium established in the 2020 Water Quality Monitoring Plan (WQMP) for the SLC[9] will be adhered to, without providing any data on the water quality performance of prior Westlands pump-ins. We note that almost 40% of the discharge points identified in Table 1 of the September 2020 IS/ND had at least one well sample that exceeded MCLs identified in the previous WQMPs for the constituents As, Se or TDS. This information is summarized in Appendix A to our September 30, 2020 comments on the IS/ND for this Project.[10]

The water supply for Kern National Wildlife Refuge (NWR) comes from the California Aqueduct and is diverted at Check 29. These refuges provide habitat for rare species including the federally listed Buena Vista Lake Ornate Shrew (Endangered) and the federally listed giant garter snake (Threatened). These species could be impacted by selenium from Westlands' contaminated groundwater discharges from the pump-in project. During drought years cutbacks to water users south of Delta has resulted in reduced freshwater flows in the California Aqueduct. Numerous water actions such as groundwater pump-ins and exchanges into the California Aqueduct have the potential to cumulatively degrade the quality of refuge water delivered to Kern NWR. Past data on the percent of flow in the Aqueduct (POA) comprised of Westlands groundwater pump-ins in the fall of 2014 and early 2015 indicate that the groundwater pump-ins have at times contributed 100% of the flow in the Aqueduct at Check 21 as depicted in the Figures 3-1 and 3-2 from DWR 2015[11] and Figure 3-1 from DWR 2016[12] reports and copied below. Some of these time periods overlap with refuge water deliveries to Kern NWR.

DWR has promoted fishing along the aqueduct and identifies five locations within or near Westlands (Fairfax, Three Rocks, Huron, Avenal Cutoff, and Kettleman City sites).[13] Due to the high percentage of discharge volumes represented by Westlands' WD's groundwater pump-ins into the Aqueduct during

---

[8] See CDFW's comments on the September 2020 IS/ND: https://ceqanet.opr.ca.gov/2020090040/2/Attachment/JS3MC2

[9] The SLC WQMP for non-project water pump-ins is available beginning at pdf pg 83 of the FEA available here: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=46945

[10] https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020_WWD-SLC-Pump-in-2020-IS_ND_-Cal-Aqueduct-Corrected.pdf

[11] See: https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2014.pdf

[12] See: https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2015.pdf

[13] *Ibid.*

certain time periods, especially under drought conditions, humans who fish the California Aqueduct are likely to be periodically exposed to much higher contaminants than the long-term average. In addition, there will be higher contaminant levels in fish than reported in canal water due to accumulation in fish tissue.

The groundwater contributions from the groundwater pump-ins into the California Aqueduct are conveyed south and stored in four reservoirs (Pyramid Lake, Castiac Lake, Silverwood Lake, and Lake Perris). The Aqueduct and these four reservoirs are regulated under four Regional Water Boards jurisdictions. Currently designated fish and wildlife beneficial uses for these downstream reservoirs include WARM (warm freshwater habitat), COLD (cold freshwater habitat), SPWN (spawning, reproduction and/or early development), and WILD (wildlife habitat). These beneficial uses need to be considered and protected.

Monitoring Requirements are Lax or Absent.
The draft CEQA Exemption distributed at the Westlands May 21, 2021 Board Meeting did include a link to the Bureau of Reclamation's Final Environmental Assessment (FEA) and a 2020 Water Quality Management Plan (WQMP) in Appendix B of the FEA.[14] The WQMP requires that all participating wells must have baseline sampling each year before pumping
into the San Luis Canal (SLC, the Federal/State portion of the Aqueduct) begins for those constituents of concern used for screening-out non-compliant wells. Further, the WQMP requires that for all constituents in the Table 5 (including Arsenic and Selenium), except as specified in the footnotes, monitoring will continue to occur weekly for four consecutive weeks, and then monthly for the duration of pumping into the SLC. This sampling frequency is inadequate to protect downstream beneficial uses and public health.

The California Department of Water Resources (DWR) currently conducts monthly monitoring of the California Aqueduct at Check 21 near Kettleman City (station number KA017226), and has documented occurrences of elevated levels of concern for selenium especially during times when surface water flows have been restricted in the Aqueduct and groundwater from Westlands is being pumped into the Aqueduct.[15] The once-a-month water quality sampling is insufficient to establish a monthly mean water quality calculation, to capture contaminant spikes that accumulate downstream, or to assess potential bioaccumulation in the food chain. Refuge water delivered to the Kern National Wildlife Refuge is diverted from the California Aqueduct in Kern County near Check 29, downstream of where groundwater from the groundwater inputs into the Aqueduct. Inexplicably, DWR stopped collecting water quality data from Check 29 after November 2016.[16] To ensure fish and wildlife and public health uses are protected, we recommend that DWR collect daily water quality monitoring for arsenic and selenium in the Aqueduct at Check 21 and Check 29 when the groundwater pump-ins are occurring. This daily monitoring would ensure the four-day average contaminant measure required by the Clean Water Act can be met. Further this daily frequency would also measure accumulation and spikes that are likely as the result of discharges into the California Aqueduct of groundwater contaminants.

---

[14] See Appendix B starting @ pdf pg 83:
https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=46945

[15] Water quality data for the California Aqueduct near Kettleman City is available here by specifying Station Name Check 21: https://wdl.water.ca.gov/waterdatalibrary/

[16] Selenium & Arsenic concentrations in the California Aqueduct at Check 29, downstream of where groundwater has been pumped into the canal increased markedly in 2015 and in the case of Arsenic were approaching the Maximum Contaminant Level for drinking water of 0.010 mg/L.
See: http://www.water.ca.gov/waterdatalibrary/waterquality/station_group/index.cfm

Compliance with Clean Water Act and Porter Cologne Water Quality Control Act is Absent.
As the USEPA (EPA) noted in comments submitted for the Westlands groundwater pump-ins in 2010, the discharge of contaminated groundwater from Westlands with potentially high salt, boron, chromium, arsenic, selenium and other metals would be subject to the National Pollution Discharged Elimination System (NPDES) permitting requirements pursuant to the federal Clean Water Act. Further EPA noted, "Permits will need to be designed to ensure the discharges do not cause or contribute to exceedences of applicable State water quality standards or degradation of designated beneficial uses."[17]

The Clean Water Act prohibits the discharge of "pollutants" through a "point source" into a "water of the United States" unless they have an NPDES permit. Such a permit would contain limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not harm water quality or human health. The term point source is also defined very broadly in the Clean Water Act. It means any discernible, confined and discrete conveyance, such as a pipe, ditch, channel, tunnel, conduit, discrete fissure, or container.[18] Yet, no compliance with the federal Clean Water Act has been provided for this project.

Further, we note that no Waste Discharge Requirements (WDRs) have been issued for this project. Waste Discharge Requirements established pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13263) permit discharges that "could affect the quality of waters of the state" – both surface and groundwater. These permits shall take into consideration beneficial uses to be protected, water quality objectives required for that purpose, other waste discharges, and the need to prevent nuisance. Some WDRs can also serve as a CWA NPDES permit (Wat. Code, § 13377; Chapter 5.5, Wat. Code, § 13370 et seq.).[19]

Without the necessary permits, the public is precluded from analyzing the permit and conditions to ensure protection and non-degradation of water supplies under the NPDES or WDR permit and potential mitigation measures. As we have noted above, groundwater from almost half of the wells included in Table 1 of the FEA have been reported in past monitoring reports to contain elevated concentrations of various metals and constituents such as selenium that can bioaccumulate in the food chain thus have amplifying the impacts on the environment (DWR 2016, 2017).[20]

Subsidence Impacts to the California Aqueduct are Significant.
Land subsidence is a major and growing consequence of groundwater pumping in the project area and

---

[17] See: http://calsport.org/news/wp-content/uploads/EPA-comments-Westlands-WD-EIR-NOP-3-4-10.pdf

[18] See: https://www.epa.gov/npdes/npdes-permit-basics

[19] See: https://www.waterboards.ca.gov/board_reference/docs/wq_law.pdf

[20] DWR Groundwater Data from WWD 2008 Pump Ins at:
https://wdl.water.ca.gov/waterdatalibrary/WaterQualityDataLib.aspx
And the following DWR Groundwater Data from WWD Pump-ins:
https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2016.pdf
https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2014.pdf
https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2015.pdf

threatens the California Aqueduct and other infrastructure. Increases in subsidence, impacts and costs to the California Aqueduct, and long-term cumulative impacts are significant. The Survey data in the 2017 DWR Subsidence Report show this section of the Aqueduct, the San Luis Canal (Los Banos to Kettleman City), has subsided the most over the years.[21] The DWR report identifies several significant operational impacts of subsidence to the Aqueduct including: reduction in conveyance capacity, increase in power cost, decrease in available freeboard (the difference in elevation between the crest of the canal and the water level as fixed by design requirements). These effects are significant and costly to repair.[22]

In DWR comments submitted to Westlands on the IS/ND in 2020, DWR noted that the allowable land subsidence in the IS/ND is not sustainable and would "significantly impact the functioning capacity and operational flexibility of the SWP. This degree of subsidence has resulted in considerable damage to the SLC for many years, impacting the overall functional capacity and operational flexibility of the State Water Project (SWP). The IS/ND determination that a 0.1 feet per year subsidence rate must be re-analyzed."[23] The impacts of this action are complex, broad and far reaching, and should not be authorized through a CEQA Exemption.

Cumulative Impacts Need to be Considered.
Cumulative impacts from these groundwater discharges and exchanges are not disclosed or analyzed. Monitoring for the long term impacts of discharging these contaminants is not considered or included. In addition to the continued extraction of water from already over-drafted groundwater basins, the impacts from discharging this groundwater to the SLC for irrigation of Westlands's toxic soils and exacerbating an existing subsurface agricultural drainage problem on the west-side of the San Joaquin Valley are not considered or mitigated in a CEQA Exemption nor considered by federal government partners in accordance with the National Environmental Policy Act (NEPA). Selenium found in groundwater and drainage water in Westlands is known to create life threatening impacts to migratory birds, wildlife and fish, magnifying up the food chain as these pollutants accumulate.

Further, no alternatives to this CEQA Exemption are considered. Additionally compliance with NEPA is absent. For instance, agricultural land fallowing and land retirement are not considered. The Bureau of Reclamation's San Luis Drainage Feature Re-evaluation Final EIS in 2006 found that land retirement was the most cost-effective solution to managing drainage in the San Luis Unit (which includes Westlands WD).

The CEQA Exemption fails to consider a reduction in exports, land fallowing and land retirement, issues of irrigability of lands in Westlands, expansion of the Place of Use boundary for the State Water Project and Central Valley Project south of the Delta[24, 25] the cumulative effects of as groundwater pump-ins and exchanges, and transfers, and impacts of applying water to drainage-impaired lands.

---

[21] See: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Engineering-And-Construction/Files/Subsidence/Aqueduct_Subsidence_Study-Accessibility_Compatibility.pdf

[22] See: https://sjvwater.org/the-sinking-central-valley-town/
https://www.msn.com/en-us/news/us/800m-in-upgrades-proposed-for-valley-canals-including-delta-mendota-california-aqueduct/ar-BB1fJhsN

[23] See: : https://calsport.org/news/wp-content/uploads/DWR_10-1-2020-Pump-in-Comment.pdf

[24] On May 14, 2021, the Department of Water Resources (DWR), and the U.S. Bureau of Reclamation (Reclamation), collectively Petitioners, filed a petition for temporary change to transfer/exchange up to 431,780 acre-feet of water pursuant to California Water Code section 1725 et seq. The Petitioners request the temporary addition of the State Water Project (SWP) place of use downstream of Harvey O. Banks Pumping Plant (Banks) to Reclamation License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316,

More Robust Monitoring Program & Enforcement Requirements Are Needed.
To protect downstream beneficial uses, we recommend the following be State requirements of the Pump-in Project:

- Well water should not be conveyed into the Aqueduct until it has been confirmed that the well water does not exceed the selenium wellhead standard of 2 µg/L.
- Daily monitoring of wells (while pumps are running) that have had at least one water quality sample above 2 µg/L selenium during the 2015 and 2016 pump-ins;
- Daily water quality sampling for selenium at Checks 21 and 29 of the California Aqueduct while Westlands is pumping groundwater into the Aqueduct;
- Consistent with USEPA's selenium criteria guidance document[26], the selenium objective for the California Aqueduct should be 1.5 µg/L to be protective of downstream beneficial uses in lentic habitats (e.g., meaning or relating to, or living in still waters such as lakes, ponds or swamps) and associated with water from the Aqueduct and Mendota Pool;
- Well water pumped into the Mendota Pool should not exceed 800 mg/L TDS to protect Mendota Wildlife Area water quality.
- Water monitoring of wells and the Aqueduct at Check 21 should require rapid turnaround so results are received within 7 days and can be responsive to current and changing conditions.
- Well water from Westlands should not be pumped into the Aqueduct if Dos Amigos Pumping Plant is not operating.
- There needs to be an established protocol dictating required actions and enforcement when water quality standards are exceeded at individual wells or in the aqueduct and related conveyance canals.

Conclusion
We ask the Governor's office to rescind this CEQA Exemption for the Westlands pump-in project until sufficient water quality and subsidence monitoring and enforcement mechanisms are established for this project in 2021. We also ask that the current Warren Act Contract (including an Exhibit D), and a current Agreement between DWR and Westlands for introduction of local groundwater into the Aqueduct (that includes an Attachment 1) be provided to the public. Further we seek your intervention to ensure adequate monitoring and safeguards to protection downstream beneficial uses including the drinking water quality of Southern California residents and ratepayers. Allowing the discharge of these

---

11968, 11969, 12860, 11971, 11973, and 12364 (Applications 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15764, 16767, 17374, and 17376) and the temporary addition of the Central Valley Project (CVP) place of use downstream of Jones Pumping Plant (Jones) to DWR Permit 16479 (Application 14443): https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/2021/14443tt210514_notice.pdf

[25] On May 5, 2021, Clifton Court LP (Clifton Court) filed with the State Water Resources Control Board (State Water Board) a petition for temporary change to transfer up to 1,539 acre-feet of water pursuant to California Water Code section 1725 et seq under License 1289. Clifton Court proposes to transfer the water between July 1 and September 30, 2021 to the Westlands Water District. Changes include: (1) add the Central Valley Project's Jones Pumping Plant as a point of diversion, and (2) add a portion of the Westlands Water District service area as an additional place of use. See:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

[26] 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: https://www.federalregister.gov/documents/2016/07/13/2016-16585/recommended-aquatic-life-ambient-water-quality-criterion-for-selenium-in-freshwater

contaminated waters into the California Aqueduct shifts the cleanup and treatment costs from Westlands to other ratepayers. The drought emergency declaration loophole should not allow the transfer of these pollution costs to downstream ratepayers without adequate payment and mitigations.

Thank you for your timely consideration of this matter.

Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League
jminton@pcl.org

Mike Conroy
Executive Director
Pacific Coast Federation of Fishermen's Asso.
mike@ifrfish.org

Bill Jennings
Chairman Executive Director
California Sportfishing Protection Alliance
deltakeep@me.com

Barbara Vlamis,
Executive Director
AquAlliance
barbarav@aqualliance.net

Brandon Dawson
Acting Calif. Director
Sierra Club California
brandon.dawson@sierraclub.org

Tom Stokely
Director
Save California Salmon
tgstoked@gmail.com

Stephen Green
President
Save the American River Association
gsg444@sbcglobal.net

Lloyd G. Carter
President, Board of Directors
California Save Our Streams Council
lgeorgecarter@gmail.com

Caleen Sisk
Chief and Spiritual Leader of the
Winnemem Wintu Tribe
caleenwintu@gmail.com

Pietro Parravano
President
Institute for Fisheries Resources
pietro15@comcast.net

Dr. C. Mark Rockwell, D.C.
President & Conservation VP,
Northern California Council,
Fly Fishers International
mrockwell1945@gmail.com

Conner Everts
Executive Director
Southern California Watershed Alliance
Environmental Water Caucus
connere@gmail.com

Gerald Neuburger
Representative
Delta Fly Fishers
gneuburg@gmail.com

Carolee Krieger
Executive Director
California Water Impact Network
caroleekrieger7@gmail.com

Frank Egger
President
North Coast Rivers Alliance
fegger@pacbell.net

Ron Stork
Senior Policy Advocate
Friends of the River
rstork@friendsoftheriver.org

Larry Collins
Senior Advocate
Crab Boat Owners Association
papaduck8@gmail.com

Barbara Barrigan-Parrilla
Director
Restore the Delta
Barbara@restorethedelta.org