

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF WATER QUALITY
OCTOBER 5, 2010**

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS FOR THE CONTROL OF SELENIUM IN THE LOWER SAN JOAQUIN RIVER BASIN

BACKGROUND

On May 27, 2010 the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Resolution No. R5-2010-0046 ([Attachment](#)) amending the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to modify the existing compliance schedule for the Grasslands Bypass Project selenium control plan to allow agricultural subsurface drainage discharges (also referred to as tile drainage) to the Lower San Joaquin River to continue through December 31, 2019. The Basin Plan amendments include a time extension, modify an existing conditional prohibition of discharge and set an interim performance goal for agricultural subsurface drainage discharges to Mud Slough and the San Joaquin River between Mud Slough and Merced River confluence.

The Grasslands Bypass Project is the drainage control project that implements the selenium control program for the Grasslands Drainage Area located on the western side of the San Joaquin River roughly between Los Banos to the north and Mendota to the south. The watershed contains salts and selenium which can be mobilized through irrigation practices and can affect the water for beneficial uses of surface waters and wetlands if not properly regulated. This area is near the Grasslands Ecological Area, a wetland complex that is home to state and federal wildlife refuges and several privately-operated wetlands. A portion of the federally-owned San Luis Drain serves as the conveyance structure to move drainage outside of the Grasslands Bypass Project service area. A Use Agreement among the U.S. Bureau of Reclamation, the operators of the Grasslands Bypass Project, and the Grassland Area Farmers group was put in place to establish conditions under which a portion of the San Luis Drain could be used to discharge selenium from the Grasslands Bypass Project drainage area. The provisions in the Use Agreement were the result of negotiations among the U.S. Bureau of Reclamation, the Grassland Area Farmers, and other interested parties, including Environmental Defense Fund, wetland operators, and other downstream water users. From 1996 until the present, the U.S. Bureau of Reclamation and Delta-Mendota Water Authority have been operating under the Use Agreement that established conditions for utilizing a portion of the San Luis Drain as part of the Grasslands Bypass Project.

A selenium control program established by a 1996 Basin Plan amendment includes a prohibition of discharge of agricultural subsurface agricultural drainage unless either the discharge is regulated by Waste Discharge Requirements (WDRs) or water quality objectives for selenium are met. When the Central Valley Water Board adopted the Basin Plan amendment in 1996 addressing agricultural subsurface drainage (the selenium control program), the Central Valley Water Board included a compliance time schedule establishing October 1, 2010 as the effective date of the prohibition of discharge to Mud Slough. The selenium control program's time

schedule requires compliance with the selenium objectives in the San Joaquin River and specified channels within the Grassland watershed by certain dates. The Grasslands Bypass Project is in compliance with applicable objectives in most channels addressed in the Basin Plan, but the Central Valley Water Board has been notified that the project will be unable to fully manage all agricultural subsurface drainage to meet the water quality objective for Mud Slough and the San Joaquin River above the Merced River by 1 October 2010, the date when these water bodies must meet the 5 µg/L (4-day average) selenium objective. The dischargers state that they have made a great deal of progress improving water quality in wetland supply channels and Salt Slough as well as reducing overall selenium loads but have been unable to complete all planned drainage control actions in the Grasslands Bypass Project within the timeframe established by the 1996 Basin Plan amendment. Therefore, the organizations that implement the Grasslands Bypass Project, the San Luis and Delta-Mendota Water Authority and U.S. Bureau of Reclamation have requested additional time to comply with the prohibition/objective.

When the 1996 amendment was adopted, there was some uncertainty over the length of time that would be needed to develop a project capable of managing all subsurface agricultural drainage produced in the area. The Grasslands Bypass Project currently manages drainage through source control efforts such as selective land retirement, irrigation efficiency, and channel lining to control seepage; management strategies including drainage blending and re-use; and limited, temporary discharge. These efforts have reduced the amount of discharge substantially since 1996, however some aspects of the Grasslands Bypass Project remain incomplete or in various stages of planning and implementation. The Basin Plan amendments serve an administrative need, granting more time to complete the drainage control project without changing selenium control program goals, priorities or water quality objectives.

The two main reasons progress has been delayed are the difficulty of finding effective drainage treatment options and the loss of previously awarded State Grant Funds. The EIS/EIR for the 2001 Use Agreement between the U.S. Bureau of Reclamation and the Delta-Mendota Water Authority anticipated that appropriate drainage treatment technology could be identified within a few years of adoption of the agreement. Several technologies were tested but results have been mixed, with no clear Best Practicable Treatment and Control option emerging. The operators now have more information than they did in 2001, but treatment technology must still be tested and validated as appropriate for the Grasslands Bypass Project. This testing and validation was fully funded through a number of sources including State grant moneys. In 2008, The State Department of Finance issued Budget Letter 08-33 halting disbursement of awarded grant funds and forcing the operators to stop work while alternative funding was pursued. The work stoppage occurred after a series of local source control projects had been completed and additional drainage reuse area development had taken place, but before treatment technology could be selected, constructed, tested and employed.

The U.S. Bureau of Reclamation and Delta-Mendota Water Authority signed an updated Use Agreement in December 2009 (the 2010-2019 Use Agreement) that establishes a detailed set of conditions under which a designated portion of the San Luis Drain will operate. It also serves as the dischargers' plan to comply with water quality objectives, with oversight tasks being shared by multi-agency cooperators serving on the Data Collection and Reporting Team (day-to-day monitoring and reporting issues), the Technical and Policy Review Team (addressing the technical aspects of compliance issues), and the Drainage Oversight Committee (advised by the Technical and Policy Review Team). Participators in the various teams include the Bureau and managers of Grassland Area Farmer districts, U.S. Fish and Wildlife Service, California

Department of Fish and Game, U.S. Environmental Protection Agency, and the Central Valley Water Board, with U.S. Geological Survey serving in an advisory capacity.

COMPLIANCE SCHEDULE TIME EXTENSION

The amendments will allow discharges from the Grasslands Bypass Project area to continue to impact Mud Slough (north) and the San Joaquin River between the Mud Slough discharge and the confluence with the Merced River for up to an additional nine years, three months. The original compliance schedule set October 1, 2010 as the end date for the agricultural subsurface discharges into Mud Slough. Other objectives outlined in the 1996 amendment have been met, except for the 5 µg/L (4-day average) objective at Mud Slough and the San Joaquin River between the Mud Slough discharge and the confluence with the Merced River. This extension will allow discharges to continue at Mud Slough and the objective to be exceeded until December 31, 2019. Since the selenium control program implements major portions of the 2001 San Joaquin River Selenium Total Maximum Daily Load (TMDL), these amendments will revise the implementation of the TMDL. In addition, selenium is a priority pollutant covered by the California Toxics Rule (CTR) and the change to the compliance schedule will require U.S. EPA approval.

CONDITIONAL PROHIBITION OF DISCHARGE

The discharge of agricultural subsurface drainage water to Mud Slough (north) and the San Joaquin River from the Mud Slough confluence to the Merced River is prohibited after December 31, 2019 unless water quality objectives for selenium are being met. The amendments give the Central Valley Water Board the option of activating the prohibition before this date if it determines that timely and adequate mitigation agreed to in the 2010-2019 Use Agreement has not been provided.

INTERIM PERFORMANCE GOAL

The amendments establish an interim performance goal during the compliance extension timeline. The interim performance goal for selenium of 15 µg/L monthly mean is expected to be achieved by December 31, 2015. Grasslands Bypass Project dischargers have included this as a goal for progress toward meeting the 5 µg/L (4-day average) objective by December 31, 2019 when the extension would expire.

POLICY ISSUE

Should the State Water Board approve the amendments to the Basin Plan to incorporate a modification to the existing time compliance schedule for the Grasslands Bypass Project?

FISCAL IMPACT

Central Valley Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, approval of this resolution will amend the Central Valley Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendments to the Basin Plan adopted under Central Valley Water Board Resolution R5-2010-0046.
2. Authorizes the Executive Director, or designee, to transmit the amendments adopted under Central Valley Water Board Resolution R5-2010-0046 to the Office of Administrative Law and the U.S. Environmental Protection Agency for approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Action 1 to prepare, adopt, and take steps to carry out Total Maximum Daily Loads (TMDLs), designed to meet water quality standards, for all impaired water bodies on the 2006 list.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

APPROVING AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE FOR THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS (BASIN PLAN) TO ADDRESS SELENIUM CONTROL IN THE SAN JOAQUIN RIVER BASIN

WHEREAS:

1. On May 27, 2010, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Resolution R5-2010-0046 ([Attachment](#)) amending the Sacramento River and San Joaquin River Basins (Basin Plan) to modify the existing compliance schedule for the Grasslands Bypass Project selenium control plan to allow agricultural subsurface drainage discharges to the Lower San Joaquin River to continue through December 31, 2019.
2. The amendments meet the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
3. Central Valley Water Board staff prepared documents and followed procedures satisfying State laws and regulations.
4. The amendments are in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Board may revise basin plans.
5. Water Code section 13141 requires cost estimates to be developed for any agricultural water quality control program. This is an ongoing program. The Basin Plan includes a cost estimate for the selenium control program with potential sources of funding and neither the cost nor the sources need to be revised.
6. The amendments are limited to policy changes that do not include changes to the underlying scientific basis, and therefore do not require scientific peer review.
7. The Central Valley Water Board found that the analysis contained in the Basin Plan amendment staff report, the Environmental Impact Report/Environmental Impact Statement for the Grasslands Bypass Project 2010-2019 that was prepared by the U.S. Bureau of Reclamation and Delta-Mendota Water Authority, the California Environmental Quality Act (CEQA) Checklist, and the responses to public comments comply with the requirements of the State Water Resources Control Board's (State Water Board's) certified regulatory CEQA process, as set forth in California Code of Regulations title 23, section 3775 et seq.
8. The amendments will revise the compliance time schedule located in chapter IV (implementation chapter) of the Basin Plan for Agricultural Drainage Discharges in the San Joaquin River Basin and its accompanying narrative description in Regional Water Board Prohibitions, section 6.c.
9. The Basin Plan amendments do not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The amendments must also be approved by the U.S. Environmental Protection Agency (U.S. EPA).

D R A F T

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the amendment to the Basin Plan as adopted under Central Valley Water Board Resolution No. R5-2010-0046.
2. Authorizes the Executive Director, or designee, to transmit the amendment adopted under Central Valley Water Board Resolution R5-2010-0046 to the Office of Administrative Law and the U.S. Environmental Protection Agency for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 5, 2010.

Jeanine Townsend
Clerk to the Board