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March 2, 2010

Russ Freeman
Westlands Water District
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RE: Scoping Comments for Westlands Water District [Westlands] Proposed “Conveyance of Nonproject Groundwater from the Canal side project using the California Aqueduct”¹. The project proposes to discharge up to 100,000 acre feet of groundwater into the State Water Project California Aqueduct, a Drinking Water Supply for Approximately 20 Million People.

Thank you for the opportunity to comment on the proposed scope of the Environmental Impact Report [EIR] to be prepared by Westlands Water District [Westlands]. Westlands, a federal Central Valley Project contractor, proposes to use up to 100,000 acre feet of the capacity of the State Water Project [SWP] California Aqueduct, operated by the California Department of Water Resources, to transport groundwater. We understand from the proposed project description that “Westlands’ laterals and private pipelines will pump well water directly into the SWP California Aqueduct in both Fresno and Kings Counties within Westlands boundaries.” Our three comments, explained below, are that

Westlands is not the appropriate Lead Agency for this project, the EIR has a wide range of complex water-quality and water-management issues to evaluate, and the trend of piecemeal evaluation of the impacts of such projects needs to stop.

DWR should be the Lead Agency Rather than Westlands:

Our first comment is that we object to Westlands as the Lead Agency. California Environmental Quality Act [CEQA] Guidelines section 15367 and Section 15051 require that the California Department of Water Resources, as the operator of the California Aqueduct and who has responsibility to protect the public health and safety and the financial security of bondholders with respect to the aqueduct, is the more appropriate lead agency. Providing 100,000 acre feet of conveyance capacity to Westlands raises issues about how this project action may have impacts to other State Water Project Contractors.

CEQA requires DWR, the only entity with the requisite statewide authority and expertise, to assume its proper role as lead agency. In *PCL v DWR*, the court found that DWR's attempt to delegate that authority impermissibly insulates the department from "public awareness and possible reaction to the individual members' environmental and economic values." (*Planning and Conservation League et al. v Department of Water Resources* (2000) 83 Cal.App.4th 892, 907, citing *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770, 779.)

Further, an environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to ensure informed decision making and to expose the decision-making process to public scrutiny. (*No Oil, Inc. et al. v. City of Los Angeles et al.* (1974) 13 Cal.3d 68, 86; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123.) The EIR is, as the courts have said repeatedly, the "heart of CEQA, an environmental alarm bell, and a document of accountability." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 [*Laurel Heights*].) The potential impacts from using the State Water Project's California Aqueduct to transport Westlands ground water supplies to various counties needs the objectivity and expertise of an agency with statewide experience in analyzing and disclosing environmental impacts. The quality of this groundwater that is the subject of the proposed transfer is known to be severely degraded with contaminants.² The underlying premise of the transfer—that high quality water supplies in the State Water Project may be degraded to make polluted water marketable for a private interest—is against the public interest and should be thoroughly assessed by means of an independent objective and complete evaluation in an EIR. The potential impacts to drinking water, treatment costs, aquatic impacts, and sediment loads within the California Aqueduct have far reaching implications to millions of Californians. This environmental analysis needs to have a statewide circulation and a statewide audience.

Additionally, the California Aqueduct is a "water of the State and water of the Nation" and, consequently, Westland's would need an NPDES permit (National Discharge Elimination System) permit under the federal Clean Water Act to discharge pollutants (i.e., selenium, boron, salt, etc.) into the aqueduct. Any environmental document must disclose and discuss all applicable permits.

Westlands, although a public agency, represents the corporate interests of approximately 350 common ownerships.³ Westlands has not demonstrated the credibility and objectivity needed to carry out the analysis and environmental impacts associated with this project. It has consistently acted in its corporate landowner interests against the public interest. For example, it recently sought a waiver from environmental laws and water right laws so that it could jump to the head of the water supply line

during the third year of a drought despite its junior water contract status. This corporate self interest is again on display in this project. For example the stated purpose for using this publicly financed conveyance system is to provide Westlands, a federal contractor, with a more efficient transport system. What is left unsaid is that corporate interests within Westlands will receive a benefit from blending their contaminated groundwater with cleaner supplies. What is patently unclear is how this action will benefit the public interest and public drinking water supplies.

The EIR Must Consider a Complex Range of Water Quality and Water Management Impacts:

The EIR should include evaluation of the proposed action's impact on the following:

1. The SWP water supplies caused by the introduction of degraded groundwater into the California Aqueduct.
2. The variability over time and among wells in the quality of ground water, and changing impacts on the California Aqueduct over time.
3. The quantitative assessment on California's water supply, including increased treatment costs and public health costs, due to increases in selenium, salts, boron and other contaminants that will persist during the twenty five year term of the proposed action.
4. Subsidence impacts to the aqueduct from pumping up to 100,000 acre feet annually.
5. The bioaccumulation of contaminants in the sediments of the aqueduct.
6. The precedent-setting significance of degrading the quality of water in the California Aqueduct.

The EIR Must Stop the Trend of Piecemeal Evaluation of Impacts and Include Broad Assessment of this Project in Relation to Westlands' Past and Current Uses of State Water Facilities:

There is a disturbing trend of piecemeal environmental analysis of the use by Westlands of the California Aqueduct for conveyance non project water. Typically, negative declarations or exemptions from CEQA have been issued by Westlands, or at the behest of Westlands, for their benefit. Typically, objections are brushed aside or documents are not made available to the public in a timely manner for review and comment. Most of these water transfers and exchanges in and out of Westlands could not take place without the use of the SWP California Aqueduct. Two specific examples illustrate the piecemeal actions and analysis:

1. **Discharging Groundwater into the California Aqueduct for Westlands Use or Storage in Kern County:** At different times Westlands has discharged contaminated groundwater into the California Aqueduct for use in the district or for storage in Kern County.⁴ Despite elevated levels of selenium, salt and boron, dumping this groundwater into a canal that serves drinking water for approximately 20 million people was deemed to have no environmental impact.⁵ In 1995, however, previous efforts by Westlands' to use the California Aqueduct to pump in lower quality groundwater to be blended with higher quality Delta water were halted due to concerns by DWR and other agencies, that Westlands' groundwater could degrade the water quality in the canal.⁶ Recently Westlands declared that this use of the California Aqueduct for non-project water conveyance would have not any environmental impacts.⁷

2. **Transfer of State Water Project Water to Westlands:** On December 29, 2009, Tulare Lake Basin Water Storage District concluded that transfer of SWP water to Westlands of up to 10,000 acre feet for 15 years would have no environmental impact. In fact, since 2004, Westlands has taken advantage of temporary rules to get around the law requiring disclosure of environmental impacts from transferring SWP water to Westlands and substituting other surface water or groundwater. This had been done despite State Water Resources Control Board rules that “temporary change orders” should be temporary. For approximately the last five years, environmental disclosure rules have been waived using the temporary change provisions. Protests by the Central Delta Water Agency were brushed aside and the cited impacts to the Delta, other SWP project users and increased drainage pollution to the groundwater and San Joaquin River were dismissed because the transfers were for only one year.⁸

In response to these protests the SWRCB stated, “With regard to the delivery of water to WWD pursuant to this Order, the State Water Board understands that agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River. However, this process would take up to 10 to 20 years for water applied today to accrete to the San Joaquin River and be measured within the southern Delta.”⁹

The Negative Declaration, issued four days after Christmas 2009, sanctioned this transfer of SWP water to Westlands for 15 years. No analysis of the impacts was provided. These water transfers of SWP project water, other transfers of water from surrounding districts, and application of water to toxic lands in Westlands has been demonstrated to create pollution.¹⁰ And yet the CEQA documents failed to disclose and analyzed these aspects. Irrigators within Westlands indicated they needed this extra water because their water contracts only allow delivery of 1.3 AF per acre under their CVP contracts and they have switched from cotton to almond orchards which demand at least 4 AF per acre.¹¹

All of these recent actions have been approved by waiving the California Environmental Policy Act, or declaring that the water transfers provide greater efficiency, and therefore claiming that environmental disclosure rules are unnecessary. This proposed action of allowing up to 100,000 acre feet of groundwater to be discharged into the California Aqueduct annually will export pollution costs from Westlands to other water districts or drinking-water suppliers and result in a direct public health risk. Assurances that the groundwater quality does not exceed drinking water standards will not adequately protect public health because many contaminants, such as the most commonly used pesticides in the area, do not have drinking water standards. Nor are many of the pesticide contaminants even monitored. These risks and a full environmental impact analysis need to be included in this environmental analysis.

Because of these concerns, we urge the Department of Water Resources to be the Lead Agency for this Environmental Impact Report. This is the only way that decision makers can be fully informed as to the environmental impacts of discharging up to 100,000 acre feet of Westlands groundwater into the California State Aqueduct, which supplies drinking water to approximately 20 million people. The cumulative impacts of the wide range of uses of SWP water and SWP Conveyance facilities by Westlands

must be analyzed in this EIS. The definition of the scope of this project has been artificially narrowed to avoid full disclosure and informed decision making.

Respectfully submitted,



Jim Metropulos
Senior Advocate
Sierra Club California



Steven L. Evans
Conservation Director
Friends of the River



Barbara Barrigan-Parrilla
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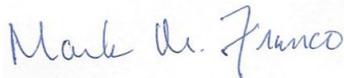
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Gary Bobker, The Bay Institute

Kate Poole, NRDC

Trent Orr, Earthjustice

Antonio Rossmann, Rossmann and Moore

Ryan Alexander, Taxpayers for Common Sense

Interested Parties

ENDNOTES

¹ See: Notice of Preparation, State Clearinghouse February 1, 2010.
www.westlandswater.org/wwd/.../about.asp?...About%20the%20Project

² Final WQ Data Report for the WWD 2008 Pump-In Project 09/25/2008 (PDF, 40 KB). Description: DWR Bryte Lab data final water quality report for the Westland's
...www.water.ca.gov/publications/browse.cfm?letter=F - Cached

³ Nicholas Brozovic et. al. "Trading Activity In An Informal Agricultural Water Market: An Example From California," Department Of Agricultural and Resource Economics University of California 2001. Pg 1.

⁴ See DWR WWD 2008"Pump-In" Project. DWR WATER QUALITY SUMMARY 2008 WWD SWP PUMP-IN PROJECT

⁵ Final WQ Data Report for the WWD 2008 Pump-In Project 09/25/2008 (PDF, 40 KB). Description: DWR Bryte Lab data final water quality report for the Westland's
...www.water.ca.gov/publications/browse.cfm?letter=F - Cached

⁶ From Westlands Water District March 2009 Report, "Deep Groundwater Conditions Report December 2008". Page 8.

Also see DWR Bulletin 132-95 Westlands Water District--"Turn-In" Agreements. In August 1994, the Department signed two "turn-in" agreements with Westlands Water District. Under the terms of these agreements, WWD could pump up to 100,000 acre-feet of ground water directly into the California Aqueduct from WWD's wells located alongside the aqueduct. In addition, WWD could also pump up to 50,000 acre-feet of ground water into the Mendota Pool for conveyance to the California Aqueduct through WWD's Lateral 7."

"During the term of these agreements, March 1994 through February 1995, 16,000 acre-feet of water was conveyed from the Mendota Pool to the California Aqueduct, through Lateral 7, and 84,600 acre-feet of water was pumped directly into the California Aqueduct. The total, 100,600 acre-feet was conveyed by the Department to Reaches 5 through 7 to be used within WWD's service area."

"Westlands Water District--Kings River Water. A letter agreement signed May 12, 1995, between the Department and Westlands Water District approved the acceptance into the California Aqueduct of up to 10,000 acre-feet of Kings River Water for delivery to WWD through Reaches 5, 6, and 7 of the California Aqueduct. This nonproject water will be made available to WWD through an agreement between WWD and the Kings River Water Association. The water will be released from Pine Flat Reservoir and will flow to the Mendota Pool via the Kings River and Fresno Slough. WWD will then convey the water from the Mendota Pool to the California Aqueduct through WWD's Lateral 7."

Also see: Westlands Water District. 1995. Conveyance of Nonproject Groundwater from the Mendota Pool Area Using the California Aqueduct, Draft Environmental Impact Report, Westlands Water District. pp. 303

⁷ State Clearinghouse Number 2009091128, September 30, 2009. "Westlands WD proposes to divert up to 50,000 AF of 2009-10 Central Valley Project supplies for delivery to Semitropic Water Storage

District's [SWSD] banking facilities in Kern County prior to March 1, 2010. SWSD is a member of Kern County Water Agency and partial owner of the Kern Water Bank.

⁸ SWRCB Order WR 2009-0026-DWR page 2.

⁹ Ibid. page 2.

¹⁰ According to the December 2000 United States Geological Survey Open File Report 00-416, even if irrigation of drainage problem areas were halted today, it would take 63 to 300 years to drain contaminated water from the Western San Joaquin Valley's aquifer underlying contaminated soils in WWD. The report reiterates the findings in the Rainbow Report [USGS, Gilliom et.al. 1989] that a 950 thousand acre highly toxic region – more toxic than currently exists - in the Western San Joaquin Valley within the next 40 years will result from continued irrigation with CVP water. To a layperson, although technically not accurate, this reality is tantamount to the Bureau using scarce developed water resources to create a massive, 950,000 acre Superfund Site in the Western San Joaquin Valley. This strongly supports retirement of affected lands and non-irrigation covenants on these toxic lands.

¹¹ Letter from Robert Cooke, Chief, State Water Project Analysis Office to Victoria Whitney, Chief Division of Water Rights, SWRCB. May 7, 2008, "Petition for Temporary Change to Allow the Transfer of State Water Project Water from the Tulare Lake Basin Water Storage District to Westlands Water District in the U.S. Bureau of Reclamation's service area". Page 4.