

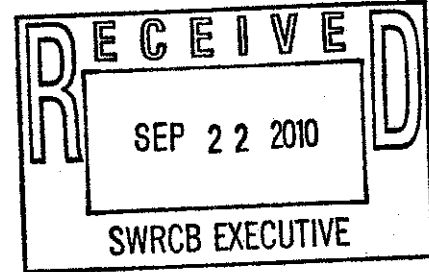
SOLURI MESERVE
A Law Corporation

1822 21st Street, Suite 202
Sacramento, California 95811
916.455.7300 (telephone)
916.244.7300 (facsimile)
www.semlawyers.com

September 22, 2010

Public Comment
SJR Selenium Control BPA
Deadline: 9/22/10 by 12 noon

Via Email: commentletters@waterboards.ca.gov



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comment Letter – San Joaquin River Selenium Control Plan Basin Plan
Amendment

Dear Ms. Townsend:

This firm represents Reclamation District 999 (“District”), which is within the Clarksburg Agricultural District of the northern Sacramento-San Joaquin Delta. The District includes a complex network of channels that provide drainage in the winter and irrigation water for agriculture in the dry months, as well as a perimeter of levees to prevent flooding. Communities within the District include the town of Clarksburg, rural south-eastern Yolo County and a small portion of Solano County, as well as residents of marinas and moorings on the Sacramento River and Minor Slough. Our District has been a steward of Delta resources for almost 100 years, and depends on adequate flows of good quality water to serve farmland in the District.

Incorporation by Reference of Prior Comments

The District submitted written comments, including a technical memorandum, to the Regional Water Quality Control Board, Central Valley Region (“RWQCB”), dated May 26, 2010. The District hereby incorporates these comments by reference. Because the District’s comment letter was not received prior to the official deadline for comment, the RWQCB did not prepare written or oral responses to the cover letter or the attached technical memorandum; thus, it is not possible to identify how the RWQCB’s responses were inadequate or incorrect, as requested in the hearing notice. The District requests that in addition to responding to this letter, the State Water Resources also respond to the District’s previously submitted comments (including the technical memorandum).

Specific Comments on Proposed Grasslands Bypass Project Basin Plan Amendments

The Grasslands Bypass Project Basin Plan Amendments ("BPAs") would weaken requirements applicable to selenium discharges to Mud Slough and the San Joaquin River. Specifically, the proposed action would delay implementation of the 5 µg/l (4 day average) Basin Plan Objective for selenium in Mud Slough (north) and the San Joaquin River from Mud Slough confluence to the Merced River for nine years. The BPAs also propose a new interim "Performance Goal" of 15 µg/l (30 day average), effective on December 31, 2015 – up from the 5 ug/l (4-day average) slated to be effective in October 2010.

Selenium is a naturally occurring element, which is concentrated as a result of agricultural activities in the San Joaquin Valley. Continued farming of high selenium soils results in leaching of selenium from the soils to agricultural drains and eventual concentration in wetlands and the San Joaquin River. Selenium is highly toxic to fish and wildlife, and was the primary cause of the dramatic mortality and deformation of birds in the Kesterson Wildlife Refuge. Kesterson's selenium contamination now flows to the San Luis Drain and eventually to Mud Slough. According to the U.S. Fish and Wildlife Service, selenium concentrations at this location are "well above hazardous concentrations," although they are slowly trending downward. (Available at <http://www.fws.gov/pacific/ecoservices/envicon/pim/reports/Sacramento/San%20Luis.html>.)

Selenium and the host of other toxins including boron, chromium, molybdenum, and methylmercury, continue downstream to the Sacramento-San Joaquin Delta. Much effort has been and is being expended to address pollution and related problems in the Delta. As a result, water uses and discharges are becoming more, not less, stringent as regulators attempt to improve ecosystem conditions in the Delta.

The proposed BPAs, however, weaken critical Basin Plan objectives designed to protect fish and wildlife and human health and will lead to the further deterioration of the state of the Sacramento-San Joaquin Delta and its tributaries. This is of particular concern because deliveries from the Central Valley Project make up a large portion of the drainage water at the root of the selenium contamination problem. Continuing exports of Delta water to the San Joaquin Valley without adequate regulatory requirements to address the sources of selenium contamination exacerbates the current situation, creating a seemingly endless toxic cycle.

The BPAs apply not only to the Grassland Area Farmers ("GAF"), who have made important strides in the battle against further selenium contamination, but to all sources of contamination in Mud Slough. By rolling back the selenium requirements, the BPAs facilitate the continued contamination of Mud Slough and downstream waters by those (unlike the GAF) that are not currently regulated by Waste Discharge Requirements. As discussed at the RWQCB's hearing on the BPA, both groundwater and surface water flows occur from upslope areas to the Grassland Bypass Project service area. (RWQCB Transcript (May 27, 2010), pp. 89-91.) Though the GAF are held accountable for meeting applicable water quality objectives, other contributing dischargers are not. To the extent the Irrigated Lands Program is pointed to as a means to address contamination from these other sources (RWQCB Transcript (May 27, 2010), pp. 90-91), it must be understood that this program has thus far been ineffective in regulating selenium pollution from these sources.

Concurrent with the request to weaken the Basin Plan's selenium protections, many CVP water recipients such as Westlands Water District, are actively working through the Bay Delta Conservation Plan to relocate the CVP's primary pumping facility upstream to the Sacramento River. This change in point of diversion would dramatically improve the water quality of exported water by allowing CVP water users to avoid their own toxic runoff. The BPAs would allow these CVP water users to continue circumventing responsibility for their polluted discharges and underseepage.

Conclusion

As a result of these concerns, the District does not support the requested BPAs, which allow increased loading of selenium in the Delta and its tributaries in violation of state and federal antidegradation policies, among other legal requirements. If a BPA is adopted despite these concerns, RD 999 recommends that it be for a shorter duration (such as 2 years) and that the water boards commit to bringing all appreciable sources of selenium within the Basin Plan under direct regulatory supervision in that same time period. At this critical juncture, the health of the Delta is too important to roll back selenium requirements in the Basin Plan.

Ms. Jeanine Townsend

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Thank you for the opportunity to comment on the proposed BPA. Please feel free to contact me with any questions about these comments.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Osha R. Meserve

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cc: Katherine Hart, Chair, Regional Water Quality Control Board, Central Valley Region
Reclamation District 999 Board of Trustees