

ITEM: 10

SUBJECT: Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins to Address Selenium Control in the San Joaquin River Basin

BOARD ACTION: Consideration of Approval of Environmental Document and Adoption of Proposed Amendments

BACKGROUND: The selenium control plan in the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4<sup>th</sup> ed. (Basin Plan) prohibits the discharge of agricultural subsurface drainage, (also referred to as tile drainage) to surface waters in the San Joaquin Basin unless selenium water quality objectives are met or the discharge is regulated under waste discharge requirements (WDRs) that bring the discharge into compliance with the objective/prohibition over time. The Board adopted Amendments in 1996, establishing a compliance time schedule for implementation of the control program. The Grassland Bypass Project (GBP), a regional agricultural drainage management project operated by seven districts known as the Grassland Area Farmers (GAF), is regulated under WDRs. Significant water quality improvements have been achieved in the area. Applicable selenium water quality objectives are met in 75 miles of wetland supply channels and 31 miles of the San Joaquin River and Salt Slough. However, the GAF have informed staff that they are unable to comply with the 5 µg/L selenium objective in Mud Slough (north) and a portion of the San Joaquin River (approximately 6 miles in total) by the compliance date in the Basin Plan (30 October 2010). They have, therefore, requested Amendments extending the compliance date by nine years, three months to 31 December 2019.

The original time schedule was based on consensus agreements among the dischargers and interested parties, arrived at through negotiations to establish a Use Agreement between the San Luis and Delta-Mendota Water Authority (including the districts comprising the GAF) and the Bureau of Reclamation for use of a section of the federally-owned San Luis Drain. These parties (US Bureau of Reclamation, Grassland Area Farmers, Board staff, US Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), US Environmental Protection Agency (USEPA), downstream water users and other interested parties) were brought together again in 2007-2008 to negotiate terms of a new Use Agreement, which the Bureau and Authority signed in December 2009. The new Use Agreement specifies mitigation for impacts to wildlife and requires selenium load (i.e., the total amount or mass of selenium) reductions over time. Selenium load target starts at the current load limits in the WDRs and ramps

down over time, with the goal of eliminating the discharge of agricultural subsurface drainage by the end of 2019. Until the dischargers complete build-out of the drainage area infrastructure, they will be unable to cease discharge without risking loss of agricultural productivity due to drainage impairment. Maintaining the viability of agriculture in this area means maintaining the resource base which is funding much of the ongoing regional drainage monitoring and management effort.

If the Board adopts the Amendments, the WDRs regulating the project would be modified to require further load reductions consistent with those agreed to by the interested parties for the Use Agreement.

The proposed Amendments include a provision allowing the Board to put the prohibition of discharge into effect immediately upon determination that the environmental impact mitigation agreed to in the Use Agreement is not taking place. If the Board adopts the Basin Plan Amendments, staff will recommend that the project's Monitoring and Reporting Program be updated to require the dischargers to report to the Board on an annual basis so that the Board can determine whether or not the mitigation commitments are being met and whether the proposed 31 December 2019 compliance date should remain in effect. The environmental document indicates that with mitigation, all impacts are reduced to less than significant.

#### ISSUES:

Commenters asked the Board to consider land retirement, or permanent cessation of irrigation, of drainage-impaired lands. Land retirement is one option being used now within the GBP and elsewhere to reduce regional agricultural subsurface drainage generation. The draft resolution requires the dischargers to assess the feasibility of treatment technology and identify their plan for achieving compliance. The proposed date for submittal of the plan is 31 January 2013 and must describe how compliance with objectives will be achieved, which may include a land retirement component.

Commenters faulted the load limits in the Use Agreement because limits remain relatively stable at the levels currently required by the WDRs for the first few years of the time extension. The load limits in the Use Agreement are the result of negotiations between the operators of the GBP and selected interested parties. The Central Valley Water Board will consider the appropriate load limits when the WDRs are updated subsequent to consideration of these Amendments.

Commenters voiced concern that the selenium water quality objective for the San Joaquin River is inadequate to protect

salmon, noting that the San Joaquin River Restoration Plan will reintroduce salmon to reaches of the river receiving the GBP discharge. The Amendment does not alter the selenium objective for the river, which is based on the USEPA national criterion for selenium. Should the USEPA modify its national criteria, the Board can consider potential changes to the objective at that time.

Some comments were directed at the EIS/EIR completed by the Bureau of Reclamation and San Luis & Delta-Mendota Water Authority for Use Agreement issues that are not directly pertinent to the proposed Amendments, including comments on the management of the GBP's drainage reuse area, which will continue to be operated with or without the Amendments with oversight by the agencies participating in the Use Agreement negotiations; and groundwater quality. Groundwater quality under irrigated land is a much broader issue that will be addressed by the CV-SALTS program. The GAF and Bureau of Reclamation both participate in CV-SALTS.

A comment was made regarding water transfers, groundwater pumping and groundwater flow; issues which, under some circumstances, can contribute to water quality degradation but these topics are also outside the scope of the proposed Amendments.

A comment was made concerning mercury in Mud Slough. Staff in the Board's mercury control program is currently working on a report that will address this issue. Comments were received concerning flood management in the upper watershed. This is outside the scope of the proposed Amendments.

USEPA commented that the draft staff report does not mention the type of monitoring that will be needed for the GBP. The GBP is rigorously monitored by multiple parties now. Those parties serve on the Data Collection and Reporting Team, which oversees monitoring performed in accordance with the Use Agreement and the project's Monitoring and Reporting Plan (MRP) approved by the Executive Officer. Updating the MRP is a separate action, outside the scope of the proposed Amendments.

Although a number of comments are outside the scope of this Amendment, they can be addressed when the WDRs and MRP are revised. Staff will consider those comments when developing the draft WDRs and MRP.

Comment letters received as of the date of agenda preparation are attached to this item, but additional comments are expected. Per regulatory requirements, Staff will prepare a written comment and response document addressing comments received at least 10 days prior to the Board's hearing.

RECOMMENDATION: Staff recommends Board approval of the environmental document and adoption of proposed Amendments.

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