



California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

January 11, 2009

Federico Barajas
U.S. Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95815-1898

Re: Comments on November 26, 2008 Draft "San Luis Unit Drainage Resolution Act"

Dear Mr. Barajas:

The California Water Impact Network (C-WIN) and the California Sportfishing Protection Alliance (CSPA) submit these scoping comments on the above-referenced Draft Legislation and the so-called "collaborative process." We also incorporate the attached C-WIN/CSPA comments to Senator Feinstein of June 23, 2008 as part of our comments on the proposed legislation. In this current letter, our comments focus on flaws we see in the collaborative process. We strongly recommend that the Bureau prepare a supplemental environmental impact statement on the draft legislation. Finally, we put forward an alternative that must be considered as part of the supplemental environmental review if realistic and cost-effective solutions are to be fully disclosed to agency officials and legislators associated with this proposed legislation. Narrowness of purpose does not excuse the Bureau from due diligence in evaluating reasonable and cost-effective solutions to the drainage problems of the western San Joaquin Valley.

The draft legislation to resolve San Luis Unit drainage problems provides that the San Luis Unit Contractors will receive a permanent 9(d) water contract and title to certain federal facilities in exchange for assuming responsibility for drainage that is currently the responsibility of the federal government.

We have not seen substantive changes in the draft legislation over the past several months, despite numerous comments with significant legal, technical and economic issues raised by C-WIN, CSPA and other organizations. We were told at our December meeting with you that you were unable to incorporate most of the comments from the stakeholders because your direction from the Senator was narrow. It is disappointing to us that the process has not resulted in any substantive progress toward a cost effective and sustainable solution to San Luis Unit Drainage problems that include some irrigated agriculture in appropriately fertile areas, as well as a reduction in water service contract deliveries for irrigation. With the framework apparently constrained sharply by Senator Feinstein's guidance, the process doesn't feel very collaborative to us at all. We are very concerned that outcomes of the process have been set ahead of time.

We request that you provide us and other stakeholders in attendance last December with the letter from Senator Feinstein instructing you as to the objective of your legislative effort so we may see the nature of the Senator's direction.

As you know, the National Environmental Policy Act (NEPA) requires analysis prior to legislation or administrative actions. C-WIN and CSPA propose that a Supplemental EIS be prepared.

Despite the lack of meaningful incorporation of concerns expressed about the proposed Legislation, significant new information has become available since the San Luis Drainage Record of Decision (SLDROD) that necessitates a new look at solutions to this problem, **prior to introduction of new legislation or implementation of the SLDROD.** The U.S. Geological Survey's "**Technical Analysis of In-Valley Drainage Management Strategies for the Western San Joaquin Valley**" and the "**Feasibility Report on the San Luis Drainage Feature Re-Evaluation Project**" prepared by Trussell Technologies, Inc., for Reclamation are both documents which illustrate that the solution proposed in this legislation isn't likely to work.

Both reports reflect the reality that alleged drainage solutions proposed in both the Record of Decision and the Reclamation/Westlands "collaborative resolution" process are fraught with risks, are neither economically nor technically feasible, and do not include the only two proven and cost effective methods of reducing drainage -land retirement and selective groundwater pumping. There is a continued lack of a meaningful decision making process that amounts to window dressing for technological fixes that will not address scientific, economic or ecological issues and will therefore be unsustainable. In the words of the USGS:

"The treatment sequence of reuse, reverse osmosis, selenium bio-treatment, and enhanced solar evaporation is unprecedented and untested at the scale needed to meet plan requirements."

"Given the amount of analysis and documentation available from the SJVDP and recent re-evaluations of drainage management, the USGS identifies not a lack of information, but rather a lack of decision analysis tools to enable meeting the combined need of sustaining agriculture, providing drainage service, and minimizing impacts to the environment."

"If the goal is to reduce drainage, then the strategy would be to retire down-gradient water-logged lands. If the goal is to create a sustainable integrated production/habitat system, then up-gradient land retirement emerges as the most logical strategy."

From the standpoint of NEPA and the California Environmental Quality Act (CEQA), these two reports provide significant new information about the technologies under consideration by the Bureau and the San Luis contractors. When significant new information or new alternatives come forward which were not considered as part of the original San Luis Drainage Record of Decision, both federal and state environmental

review regulations state that a supplemental EIR/S should be prepared. Such a supplemental environmental review should reasonably include analysis of alternative proposals from the San Luis Contractors, Reclamation, as well as the C-WIN/CSPA alternative described below.

To assist the Bureau with scoping this supplemental environmental review on the draft legislation, the C-WIN/CSPA alternative would have the goal of putting prime agricultural land back in production and significantly reduce selenium mobilization, discharge, and loading from irrigated agriculture in the western San Joaquin Valley. The alternative would contain the following actions:

1. Retire up-gradient marginal lands with highly seleniferous soils. These lands are presently not scheduled for land retirement, but produce large amounts of seleniferous drainage affecting downslope areas. In some cases, those lands were never considered suitable for irrigation. A meaningful alternative would consider the environmental, economic, and social effects of retiring these lands to remove or drastically reduce natural sources of selenium contamination from the San Joaquin Valley watershed and aquifers.
2. Target groundwater pumping to reduce groundwater levels in waterlogged areas. Over time, this action would facilitate resumption of agricultural production, especially along western riparian lands, and wetlands restoration along the San Joaquin River.
3. Significantly reduce water service contract amounts with water savings going to other non-irrigation beneficial uses, including the environment.

The C-WIN/CSPA alternative would provide a distinct, meaningful, and sustainable alternative as compared with adopted alternatives and options considered through the draft legislation. The San Luis Drainage ROD, as well as the proposed legislation to a lesser extent, would instead retire the most historically productive agricultural lands in order to have a more reliable water supply to irrigate upslope agricultural lands with highly seleniferous soils, thus creating even more toxic seleniferous drainage, some of which is leaching into the confined aquifer below the Corcoran Clay Barrier.

None of the alternatives considered in the draft legislation is “generally consistent” with the alternatives considered in the San Luis Drainage Plan Formulation Report EIS and Record of Decision to avoid the need for a Supplemental EIS, especially in light of the USGS and Trussell Technologies reports which literally throw cold water on the proposed solutions offered so far in the San Luis Drainage ROD and the contractors’ proposal.

Therefore, C-WIN and CSPA urge you to initiate a Supplemental EIS which includes our alternative and others (including land retirement of 379,000 acres as recommended by U.S. Fish and Wildlife Service) prior to further meetings and legislation drafting. This process cannot possibly be legitimately or legally supported without further analysis under NEPA, and a truly collaborative stakeholder process. To take up the supplemental environmental review would be a far better use of agency staff’s time, and

result in a more sustainable and cost effective solution that Congress would have far more confidence in as it considers the draft legislation sometime in the future.

C-WIN and CSPA look forward to participating in a supplemental environmental process, or at a minimum, a rational Decision Analysis Process, as recommended by USGS.

Sincerely,



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Attachment: C-WIN/CSPA Letter to Dianne Feinstein of June 23, 2008

cc: Senator Dianne Feinstein
Representative George Miller
Barack Obama, President Elect
Interested Parties