


From: Ben King bking@pacgoldag.com 
Subject: GCID MSR/SOI Update Hearing Comments Relating To Dam in Colusa Basin Drain On South Border of Colusa National Refuge
Date: March 29, 2023 at 7:16 PM
To: jcorona@countyofcolusa.com, jbell@countyofcolusa.com
Cc: John Benoit j.benoit4@icloud.com, Ben King bking@pacgoldag.com, Luke Steidlmayer luke@steidlmayerlaw.com, Ben King bking@pacgoldag.com

BK

March 29, 2023

Supervisor Merced Corona
Chairman
Colusa County LAFCO
Flood/FEMA Ad-Hoc Committee

Supervisor Janice Bell
Colusa County LAFCO

Dear Supervisors Corona and Bell,

I am submitting these comments for your consideration at the upcoming LAFCo Hearing on April 6, 2023 regarding the update of the MSR and SOI for GCID and as Supervisor Corona's role as a Member of the Flood/FEMA Ad-Hoc Committee.

There is a dam located at the south east corner of the Colusa National Wildlife Refuge within the channel of the Colusa Basin Drain. This dam creates a reservoir of water that spreads north in the channel of the Colusa Basin Drain and spreads over a significant area to the east and west of the channel.

As Supervisor Corona may remember I raised the issue that this dam was restricting needed environmental flows at the Board of Supervisors Meeting on June 21, 2023. I have attached photos from the riparian habitat and dry channel as of August 5, 2023 attached to an email to the California Department of Fish and Wildlife. There is also a photo of the dam site on that date showing how much water is held back by the dam.

There are three general issues that I asked you to consider in your deliberations regarding the approval of the proposed MSR/SOI for GCID:

1. What public trust and environmental issues are relevant for your consideration. As you can see from the August 5, 2023 photos there was no viable water available for aquatic life in the channel and the wildlife and riparian habitat was in high stress conditions. What are the minimum in-stream requirements for the channel below the dam?
2. The channel of the Colusa Basin Drain was dug in the natural waterway of the Colusa Trough and should be considered from a public trust perspective as a natural waterway with minimum in-stream requirements. I have attached excerpt from page 57 of the 1881 History of Colusa County – please refer to the marked text about the ridge separating the Upper Basin and the Lower Basin and the narrow water way – this is our property and the place where my great grandparents settled in 1860. To the north is what was called the Upper Basin and later the Davis Tule before Davis Ranches constructed a level and drained

most of the Upper Basin which left the Colusa National Refuge as the remaining permanent wetlands. To the south was what was known as the Lower Basin and this tule area was reclaimed by RD 108 starting in 1871. Our historical property starts just north of the RD 108 and ends just south of the Hahn Road crossing at the Colusa Basin Drain. The attached Map from the 1891 History of Justus Rogers also highlights the natural hydrological and topographical setting below the dam.

3. Our family has substantial property rights and public interest advocacy rights to demand that the County of Colusa and the State of California uphold the covenants granted my grandfather in 1920. This easement allowed for the drainage of the Upper Basin and enabled most of the Davis tule to be drained and the levee on the Davis property to be moved west to reclaim a substantial portion of the Davis Tule. Please refer to the Deed for the Easement dated August 12, 1920 where the covenants between my family and the County of Colusa and State of California are set forth. Please also refer to the second page of the Deed where the two covenants are marked: (1) not to stop the natural drainage and leave openings for the natural drainage and (2) not to prevent our family from full use of the natural water from sources north of our property.
4. Is the GCID MSR/SOI consistent with the historical understanding of stakeholder rights and the transparency provided by the RD 2047 SOI. The RD2047 SOI mentions that it was the understanding that none of the adjacent landowners could obstruct the channel of the channel of Colusa Basin Drain which is consistent with the legal rights my family retains in our Deed. Additionally, the RD 2047 has substantial disclosure about the 5 Party Agreement which was amended to be a 6 Party Agreement. There is no mention of this Agreement as Amended in the GCID document . Furthermore there was mentioned in a footnote that the 5(6) Party Agreement was going to be amended again to include the Colusa Drain Mutual Water Company pursuant to an action or disclosure item relating to the April 24, 2018 Board of Supervisors Meeting. Was this agreement with CDMWC ever consummated?
5. Whether or not this dam was constructed in compliance of Chapters 9 and 33 of the Colusa County Ordinances and/or complies with FEMA requirements. Was a permit obtain under Chapter 9 of the Colusa County Code? Does this dam comply with the prohibition against an encroachment of alteration of watercourse as set out in Chapter 33 which was recently revised pursuant to Ordinance 822. Does this dam comply with FEMA?
6. If GCID is in fact the operator of this Dam – does it own, lease or license the site of the dam and the reservoir? Does it need a permit from the State to construct or operate the dam? Does GCID need a permit or license to store the water in the reservoir? Does GCID own or lease the site where the water in the reservoir behind the dam is held?
7. Is the transparency and disclosure in the GCID regarding its material contact sufficient to meet LAFCo requirements. I have sent a separate email setting out the material public agency and contractual relationships that are not in the MSR/SOI which Mr. Benoit mentioned he would provide to you.

Thank you for your time and consideration

Best Regards,

Ben King
Manager
T&M King Farms, LLC

Mail Attachment	Except From Will S....rty.pdf	Map From 1891 Colusa...rty.pdf	August 1920 Easem...nia.pdf	Covenant of Colusa...ter.pdf
-----------------	----------------------------------	-----------------------------------	--------------------------------	---------------------------------