

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916)3415400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 17512 **PERMIT** 16482 **LICENSE** _____

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706), the California Sportfishing Protection Alliance (1608 Francisco Street, Berkeley, CA 94703; 3536 Rainier Avenue, Stockton, CA 95204) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for ■ change of place of use under **APPLICATION 17512 of the California Department of Water Resources** to accommodate a long-term (16-year) transfer of water held in storage at San Luis Reservoir for use in the service areas of State Water Project contractors Tulare Lake Basin Water Storage District and Empire Westside Irrigation District (among others). Newton Farms and Hansen Ranches/Vista Verde Farms hold lands in both Tulare and Westlands Water District; Newton and Brooks Farms hold lands in both Empire and Westlands Water District. The State Water Board’s notice of this long-term transfer proposal states that DWR’s petition requests long-term addition of lands (from May 1, 2011 through April 30, 2027) identified in Exhibit C of Department of Water Resources’ petition for long-term transfer of water/water rights, submitted to the Board on February 10, 2010.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

- | | |
|-------------------------------------------------------------------------|-------------------------------------|
| 1. not be within the State Water Resources Control Board’s jurisdiction | <input type="checkbox"/> |
| 2. not best serve the public interest | <input checked="" type="checkbox"/> |
| 3. be contrary to law | <input checked="" type="checkbox"/> |
| 4. have an adverse environmental impact | <input checked="" type="checkbox"/> |

State facts, which support the foregoing allegations:

- 1. The proposed long-term transfer would have adverse environmental impacts due to the shift of irrigation water supply from lower to higher soil selenium concentration.**

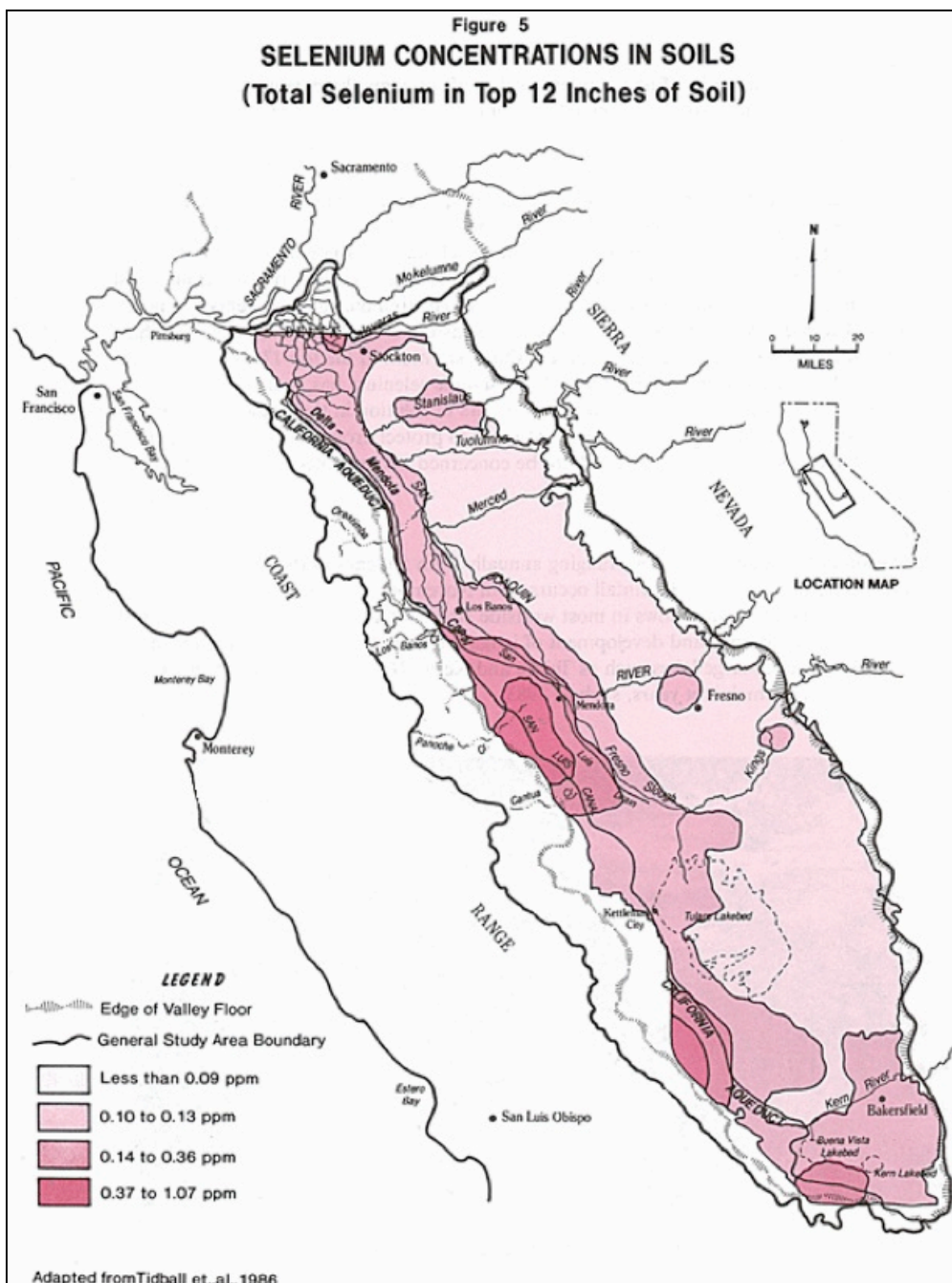
The lands of the west side of the San Joaquin Valley have a range of naturally-occurring soil selenium concentrations. Increased irrigation drainage resulting from this proposed long-term transfer may increase leaching of selenium from Westlands’ soils and may percolate to shallow aquifers and may find its way into the San Joaquin River system. Increased irrigation drainage resulting from this proposed long-term transfer may increase leaching of selenium from Westlands’ soils in other locations and may percolate to deeper aquifers which cities and towns of the San Joaquin Valley use as drinking water sources. These are environmental impacts that are not assessed in the petition’s Initial Study/Negative Declaration.

- a. **The proposed transfer would shift water supply for irrigation from lands with lower concentrations of soil selenium to locations in Westlands Water District where soil selenium concentrations are higher.**

At present, the subject petition is inadequate for the State Water Board to make a reasonable and informed decision on the proposed long-term transfer. The California Department of Water Resources submitted with its petition requesting to change the place of use of water to be delivered under the above referenced application and permit a map showing locations of Empire Westside Irrigation District, Tulare Lake Basin Water Storage District, Westlands Water District, and the locations within Westlands of the farms and ranches where water transferred from Empire and Tulare Lake would be used in Westlands. While helpful, this map fails to disclose the location of the State Water Project's existing place of use in relation to these districts and the lands on which transferred water users. We recommend that the map be revised, or a new map be prepared that delineates the State Water Project service area in relation to the spatial changes in the place of use of State Water Project water

that this proposed long-term transfer would cause. In particular, the specific ranch locations should be placed on the map showing where the water would no longer be applied (in Empire Westside and Tulare Lake Basin's jurisdictions) as well as where it would be applied within Westlands. In our view, the mapped locations should show which ranches are newly added to the SWP's place of use, and which ranch and farmlands have been removed. They should represent "islands" within the larger SWP service area (place of use).

A further issue arises from correlating DWR's submitted map with the 1990 Rainbow Report's Figure 5 (below) showing soil selenium concentrations (in the



top 12 inches of soil, irrespective of groundwater elevations) in the western and southern San Joaquin Valley.

As our organizations review this map in comparison with other landmarks on the petition map, as well as maps showing other landmarks, it appears to us that the Empire Westside and Tulare Lake Basin farms and ranches that would give up SWP deliveries in the transfer are located in areas of the San Joaquin Valley that show soil selenium levels between 0 and 0.13 parts per million (ppm), but mostly these two districts' lands lie in much of the Tulare Lake basin and have soil selenium levels that are at the lower end of this range, according to Figure 5, above.

The farm and ranch sites where the petition's water would be transferred are located in the Westlands Water District, whose lands lie northwest of the transferring districts. Newton Farms' receiving site for the transfer is located due east of Huron (and north of Kettleman City) where soil selenium levels range from 0.10 to 0.13 ppm.

Hansen/Vista Verde Ranches and Brooks Farms' sites are generally located along Interstate 5 near and along State Route 33, and are just north of Cantua Creek. As the enlargement of this section of Figure 5 suggests (in correlation with the submitted Petition map), these farm and ranch sites are located within areas of the western San Joaquin Valley and Westlands Water District where soil selenium concentrations significantly and dramatically increase by a factor of nearly 10 (both current and proposed sites), ranging from 0.14 to 1.07 ppm. The State Water Resources Control Board should insist upon receiving the specific soil selenium characteristics of the actual farm and ranch sites as it evaluates this petition. Our analysis strongly suggests that approval of the long-term transfer petition will shift State Water Project water supplies from a low soil selenium area at its current place of use to a significantly and dramatically higher soil selenium area in its proposed place of use in Westlands Water District. Our organizations believe that the appropriate environmental baseline for this analysis is 2000, before the short-term transfers between these sites mentioned in the Board's Notice of this petition began.

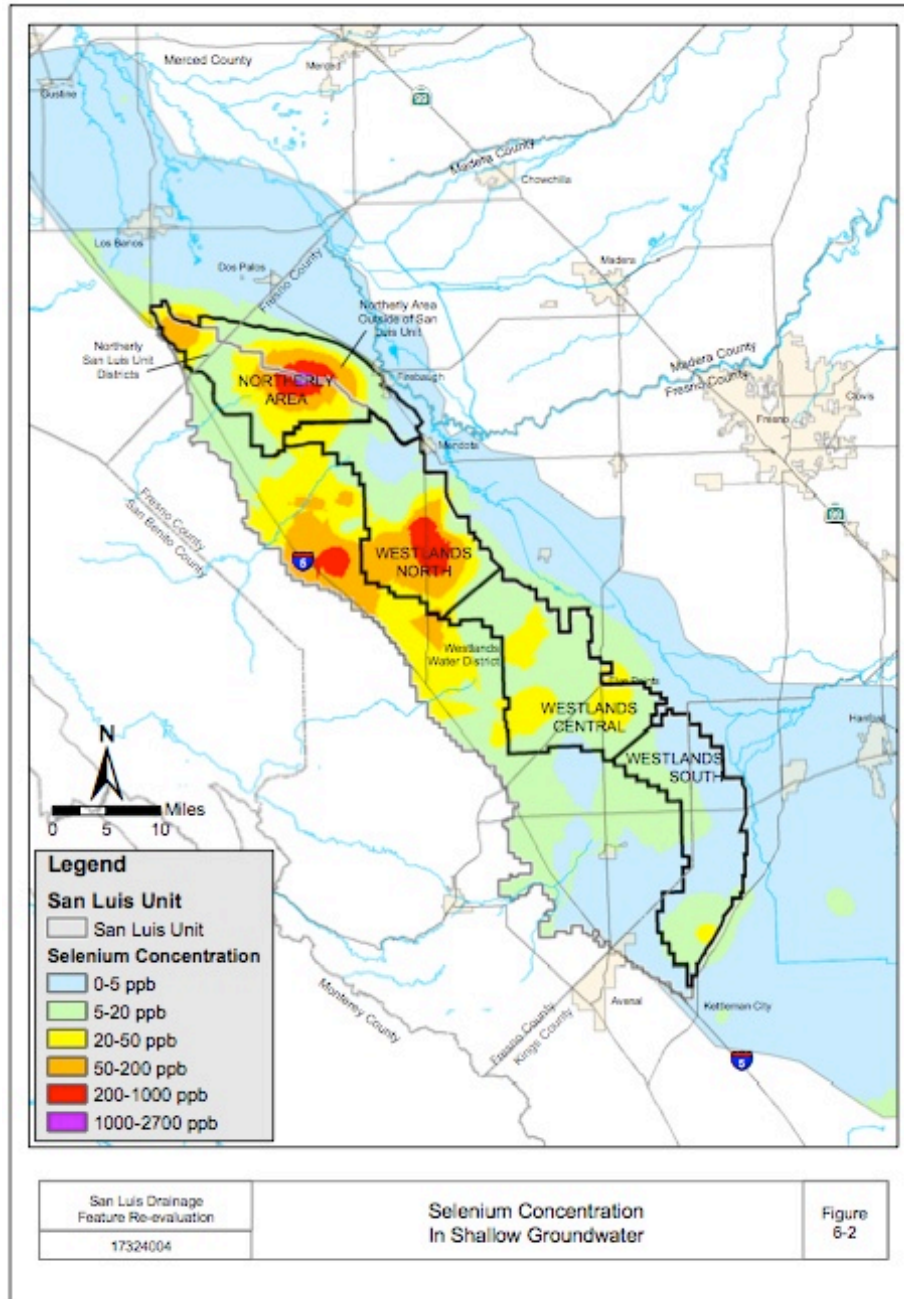


- b. **The proposed transfer would shift water supply for irrigation from lands with undisclosed (but probably lower) selenium concentrations in shallow groundwater, to locations in Westlands Water District where selenium concentrations in shallow groundwater are much higher.**

The petition's depth to groundwater maps and hydrographs are illegible for purposes of a reader's independent assessment of the time period and depths to groundwater the maps and hydrographs are intended to convey. Please post to the State Water Resources Control Board's web site clean and legible versions of these maps as soon as possible, and please inform our organizations that they have been made available to the public.

Based on these maps and hydrographs, the petition's initial study narrative states that "All lands have depths to groundwater of greater than 15 feet of ground surface....Total quantities of water delivered to the drainage problem area will not be affected by this transfer." Because the maps and hydrographs on which these assertions are based are illegible, we cannot yet agree with this finding in the petition. Nowhere in the petition is that drainage problem area delineated in writing or in map form so that interested parties can verify this assertion.

The petition continues, “Lands to receive increased water deliveries due to this transfer have not been shown to have drainage or selenium problems. None of WWD’s drainage is discharged to the San Joaquin River system.” Again, our information and understanding of the situation with soil selenium and drainage patterns in Westlands Water District diverges from this assertion. We understand that Westlands Water District promotes aggressive use of water conservation techniques among its irrigators, yet irrigation water applied to upslope lands in Westlands must go somewhere, and the Initial Study fails to state clearly where upslope irrigation drainage travels, how it is stored, and what its long-term disposition is. This is crucial to assessing cumulative effects of the proposed long-term water transfer.



A more legible shallow groundwater map appeared in 2005 in the *San Luis Drainage Feature Re-Evaluation EIR/EIS*, Map 6-2 (Section Six, page 6-5) showing areas of varying selenium concentrations in shallow groundwater. Because the petition does not map where the State Water Project water supplies are delivered to irrigate lands currently, it is uncertain what precise impacts to shallow groundwater would result from this long-term transfer. However, it appears from Map 6-2 that there is a good chance the current supplies irrigate lands whose selenium concentrations are between 0 and 5 parts per billion (ppb, and shaded in light blue in Map 6-2), since they are located in northwestern Kings and elsewhere Tulare County.

The Newton Farms site east of Huron appears to be located in an area on this map that may contain shallow groundwater with a selenium concentration ranging potentially from 0 to 20 ppb (due to the uncertainty of

whether the site is wholly or partially in either a green or light blue area).

The northernmost portion of Brooks Farms' sites along State Route 33 appear to be potentially located in an area of this map where shallow groundwater is shown to have selenium concentrations ranging from 50 to 200 ppb, while the remaining Brooks Farms and Hansen Ranches sites closer to Interstate 5 appear to be located in areas where shallow groundwater contains selenium concentrations of between 20 and 50 ppb.

Thus, it appears that one result of this proposed long-term transfer would be that up to 10,000 acre-feet of State Water Project supplies would be shifted for 16 years from areas with relatively low selenium concentrations in shallow groundwater to areas with substantially higher selenium concentrations in

shallow groundwater. Given Mr. Schnagl's testimony (above) to the Central Valley Regional Water Quality Control Board last May, the possibility exists that drainage water from the Brooks and Hansen sites could mobilize selenium from high soil concentrations into groundwater with already high concentrations of selenium and flow north to northeast downslope, since the Brooks and Hansen sites are upslope of the "Westlands North" area to which Mr. Schnagl refers.

The USEPA selenium criterion for moving waters is 5 ppb where animals are present, and 50 ppb for drinking water.

2. The proposed long-term transfer is contrary to law.

- a. **At present the petition's environmental documentation is inadequate and contrary to the California Environmental Quality Act.**

1 MS. CREEDON: Ms. Hart, if I could ask Rudy
2 to address a couple of issues?

3 MS. HART: Rudy?

4 MS. CREEDON: There was a lot of discussion
5 about upslope and offsite discharges onto the grasslands
6 project or contributing -- can you elaborate for the
7 board so that they understand what other programs may be
8 in place or will be in place to take care of those
9 issues that are not related to this project, so they
10 know we're just not ignoring it?

11 MR. SCHNAGL: Of course. There were
12 mentions of two types of inflows to the grasslands area
13 that are related to this project. First, the
14 groundwater from the Westlands Water District is moving
15 from that area to the northeast, as I mentioned earlier,
16 and that would flow under the project area. And so that
17 is of concern and -- to the commenters and from our
18 standpoint, any of that water that's captured by the
19 Grassland Bypass Project farmers has to be managed by
20 them and be discharged within their load limits.

21 So they're responsible if they collect it in
22 their subsurface drainage systems and discharge it. So
23 that puts the responsibility on this project for any
24 groundwater that enters their area.

Our organizations remind the State Water Board that During the Central Valley Regional Water Quality Control Board's May 27, 2010, hearing on the selenium Basin Plan Amendment, the need for an investigation of other sources of selenium pollution to the Grasslands Drainage Area, specifically from Westlands Water District (WWD), was discussed. Rudy Schnagl, Senior Scientist for the Central Valley Regional Board, explained that surface and subsurface drainage discharges from WWD flow northeast toward Mud Slough, to other tributaries and to the San Joaquin River. Because of this flow pattern, some of the water that Grasslands Area Farmers manage actually originates in WWD. See the Partial Transcript of Proceeding, Central Valley Regional Water Quality Control Board, Agenda Item No. 10, (May 27th, 2010) pp. 89, herein excerpted.

In the case of northern Westlands lands, drainage in Westlands heads into the Grasslands Drainage Area where it is presently handled by the Grasslands Bypass Project. The Department of Water Resources' assertion (based on the Tulare Lake Basin Water Storage District's Initial Study/Negative Declaration) that the farm and ranch sites proposed to receive long-term transfer of water supplies have no drainage problems is insufficient justification to support approval of this long-term transfer. More thorough analysis is needed. Long-term transfers are subject to the California Environmental Quality Act, and the lack of full disclosure of what occurs with selenium mobilization and irrigation drainage in relation to shallow and deeper groundwater resources in the Initial Study/Negative Declaration means that at present approval of this petition would be contrary to the California Environmental Quality Act.

- b. Approval of the petition as submitted, without the petitioner demonstrating the soil selenium problems and elevated concentrations of selenium in shallow groundwater are not significant, would result in a wasteful and unreasonable use of water under the California Constitution and the California Water Code.**

The petition fails to address the fact that the proposed long-term transfer would shift applied water from low to higher soil selenium lands in the western San Joaquin Valley, as shown above. The burden of proof in the context of this petition lies with the California Department of Water Resources to demonstrate, not merely assert, that applying water from the State Water Project to these lands would not increase risks to public health or result in a wasteful and unreasonable use of water, as required by Article X, Section 2 of the California Constitution, as well as California Water Code section 100.

- 3. The proposed long-term transfer would not best serve the public interest due to the shift of irrigation water supply from lower to higher soil selenium concentration for a period of up to 16 years.**

It is not in the public interest at this time for the State Water Resources Control Board to approve the petition proposing that State Water Project deliveries shift to permanent crops being grown on lands that in all likelihood contribute to poor water quality conditions in the groundwater and surface water systems of the western San Joaquin Valley. The cumulative environmental impacts of this long-term transfer could be considerable, which the Initial Study/Negative Declaration fails to acknowledge. While the transfer's individual impacts may be individually small, it may contribute cumulatively to selenium pollution problems in the western San Joaquin Valley that have been inadequately disclosed and analyzed in the petition. Our organizations believe this meets the fair argument test for triggering preparation of an environmental impact report under the California Environmental Quality Act.

This proposed long-term water transfer has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an

individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects and the effects of reasonably foreseeable probable future projects (see CEQA Guidelines Section 15130 <http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art9.html>).

Court interpretations of CEQA's cumulative impact requirements reveal that an EIR analysis may be found inadequate if it does not include the elements listed in CEQA Guidelines Section 15130; specifically, either a list of closely related past, present, and reasonably foreseeable future projects, or a summary of projections contained in an adopted planning document that is designed to evaluate regional or area-wide conditions. This section must also include a discussion of projects under review by the lead agency and projects under review by other relevant public agencies, using reasonable efforts to discover, disclose, and discuss other related projects.

Under what conditions may this protest be disregarded and dismissed?

None at this time.

A true copy of this protest has been served upon the petitioner:

Nancy Quan, Chief of Program Development and Water Supply and Transfers, California Department of Water Resources, P.O. Box, 942836, Sacramento, CA 94236-0001.

Date October 28, 2010



Tim Strohane, C-WIN
Protestant(s) or Authorized Representative sign here

Date October 28, 2010



Chris Shutes, CSPA
Protestant(s) or Authorized Representative sign here

Date October 28, 2010



Barbara Vlamis, AquAlliance
Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, October 28, 2010, I, Tim Strohane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to each of the following recipients:

**Nancy Quan,
Chief of Program Development and Water Supply and Transfers
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001**



Tim Strohane