



## AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

October 13, 2010

Ms. Kate Hart  
 Chairperson Central Valley Regional Water Quality Control Board  
 11020 Sun Center Drive #200  
 Rancho Cordova, CA 95670

Subject: Follow up Investigation Request on Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins Addressing Selenium Control in the San Joaquin River Basin Adopted on May 27, 2010

Dear Ms. Hart:

The California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA) and AquAlliance write to express additional concerns with the adoption of Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins Addressing Selenium Control in the San Joaquin River Basin (BPA) by the Central Valley Regional Water Quality Control Board.

At the Regional Board's May 27, 2010 hearing, the need for an investigation of other sources of selenium pollution, specifically from Westlands Water District (WWD), was discussed. Rudy Schnagl, Senior Scientist for the Central Valley Regional Board explained that surface and subsurface drainage discharges from WWD flow northeast toward Mud Slough, to other tributaries and to the San Joaquin River. Because of this flow pattern, some of the water that Grassland Area Farmers manage actually originates in WWD. (Partial Transcript of Proceeding, Central Valley Regional Water Quality Control Board, Agenda Item No. 10, (May 27th, 2010) pp. 89-91, excerpt attached as Exhibit A.)

The meeting also included discussion of the potential for a selenium-related Water Code section 13267 investigation on WWD discharges because of continuing concerns regarding the dangerous amount of selenium pollution that may originate from lands within WWD, despite the progress of Grassland Area Farmers in controlling their discharges. (See Exhibit A.)

The Regional Board has the authority and obligation, in accordance with California Water Code sections 13267 and 13304, to locate and abate the impacts of waste

discharges that cause or threaten to cause a condition of pollution. Specifically, under Water Code section 13267:

*“(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.*

*(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*

The public record, consisting of both written and oral testimony, indicates that discharges and/or seepage from WWD threaten to cause a condition of pollution to surface waters and groundwater. Former Commissioner of Reclamation John Keyes testified that the 379,000 acres of drainage impaired lands in the San Luis Unit creates 97,000 acre-feet/year of contaminated drainage water.<sup>1</sup> In some cases selenium levels exceed drinking water standards (50 µg/l) and even reaching hazardous waste levels (1,000 µg/l). Where is all that toxic pollution going?

The above-cited sections of the Water Code, in combination with Water Code section 13243, which states that the Board may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted, indicates the Regional Board's authority and responsibility to investigate and stop the discharge or threatened discharge.

An investigation is needed to identify all of the sources of selenium that continue to contaminate the San Joaquin River, the receiving waters of the Sacramento San Joaquin Delta, as well as the confined and semi-confined aquifers of the western San Joaquin Valley. The fact that RWQCB may be working to eventually issue a “voluntary” Waste Discharge Requirement (WDR) to WWD does not obviate the need to conduct an investigation, and an investigation would inform the WDR process. Likewise, the Irrigated Lands Regulatory Program does not adequately address selenium contamination from WWD and other lands. We therefore request that the Regional

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<sup>1</sup> Statement of John Keys, Commissioner, Bureau of Reclamation, U.S. Department of the Interior Before the Subcommittee on Water and Power, U.S. House of Representatives, July 28, 2005. <http://www.doi.gov/oc/2005/SanJoaquinDrainage.htm>, accessed 8/26/2010.

Board immediately commence an investigation for the southern, central and northern regions of Westlands Water District pursuant to its authority under the Water Code.

Please Tom Stokely of C-WIN at (530) 926-9727 for further information and documentation. Thank you for your attention to this matter.

Sincerely,



Carolee Krieger, President  
California Water Impact Network  
808 Romero Canyon Road  
Santa Barbara, CA 93108  
(805) 969-0824  
[caroleekrieger@cox.net](mailto:caroleekrieger@cox.net)



Bill Jennings, Chairman  
California Sportfishing Protection  
Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
(209) 464-5067  
[deltakeep@aol.com](mailto:deltakeep@aol.com)



Barbara Vlamis, Executive Director  
AquAlliance  
P.O. Box 95  
Chico, CA  
(530) 895-9420

Attachment: Exhibit A- Partial Transcript of Proceeding, Central Valley Regional Water Quality Control Board, Agenda Item No. 10, (May 27th, 2010) pp. 89-91

cc: Congresswoman Grace Napolitano  
Congressman George Miller  
Congressman John Garamendi  
Senator Wes Chesbro  
Assemblyman Jared Huffman  
Tom Howard, Executive Director State Water Resources Control Board  
Jared Blumenfield, Regional Administrator, EPA Region 9  
Alexis Strauss, EPA Region 9, Director Water Division  
Janet Hashimoto, EPA Region 9, Standards and TMDL Office

1 MS. CREEDON: Ms. Hart, if I could ask Rudy  
2 to address a couple of issues?

3 MS. HART: Rudy?

4 MS. CREEDON: There was a lot of discussion  
5 about upslope and offsite discharges onto the grasslands  
6 project or contributing -- can you elaborate for the  
7 board so that they understand what other programs may be  
8 in place or will be in place to take care of those  
9 issues that are not related to this project, so they  
10 know we're just not ignoring it?

11 MR. SCHNAGL: Of course. There were  
12 mentions of two types of inflows to the grasslands area  
13 that are related to this project. First, the  
14 groundwater from the Westlands Water District is moving  
15 from that area to the northeast, as I mentioned earlier,  
16 and that would flow under the project area. And so that  
17 is of concern and -- to the commenters and from our  
18 standpoint, any of that water that's captured by the  
19 Grassland Bypass Project farmers has to be managed by  
20 them and be discharged within their load limits.

21 So they're responsible if they collect it in  
22 their subsurface drainage systems and discharge it. So  
23 that puts the responsibility on this project for any  
24 groundwater that enters their area.

25 There's also surface water impacts in some

1 of the grassland waterfowl areas, the wetland areas.  
2 From tile drainage to the east and west of the bypass  
3 project area, and I'm thinking that a map might help  
4 here.

5 MS. CREEDON: While he's setting that up, I  
6 wanted to bring up to the board, we also did have a  
7 request for report of discharge from the grasslands  
8 water district. It's been difficult to get that  
9 document because it's been difficult for them to define  
10 their project in order for us to do the CVCWA  
11 requirements. And so we've been working with them on a  
12 parallel basis.

13 We have a long-term irrigated land program,  
14 which is now moving into regulating groundwater. So  
15 regardless of if we have an individual report of  
16 discharge or not, grasslands -- or the Westlands Water  
17 District area would be regulate -- is regulated and will  
18 continue to be regulated under the irrigated lands  
19 program, which we will then address both surface water  
20 and groundwater and that will be captured under that  
21 program. So it's not being ignored by the board, and  
22 the selenium issues offsite are not being ignored by the  
23 board as well.

24 MR. SCHNAGL: Now that I have a map to help  
25 explain things, the red area is the Grassland Bypass

1 Project service area. The Westlands Water District is  
2 to the south. It's not marked, but it's to the south of  
3 that red area. Groundwater is moving to the northeast,  
4 and so some of the water that's collected by the  
5 Grassland Area Farmers may originate in the Westlands  
6 Water District, but they're entirely responsible for  
7 anything they collect and discharge through the bypass  
8 project.

9           The other dischargers that have been  
10 referred to in some of the comments from agricultural  
11 subsurface drainage systems within this grassland  
12 watershed, and it's mostly along the west side, where my  
13 arrow is or along the east side. And that drains toward  
14 the center of the watershed where the wetland areas are,  
15 and Fish and Wildlife Service has repeatedly pointed out  
16 their concerns about those drains and their impacts on  
17 the wetlands.

18           Those areas, both farmers and the wetlands,  
19 are participating in the irrigated lands regulatory  
20 program, and we will be working with that group, in the  
21 irrigation districts in the area, to address the fish  
22 and wildlife concerns.

23           MS. CREEDON: So, Rudy, since you have this  
24 up, let me ask you a couple more question to address the  
25 board. There are a couple issues especially with the