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PRESS RELEASE

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ENVIRONMENTAL GROUPS WIN COURT VICTORY AGAINST
CENTRAL VALLEY AGRICULTURAL POLLUTERS

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On Friday, December 20, the Ninth Circuit Court of Appeals handed commercial and sports fishermen, biologists and conservation groups a major victory in their efforts to clean up contaminated discharges from the Central Valley's Grassland Bypass Project. Owned and operated by the federal Bureau of Reclamation and local irrigation districts, the Project collects wastewater from 97,400 acres of farmed and unfarmed lands within California's Central Valley. The Project discharges substantial quantities of selenium and other pollutants into state and federal wildlife refuges and thence the San Joaquin River, the Delta and San Francisco Bay. The Court unanimously denied the Petition for Panel Rehearing filed by the Defendant San Luis and Delta Mendota Water Authority and reconfirmed the Court's September 6, 2019 Opinion for Publication reversing Federal District Judge Kimberly Mueller's dismissal of the Plaintiffs' lawsuit against the Project. The Court ruled that a Clean Water Act discharge permit is required for the Project despite the Act's exemption of return flows from irrigated agriculture so long as any part of its wastewater is generated by activities unrelated to crop production.

In reaching its decision, the Court issued three landmark rulings under the Clean Water Act's exemption for discharges from irrigated agriculture. First, the Court held that the Defendants had the burden of establishing that their discharges were "composed entirely of return flows from irrigated agriculture." Second, the Court held that the exemption was limited to "only those flows that do not contain additional discharges from activities unrelated to crop production." Third, the Court held that the District Judge erred in ruling that the exemption applied so long as a "majority" of the wastewater originated from agricultural activities. The Court ruled that only those discharges that are composed *entirely* of return flows from irrigated agriculture were exempt.

Applying these rulings to the commingled discharges of the Grassland Bypass Project, the Court held that all of the Plaintiffs' claims should proceed. First, the commingled discharges from a solar project were not exempt even though they did not comprise a majority of the Project's wastestream, since only those discharges that "were composed entirely of return flows from irrigated agriculture were exempt." Second, the Court overturned the District Judge's dismissal of the Plaintiffs' claims regarding polluted ground water that seeped into the Project's massive drain from unfarmed lands including highways and residences. Because those commingled discharges were not composed entirely of return flows from irrigated agriculture, they did not fall within the exemption. Third, the Court held the fact that these non-exempt flows were commingled with discharges from irrigated agriculture did not bring them within the exemption.

Accordingly, because all of the Project's discharges are commingled, all of the Plaintiffs' claims were proper. Therefore the Court reversed the District Judge's dismissal of them.

The Plaintiffs praised the Court's ruling. Noah Oppenheim, Executive Director of the Pacific Coast Federation of Fishermen's Associations, stated: "We are gratified that the Ninth Circuit agreed with our arguments and held the Bureau of Reclamation to account for discharging massive quantities of pollutants into the San Joaquin River, the Bay-Delta Estuary, and ultimately San Francisco Bay without the discharge permit that is required under the Clean Water Act. This ruling will help protect the salmon and salmon fishing jobs that require a healthy Delta free of toxic discharges from the San Joaquin drainage, as well as restore the vast populations of salmon and steelhead that historically swam up the Delta and the San Joaquin River."

Bill Jennings, Executive Director of the California Sportfishing Protection Alliance, stated: "After decades of inaction by our federal government to halt the contamination that has destroyed habitat for our fish and wildlife, it is reassuring to see our federal court issue a strong ruling enforcing the Clean Water Act's mandate for fishable and swimmable rivers."

Stephan Volker, Lead Counsel for the Plaintiffs, agreed that "the Court's Ruling ends over forty years of evasion of the Clean Water Act's strict requirement for discharge permits. We are pleased that the Ninth Circuit issued a well-reasoned ruling enforcing this vital statute and protecting our rivers."

The Ninth Circuit's December 20, 2019 Opinion is linked for download on the Volker Law website. Additional documents pertaining to the litigation can be obtained from the Volker Law Offices.