

Congress of the United States
Washington, DC 20515

April 14, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We request your views on the Drainage Settlement Agreement (Agreement) signed by the Westlands Water District (Westlands) and the U.S. Department of Justice on September 15, 2015, as well as the current “term sheet” outlining a second, near-final draft Agreement between the Department of the Interior and three other contractors in the San Luis Unit of the Central Valley Project (the Northerly Districts). Each of these two documents, attached, will have significant impacts on water quality and other clean water issues in California.

We are also attaching a Congressional Research Service report, *Westlands Drainage Settlement, H.R. 4366, and “Key Concepts” Identified by DOI*, that notes that key elements are missing from the Westlands Settlement agreement compared to earlier proposals presented by the Department of the Interior. This report reinforces our concerns that environmental laws and enforcement by your agency may be one of the only backstops to deficiencies in the settlement agreement.

At a House Natural Resources Committee hearing in March 2016, Bureau of Reclamation Commissioner Estevan López stated the following: “Westlands, once it takes over drainage, the drainage service itself, they would still be responsible for complying with water quality laws that are overseen by the EPA or the State of California. And so that’s really the protections that we have.”

Given the responsibilities the Environmental Protection Agency (EPA) has in the protection of the environment and enforcement of water quality laws, and the important role that the Interior Department contemplates the EPA to have in the enforcement of this agreement, we are interested in your responses to the following questions:

- 1) Was the EPA consulted during the development of the Westlands Drainage Settlement Agreement? If so, which elements of the settlement reflect that consultation? Has the EPA been consulted in the development of the separate draft Agreement with the Northerly Districts, an agreement which is not a legal settlement?
- 2) In 2007, the EPA wrote to the Bureau of Reclamation stating that “a drainage agreement should be based on clear performance objectives and assure continuous oversight, monitoring, assessment and contingency plans which, if necessary, revisit

terms of the drainage agreement.”¹ The Congressional Research Service report highlights the lack of these protections, but do you believe the 2015 Westlands settlement includes these necessary safeguards?

- 3) The Westlands Drainage Settlement Agreement requires the permanent retirement of 100,000 acres of Westlands farmland. This retirement amount is considerably less than what has previously been recommended by numerous experts and federal agencies. For example, in their March 2007 Record of Decision on the San Luis Drainage Feature Re-evaluation, the Bureau of Reclamation recommended 194,000 acres of land retirement and found 308,000 acres of land retirement to be the National Economic Development Alternative.² The EPA, in its 2007 memo, noted that “land retirement in the Westlands Water District... can be a way of reducing problem drainage.”³ Has the EPA analyzed how the reduced amount of land proposed to be retired in the 2015 Westlands settlement would impact the scale of management, treatment, and disposal of drainage?
- 4) The EPA has previously stated that Westlands’ current contract quantities are “unrealistic given the current and anticipated restraints on deliveries of an oversubscribed Delta system.”⁴ Similarly, the EPA has previously noted that any solution to the drainage issue in the San Luis region, “will have important long-term consequences for the greater San Joaquin region and proposals should be considered in that context.” Has the EPA analyzed what impacts, if any, a permanent export contract for the Westlands Water District may have on water quality, (including groundwater, in the San Joaquin Valley, or on water quality and beneficial uses in the San Francisco Bay-Delta Estuary?
- 5) There is currently legislation pending before Congress (H.R. 4366) that would authorize the Westlands Drainage Settlement Agreement. Has the EPA analyzed how this legislation will impact issues under its jurisdiction? If so, please provide us with a copy of your analysis and your feedback on the Agreement.

We thank you in advance for your response to these critically important questions. Without an adequate drainage plan, agricultural drain water can cause significant harm to California’s environment, migratory birds, and water resources.

¹ Environmental Protection Agency. (2007) Elements of a Drainage Solution for the San Luis Unit Irrigation Contractors, Firebaugh, and Central California Irrigation District (CCID)

²

United States Bureau of Reclamation (2007). San Luis Drainage Feature Re-evaluation Record of Decision. Available at: https://www.usbr.gov/mp/sccao/sld/docs/sld_feature_reeval_rod.pdf

³ Environmental Protection Agency. (2007) Elements of a Drainage Solution for the San Luis Unit Irrigation Contractors, Firebaugh, and Central California Irrigation District (CCID)

⁴ United States Environmental Protection Agency Associate Director Karen Schwinn. April 16, 2008 Letter to United States Bureau of Reclamation.

The environmental devastation that occurred at the Kesterson National Wildlife Refuge due to toxic agricultural drainage is a stark reminder of the need for a well-thought-out drainage solution. Any solution should be developed with input from regulatory agencies, such as the EPA. We appreciate your feedback on this important matter and look forward to your response.

Sincerely,



Jared Huffman
Member of Congress



Jerry McNerney
Member of Congress



Mike Thompson
Member of Congress



Doris Matsui
Member of Congress



Mark DeSaulnier
Member of Congress



John Garamendi
Member of Congress

CC: The Hon. John Laird, California Secretary for Natural Resources
CC: The Hon. Felicia Marcus, State Water Resources Control Board Chair
CC: The Hon. Sally Jewell, Secretary of the Interior