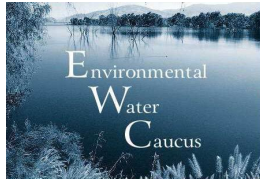
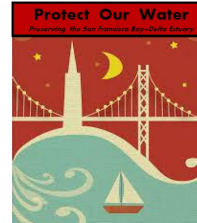




AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS



CA Save Our Streams Council



May 6, 2022

Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

Toni Atkins, President pro Tempore
California State Senate
State Capitol
Sacramento, CA 95814

Anthony Rendon, Speaker
California State Assembly
State Capitol
Sacramento, CA 95814

Re: Drought-Driven Voluntary Agreements and Legal Loopholes Threaten our Salmon Heritage, the Environment, and Community Health.

Dear Governor Newsom:

We are gravely concerned about the environmental and socio-economic impacts of the Voluntary Agreements and the growing lack of compliance with CEQA and other water protections. These actions implemented under the guise of the drought emergency will increase risks of irreversible damage to our natural heritage and our communities.

Voluntary Agreements Fail to Follow Federal and State Law: Using Taxpayer Dollars to Fund this Undertaking is Unconscionable

We object to any taxpayer funding for the proposed Voluntary Agreements (VAs). These back-room VAs do not meet legal protections for the environment, fail to protect the health of the Bay-Delta estuary, its native fish and wildlife, and the jobs and communities that depend on its health and exacerbate economic inequality.¹

Unless action is taken to enforce existing law, your legacy will likely be the destruction of California's salmon heritage for your children and generations to come. There is still time to stop investing taxpayer dollars in more dry holes and, instead, improve protections of our environment and the communities that rely upon healthy water flows through improved adherence to our environmental protections, including a greater focus on monitoring and enforcement.

We agree with you that, "*We need more tools in the damn tool kit.*" We urge you to not implement archaic solutions promoted by David Bernhardt, Westlands' former lobbyist, and by the Trump administration.² Instead, your leadership is needed to invest in real water solutions that produce water at a reasonable cost to ratepayers, while still meeting federal and state water quality and environmental protections. Your leadership is also needed to preserve the heritage and way of life of the tribes who depend on rivers and fisheries and who have for centuries lived with a balanced relationship between oceans, rivers, creeks, lakes springs, marshes and the flora, fauna and wildlife that depend on them. We cannot continue to take more and more water and with every drought merely pump more groundwater, which damages aquifers, harms third-parties, causes subsidence, and alters rights to groundwater when artificial recharge is used.³

The Pacific Institute in April 2022 reported that urban water-use efficiency improvements could reduce statewide urban water use by 2.0 million to 3.1 million acre-feet per year (AFY). The reuse potential of municipal wastewater is 1.8 million to 2.1 million AFY, and the stormwater capture potential is 580,000 AFY in a dry year to as much as 3.0 million AFY in a wet year.⁴

¹ See: <https://www.latimes.com/california/story/2022-04-01/a-2-6-billion-drought-deal-is-drawing-fire-in-california> And: <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

² <https://www.latimes.com/business/story/2019-11-15/interior-secretary-westlands-water-deal> "*Is the department's award of a lucrative permanent water contract to Westlands, Bernhardt's former client, just a coincidence? Let's examine just how influential Westlands is in Washington and what benefits it gains from the contract — which is facilitated by a law that Bernhardt helped to write as a Westlands lobbyist.*" Also See Trump, Scottsdale, USA - 19 Oct 2018 Donald Trump, Kevin McCarthy, Devin Nunes, Jeff Denham, Tom McClintock. President Donald Trump signs a "Presidential Memorandum Promoting the Reliable Supply and Delivery of Water in the West," during a ceremony, in Scottsdale, Arizona.

³ Gosselin, Paul, and Valerie Kincaid, 2020. Memo for the Vina Groundwater Sustainability Agency, Legal Implications of Potential Projects, and Management Actions." A project proponent maintains the right to water that is recharged whether it results from recharge projects or groundwater demand reduction projects (e.g., conservation, recycling). If a project uses or obtains a surface water supply and recharges into the aquifer, the project proponent would have a legal right to the recharged water. Water does not legally become "common" or "native" supply available to overlying groundwater right holders unless it is abandoned by the project proponent. (Los Angeles v. Glendale (1943) 23 Cal.2d 68, 76-78; Los Angeles v. San Fernando (1975) 14 Cal.3d 199, 258-60; Stevens v. Oakdale Irrigation District (1939) 13 Cal.2d 343, 352-43; Crane v. Stevinson (1936) 5 Cal. 2d 387, 398.)"

⁴ ***Ibid.*** California's Untapped Urban Water Potential 2022

Metropolitan Water District of Southern California, one of the largest water districts taking Northern California water supplies, has other less costly alternatives to water supplies as documented in the Pacific Institute’s report. And using tax dollars to further subsidize Westlands Water District (Westlands), the nation’s largest federal irrigation district—which is already boasting about how taxpayers are paying their water bills—is unconscionable.⁵ Your VA with the largest water exporters to “manage” recurring droughts merely entrenches the status quo: please do not merely declare an emergency and then violate water quality standards and environmental protections. Rather we urge you to invest in real water solutions like those reported in April 2022, by the Pacific Institute,⁶ instead of recklessly spending more taxpayer dollars on building empty dams and other damaging diversions.⁷

Please correct the inequities created by this lopsided water agreement. Residents of South-Central Los Angeles already pay much of the Beverly Hills’ water bills, and now if implemented, the VAs would ensure that all state taxpayers will pay for Westlands’ and MWD’s environmental damage rather than pay these costs, as they are supposed to under existing federal and state law.⁸ Furthermore, the proposed VAs fail to comply with the Central Valley Project Improvement Act, which requires the federal contractors to pay for their environmental damages rather than shift these costs to taxpayers. We urge you to seek repayment of more than \$400 million dollars in fish and wildlife mitigation costs owed by Westlands and other federal contractors rather than give them even more taxpayer subsidies for the damages caused.⁹

Environmental Protection Loopholes Put the Environment and Communities at Risk

Besides the failure of the so-called Voluntary Agreements to meet federal and state law, we also want to discuss environmental protection loopholes that benefit a few of the richest irrigators in the nation.¹⁰ For example, the recent Executive Drought Declarations have created loopholes to California Environmental

⁵ Letter Westlands’ President Ryan Ferguson (#668), April 28, 2022, <https://wwd.ca.gov/wwd-notice/letter-from-president-ryan-ferguson-668/>

⁶ <https://pacinst.org/publication/california-urban-water-supply-potential-2022/> *The Untapped Potential of California’s Urban Water Supply: Water Efficiency, Water Reuse, and Stormwater Capture*, April 2022.

⁷ <https://www.mercurynews.com/2022/04/29/newsom-desalination-project-should-be-approved-we-need-more-damn-tools-in-the-toolkit/>

⁸ <https://apnews.com/article/business-environment-and-nature-california-environment-fresno-02194469a3b70dbcee20e00802804819> “This was an effort to basically steal public resources and put them into private pockets,” said Stephan Volker, an attorney for the Winnemem Wintu Tribe, the North Coast Rivers Alliance and several other groups. See also <https://www.hcn.org/articles/south-water-judge-rejects-trump-era-water-contract-in-a-win-for-tribes> <https://calsport.org/news/innews/fresno-judge-rejects-westlands-water-districts-proposed-permanent-water-contract/>

⁹ https://calsport.org/news/wp-content/uploads/PCFFA-CSPA-2021-02-16-CVPIA-BERNHARDT_RESCISSION_REQUEST-Haaland-Biden.pdf &

¹⁰ Letter from President Ryan Ferguson (#668), April 28, 2022. <https://wwd.ca.gov/wwd-notice/letter-from-president-ryan-ferguson-668/>

Additionally, in March 2022, Westlands signed the Memorandum of Understanding to advance voluntary agreements as an alternative to the unimpaired flow standard proposed for amendment of the Bay-Delta Water Quality Control Plan. These voluntary agreements represent our best hope of maintaining water supplies restored by the 2019 biological opinions, and they represent a paradigm shift in how water resources will be managed.... Westlands was a leader in negotiating the voluntary agreements and is committed to advancing them as envisioned.

Quality Act (CEQA) review that arbitrarily benefit Westlands while harming other beneficial uses. We outline two projects below where these CEQA exemptions have been used and could have significant adverse consequences to the environment and public health. The two projects described below are examples of projects that should be required to conduct thorough environmental reviews and include adequate mitigation, monitoring, and enforcement.

1. California Aqueduct Pump-Ins Discharge Contaminants to Downstream Uses.

On February 24, 2022, Westlands Water District (Westlands) filed a Notice of Exemption from CEQA for a 1-year groundwater pump-in project into the California Aqueduct (pump-in project)¹¹, which in previous drought years had significant impacts on downstream beneficial uses, including fish and wildlife, refuge water supplies and human health.¹² Selenium and arsenic are contaminants of particular concern. Additional potential contaminants are 1,2,3-Trichloropropane (TCP), and perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS).¹³ Westlands justifies exempting themselves from these environmental protection laws citing your May 10, 2021, Proclamation of a State Drought Emergency¹⁴ and the subsequent approval from the Department of Water Resources (DWR). The CEQA exemption for the Westlands pump-in project for 2022 is not appropriate without additional assurances, monitoring, and enforcement actions to protect the public and fish and wildlife resources that rely upon water from the Aqueduct downstream of Westlands. This includes the ratepayers throughout the MWD service area and low-income communities in the Central Valley who rely upon this water.

We asked that the current federal Warren Act Contract (including an Exhibit D), and a current agreement between DWR and Westlands for introduction of local groundwater into the Aqueduct (that includes an Attachment 1) be provided to the public. We received a copy of the signed Agreement between DWR and Westlands via a Public Records Request on April 29, 2022. This Agreement covers the pump-in project thru May 31, 2022. A new Agreement and Warren Act Contract are required to authorize these groundwater inputs into the Aqueduct starting June 1, 2022. We ask that this Agreement and the Warren Act Contract be made available to the public for comment prior to completion. Westlands should not be allowed to discharge their contaminated groundwater into the Aqueduct and thereby send these contaminants downstream. Furthermore, Westlands anticipates 630,000 acre-feet of groundwater will be

¹¹ See: <https://ceqanet.opr.ca.gov/2022020570>

¹² See Coalition comments on Westlands pump-in project, 9.30.2020: https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020_WWD-SLC-Pump-in-2020-IS_ND_-Cal-Aqueduct-Corrected.pdf

¹³ Ibid.

¹⁴ See: <https://www.gov.ca.gov/2021/05/10/governor-newsom-expands-drought-emergency-to-klamath-river-sacramento-san-joaquin-delta-and-tulare-lake-watershed-counties/>

On April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, Governor Gavin Newsom issued State of Emergency Proclamations (Governor's Proclamations) in response to severe drought conditions across California, including the Central Valley. The Governor's Proclamations require DWR to expeditiously consider requests to convey water to areas of need where hydrology and other conditions allow. As of current, the Governor's Proclamations are still in place and remain in effect. Government Code section 8571 authorizes the Governor to suspend certain regulatory requirements, including CEQA, under emergency conditions. The Governor's Proclamations order the State "to expeditiously consider requests to move water to areas of need, including requests involving voluntary water transfers, forbearance agreements, water exchanges, or other means," and suspends CEQA for purposes of carrying out or approving this and other directives.

pumped and the subbasin could experience an average groundwater level decline of 40 feet.¹⁵ The resulting subsidence impacts on others needs to be disclosed.

We are encouraged to see some additional terms and conditions in the current Agreement between DWR and Westlands. Those additions include:

- Only wells further than 2 miles away from the Aqueduct can participate in the program (to reduce impacts of subsidence).
- Groundwater inputs into the Aqueduct cannot exceed flow in the Aqueduct.
- Rapid turnaround of water quality sampling for Table 5 and Lateral 7 sampling (one week but no greater than 14 days).

These are a start, but additional monitoring, mitigation and enforcement actions are needed to ensure that downstream beneficial uses are protected. Those measures were highlighted in our May 25, 2021, letter to your office and linked below.¹⁶

Further, the CEQA exemption loopholes create avenues to evade water quality protections with the Federal Clean Water Act (CWA) and State Porter Cologne Water Quality Control Act. The USEPA (EPA) noted in comments submitted for the Westlands groundwater pump-ins in 2010 that the discharge of contaminated groundwater from Westlands with potentially high salt, boron, chromium, arsenic, selenium, and other metals would be subject to the National Pollution Discharged Elimination System (NPDES) permitting requirements, pursuant to the federal Clean Water Act. Further, EPA noted that “Permits will need to be designed to ensure the discharges do not cause or contribute to exceedances of applicable State water quality standards or degradation of designated beneficial uses.”¹⁷

In addition, we note that no Waste Discharge Requirements (WDRs) have been issued for these projects. WDRs established pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13263) permit discharges that “could affect the quality of waters of the state” – both surface and groundwater. These permits shall take into consideration beneficial uses to be protected, water quality objectives required for that purpose, other waste discharges, and the need to prevent nuisance. Some WDRs can also serve as a CWA NPDES permit (Wat. Code, § 13377; Chapter 5.5, Wat. Code, § 13370 et seq.).¹⁸

Without the necessary permits, the public is precluded from analyzing the permit and conditions to ensure protection and non-degradation of water supplies under the NPDES or WDR permit and potential mitigation measures. We note that almost 40% of the discharge points identified in Table 1 of the September 2020 IS/ND for the pump-in project¹⁹ had at least one well sample that exceeded drinking water MCLs identified in the previous Water Quality Monitoring Plans for the constituents Arsenic, Selenium, or salts. This information is summarized in Appendix A to our September 30, 2020, comments

¹⁵ See WWD April Notice <https://wwd.ca.gov/wwd-notice/april-monthly-notice-667/> April 21, 2022.

¹⁶ Ibid.

¹⁷ See: <http://calsport.org/news/wp-content/uploads/EPA-comments-Westlands-WD-EIR-NOP-3-4-10.pdf>

¹⁸ See: https://www.waterboards.ca.gov/board_reference/docs/wq_law.pdf

¹⁹ See: <https://ceqanet.opr.ca.gov/2020090040/2>

on the IS/ND for the pump-in project.²⁰ Constituents such as selenium bioaccumulate in the food chain and thus have amplifying the impacts on the environment (DWR 2016, 2017).²¹

2. Westlands Injection of Water into Contaminated Aquifers Likely Spreads Contaminants to Surface Waters Impacting Fish and Wildlife.

Our organizations wrote DWR and others on October 18, 2021, regarding the failure of Westlands' Agricultural Aquifer Storage and Recovery (ASR) Project in Broadview Water District to comply with State and Federal environmental laws as required prior to providing taxpayer funded grants. Subsequently, the Planning and Conservation League contracted with Hydrofocus Inc. to assess the adequacy of hydrologic analysis of the Broadview ASR Project and its potential to mobilize contaminated shallow groundwater. Hydrofocus provided a copy of their report to DWR and others on March 16, 2022.²² The report concluded Westlands had not complied with CEQA and, *"Based on our review of substantial data and analysis conducted in the western San Joaquin Valley, we conclude that if the Broadview ASR project proceeds with injection and pumping cycles as planned, there can be hydrologic and water-quality impacts which include discharges of groundwater and drain water with selenium concentrations to surface waters."* We have received no response from DWR since the Hydrofocus report was submitted.

Conclusion

Cumulative Impacts have not been considered and no alternatives to these VAs and CEQA Exemptions were considered. The CEQA Exemptions fail to consider a reduction in exports, land fallowing and land retirement, issues of irrigability of lands in Westlands, expansion of the Place of Use boundary for the State Water Project and Central Valley Project south of the Delta, the cumulative effects of groundwater pump-ins, exchanges and transfers, and impacts of applying water to drainage-impaired lands.

CEQA loopholes also obscure the impacts to third parties and the environment from groundwater elevation decline, subsidence, well stranding, and stream depletion. In addition, without CEQA mitigation and monitoring affected third parties are left on their own to demonstrate harm that may be caused by additional groundwater pumping projects. Added extraction of groundwater also fails the Legislative directives contained in the Sustainable Groundwater Management Act (SGMA).

With climate changes the droughts of the last 10 to 15 years have been more persistent and more severe. Scientists predict droughts will even be more likely in the future. We have dammed, diverted, and disconnected or altered the majority of our rivers in the State, but especially our largest rivers, the Sacramento and San Joaquin Rivers, which feed the Delta Estuary and San Francisco Bay. Rather than

²⁰ https://calsport.org/news/wp-content/uploads/Env-Advocate-Cmts-9-30-2020_WWD-SLC-Pump-in-2020-IS_ND_-_Cal-Aqueduct-Corrected.pdf

²¹ DWR Groundwater Data from WWD 2008 Pump Ins at: <https://wdl.water.ca.gov/waterdatalibrary/WaterQualityDataLib.aspx>
And the following DWR Groundwater Data from WWD Pump-ins: <https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2016.pdf>
<https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2014.pdf>
<https://calsport.org/news/wp-content/uploads/Water-Quality-Assessment-of-Non-Project-Turn-ins-to-the-California-Aqueduct-2015.pdf>

²² See: <https://calsport.org/news/wp-content/uploads/HydroFocus-BWD-ACR-report-03182022.pdf>

subsidizing the grossly inadequate VAs, we urge your administration to provide additional funding and strong policy support to the State Water Resources Control Board to complete its update of the Bay-Delta Plan based on peer-reviewed science and open hearings. Further we urge you to:

1. Rescind the CEQA Exemption loopholes for these environmentally destructive projects and ensure CEQA and NEPA reviews are completed. This will ensure that sufficient water quality monitoring and mitigation and enforcement mechanisms are established.
2. Provide and make available for public review the federal Warren Act Contract (including an Exhibit D), and the Agreement between DWR and Westlands that would allow the discharge of groundwater into the California Aqueduct effective June 1, 2022.
3. Intervene to ensure such discharges into the California Aqueduct have adequate monitoring and safeguards to protect downstream beneficial uses, including the drinking water for California residents and ratepayers. The drought emergency declaration loophole should not allow the transfer of these pollution costs to downstream ratepayers without adequate payment and mitigations.

Thank you for your timely consideration of this matter. We would appreciate a meeting with you to discuss these critical issues and concerns. We all acknowledge and agree that this is a critical time for California, and urgent action must be taken to secure a resilient water future—especially as this prolonged drought continues. Unfortunately, the most recent actions taken by your administration, and recent comments reported in the media, are very concerning and if carried out will leave a devastating environmental and economic legacy.

Sincerely,



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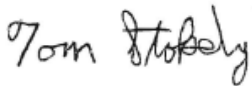
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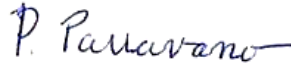
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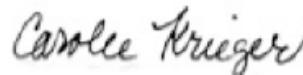
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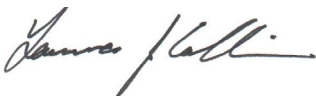
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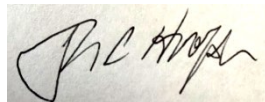
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