

**Congress of the United States**  
**Washington, DC 20515**

April 14, 2016

President Barack Obama  
White House  
1600 Pennsylvania NW  
Washington, DC 20500

Dear President Obama:

We write to convey our deep concerns about the Drainage Settlement Agreement (Settlement 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). In recent weeks, the Securities and Exchange Commission has separately charged Westlands with misleading investors and using extraordinary accounting transactions — referred to by Westlands' general manager as “a little Enron accounting” — calling into serious question the district's ability to implement the settlement. Because these settlement agreements burden state agencies, retire an inadequate number of acres, likely increase water exports, lack specific performance standards and enforcement tools, and do not engage public comment, we urge you to consult with the Departments of the Interior and Justice to reconsider these terms.

As we have raised repeatedly with those Departments, the Westlands Agreement signed by your administration fails to include key safeguards for the environment and for taxpayers, and falls far short of the principles laid out by the Interior Department earlier in your administration. We are enclosing a recent report from the Congressional Research Service that details crucial deviations from the Interior Department's previous position on resolving the drainage litigation. These shortfalls in the settlement, and the legislation that proposes to authorize it, must be addressed before your administration takes any further steps to finalize or implement this proposal.

As proposed, the Westlands Settlement Agreement will shift obligations from federal to state responsibility and likely extend exports from an oversubscribed California Delta system that is close to ecological collapse. The Bureau has made it explicit that the California State Water Resources Control Board (Board) would be responsible for monitoring the implementation of a drainage plan by Westlands, but it is unclear if the Board is prepared to properly enforce and monitor the implementation of any such plan.

At the federal level, the Bureau has mentioned that the Environmental Protection Agency (EPA) is best suited to provide oversight of the implementation of the drainage settlement moving forward. 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." For these reasons, we are also contacting the EPA to inquire about its analysis of these Agreements considering its role in protecting the environment and enforcing water quality laws. Our letter to the EPA is also attached, and we recommend that the appropriate federal agencies avoid taking any irreversible action on this matter until those questions are answered by the EPA.

The Westlands 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 2010 the Commissioner of the Bureau of Reclamation recommended permanent retirement of 200,000 acres within Westlands. Similarly, we believe a larger land retirement is necessary to prevent harm from agricultural drain water to California's water quality and environment.

The Westlands Settlement Agreement also appears to promise a permanent water export contract to Westlands of 895,000 acre-feet per year, subject to certain terms and conditions. It also creates the possibility of Westlands obtaining an additional 200,000 acre-feet from the Central Valley Project based solely on the discretion of Reclamation in those years when the water is technically "available." The Environmental Protection Agency has stated that Westlands' current contract quantities are "unrealistic given the current and anticipated restraints on deliveries of an oversubscribed Delta system."<sup>1</sup> We believe a permanent export contract of 895,000 acre-feet will negatively impact water quality, beneficial uses, and livelihoods that all depend upon a healthy Delta ecosystem.

Previous federal proposals to settle drainage issues within the San Luis Unit service area included specific performance standards and monitoring requirements that protected the public and environment of the San Joaquin Valley and Delta. The current Westlands Settlement Agreement appears to have no such standards or requirements beyond a general requirement to comply with applicable federal and state laws. Furthermore, the Westlands Settlement Agreement does not identify how the U.S. Government, state of California, or other parties will determine whether Westlands is fulfilling or has fulfilled its drainage obligations or procedures to settle a disagreement over compliance. Considering recent news of a fine levied by the Securities Exchange Commission on Westlands due to its conduct in misleading investors about its financial condition as it issued a \$77 million bond offering, an absence of specific performance standards and enforcement tools in the face of these unethical actions makes the current settlement terms even more questionable, if not untenable.

In addition to the Westlands Drainage Settlement Agreement, the federal government is negotiating a separate agreement with the so-called "Northerly Areas" within the San Luis Unit of the Central Valley Project, which could affect drainage discharges into Mud Slough and the San Joaquin River. Negotiators for the Federal Agencies claim that the Northerly Districts promise that drainage discharges to Mud Slough and the San Joaquin River will end in a few years, yet they admit that there is nothing in the Agreement that actually requires a complete cessation and no consequences have been incorporated within the Agreement in the event such

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<sup>1</sup> United States Environmental Protection Agency Associate Director Karen Schwinn. April 16, 2008 Letter to United States Bureau of Reclamation.

deadlines are missed and discharges continue. Federal agencies must correct these deficiencies before any Agreement is approved or finalized, so that there is a new, enforceable requirement to end all discharges to the River and consequences if the requirement is not met.

There is currently legislation pending before Congress (H.R. 4366) that would authorize the Westlands Drainage Settlement Agreement. The Departments of the Interior and Justice have been negotiating a final Settlement Agreement with the other San Luis Unit districts and we believe these negotiations are expected to conclude soon, if they haven't already. We have been informed that once these negotiations are finalized, the language of the original legislation authorizing the Westlands Drainage Settlement Agreement will be changed to reflect both settlements. Since the Northerly Areas Agreement is not related to any pending litigation, addresses issues with major potential impacts on the Delta environment and future federal contract terms, we believe a draft of the Agreement should be provided to the potentially impacted public for review and comment before the Agreement has been approved and signed by federal agencies and incorporated into corresponding legislation.

Without an adequate drainage plan, agricultural drain water can cause significant harm to California's public health, communities, environment, migratory birds and water resources. We are urging you to consult with the Departments of the Interior and Justice to reconsider the Westlands and Northerly Areas Drainage Settlement agreements. Any solution must include terms that balance the needs of Westlands, the Northerly Areas, and potentially impacted communities and should be developed with input from several regulatory agencies, including the State Water Resources Control Board and EPA, that will monitor and mitigate these impacts. We appreciate your attention to this important matter and look forward to working with your Administration toward a long-term resolution of drainage issues within the State of California.

Sincerely,



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JERRY MCNERNEY  
Member of Congress



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JARED HUFFMAN  
Member of Congress



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MIKE THOMPSON  
Member of Congress



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DORIS MATSUI  
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