



CRAB BOAT OWNERS ASSOCIATION, Inc.
2907 Jones Street
San Francisco, California 94133-1115
415-885-1180



SIERRA CLUB
CALIFORNIA



FRIENDS
OF THE
RIVER

NORTH

COAST

RIVERS

ALLIANCE



September 7, 2011

Michael L. Connor
Commissioner Mail Code 91-00000
Bureau of Reclamation
1849 C Street NW
Washington DC 20240-0001

**RE: Closure of Grassland Bypass Project (GBP) Data Collection and Review Team (DCRT)
Meetings to Selected Members of the Public**

Dear Commissioner Connor:

Late Friday, September 2, 2011, we were informed by Reclamation's Chair of the Grassland Bypass Project's Data Collection and Review Team (DCRT) that "outside observers" will be barred from the meetings of these public agencies who oversee the monitoring of the GBP. This action seems arbitrary and designed to exclude those most impacted by pollution caused by the GBP—the conservation, fishing and community groups advocating for water quality downstream from the discharge.

No rationale was provided as to why these meetings suddenly need to be held in secret, behind closed doors, excluding only selected members of the public, while others are granted access. For example, consultants for the dischargers, the San Francisco Estuary Institute, lawyers for the Grassland Drainers, and others, are given access.

The DCRT email indicates that "Policy documents developed by the DCRT relating to the program's implementation are subject to both scientific and public review prior to approval by the GBP Oversight Committee." We cannot find evidence in the public record to support this contention, especially with regard to critical monitoring changes made over the last decade. For example, monitoring changes recommended by the DCRT were implemented for several years without Oversight Committee approvals,¹ or at least no public record has yet been made available regarding such approvals.² The public record indicates that only one Oversight Committee meeting was held from 2000 to 2010.³

In October 2010,⁴ at the hearing before the State Water Resources Control Board, where another decade-long pollution waiver was granted, commitments were made to allow interested parties access to the proceedings of these various technical and monitoring committees. Since that time, several members of the public have monitored the meetings. On August 2, 2011, the DCRT requested comments by August 12, 2011, regarding the proposed "Interim Water Quality Monitoring Program." We responded by the due date.⁵ It appears that this critical look at the proposed monitoring program triggered a backlash, whereby, certain members of the public henceforth will be excluded from these meetings of public agencies. In particular, C-WIN's Tom Stokely, noted significant discrepancies in the proposed request for expending a half a million dollars on a Panoche Water District source canal lining project. The claim of reducing selenium by some 1000 lbs was later revised to 100 lbs. Clearly, in the public interest, these plans need this kind of careful scrutiny.

It appears that the DCRT wants to exclude downstream interests from observing these data collection and reporting meetings where, at least in the past, monitoring changes have been recommended and implemented without Oversight Committee review or approval. Closing the door to the public, and especially to those most impacted by the discharge of this pollution, is arbitrary and without merit. A double standard is created whereby those with

interest in continuing the toxic discharges are allowed access, while those impacted are excluded.

As noted in our correspondence of August 12, 2011, we remain concerned that the toxic discharges of this project are neither adequately regulated nor monitored.⁶ Some of the “proposed” reductions in monitoring are already being implemented. For example, selenium concentrations at various sites on the San Joaquin River, including its mouth at Vernalis, are no longer monitored. No one is charged with doing an integrated analysis of the consequences of this project on the San Joaquin River, source water and Bay-Delta Estuary. The establishment of the Oversight Committee⁷ and this hierarchy committee structure amounts to a mirage of oversight and lacks the checks and balances promised. It appears that the dischargers of this toxic pollution have made a calculated bet that this “Hodge Podge” of consultants, miscellaneous reports, and volumes of uninterrupted raw data, will obscure the impacts. And, when damage occurs, they will have the concurrence of state and federal regulators to insulate them from the costs of clean up and damages. Barring the public from observing the process further creates a barrier to insulate these polluters.

New government studies⁸ indicate that safe levels of selenium need to be up to 50 times less than the current water quality objectives sanctioned for the San Joaquin River flowing into the Bay Delta Estuary.⁹ (See Attachment A) State regulators have determined almost all this toxic selenium comes from the west side of the San Joaquin Valley.¹⁰ Recent federal reports document this toxic selenium pollution is showing up in source water below the federal export pumps at the terminus of the Delta Mendota Canal in the Mendota Pool at levels exceeding water quality objectives adopted to protect beneficial uses.¹¹

We urge you to take action to ensure the Grassland Bypass Project “team meetings” are open to public observers, including both the Data Collection and Review Team and the Technical and Policy Review Team. Continuation of secret, closed door meetings, largely directed by the dischargers, creates a cozy regulatory environment where pollution impacts are thrust upon downstream users to treat and clean up, In the case of selenium this will cause irreparable harm because of its bio-magnification throughout the food web of the estuary or to fresh water supply exports.

Respectfully submitted,



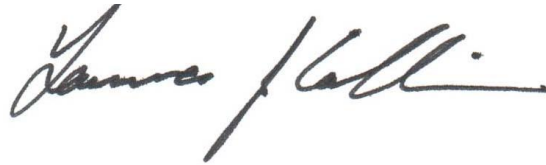
Jim Metropulos
Senior Advocate
Sierra Club California



Steven L. Evans
Conservation Director
Friends of the River



Zeke Grader
Executive Director
Pacific Coast Federation of Fisherman's
Federation Association Inc.



Larry Collins
President
Crab Boat Owners



Carolee Krieger
Board President and Executive Director
California Water Impact Network



Bill Jennings
Chairman Executive Director
California Sportfishing Protection Alliance



Bruce Tokars
Salmon Water Now



Wenonah Hauter
Executive Director
Food and Water Watch



Adam Lazar
Staff Attorney
Center for Biological Diversity



Barbara Vlamis, Executive Director
AquAlliance



Conner Everts
Executive Director
Southern California Watershed Alliance

Frank Egger, President
North Coast Rivers Alliance

CC:

Lisa P. Jackson, EPA Administrator
Daniel M. Ashe, Director, US Fish and Wildlife Service
Eric C. Schwaab, NOAA, Assistant Administrator for Fisheries
John Laird, California Secretary for Natural Resources

Grassland Bypass Project Oversight Committee:
 Donald Glaser, USBR, Regional Director
 Jared Blumenfeld, Administrator (Region 9)
 Ren Lohofener, USFWS, Regional Director
 Pamela Creedon, CVRWQCB, Executive Officer
 Charlton Bonham, California DFG, Director

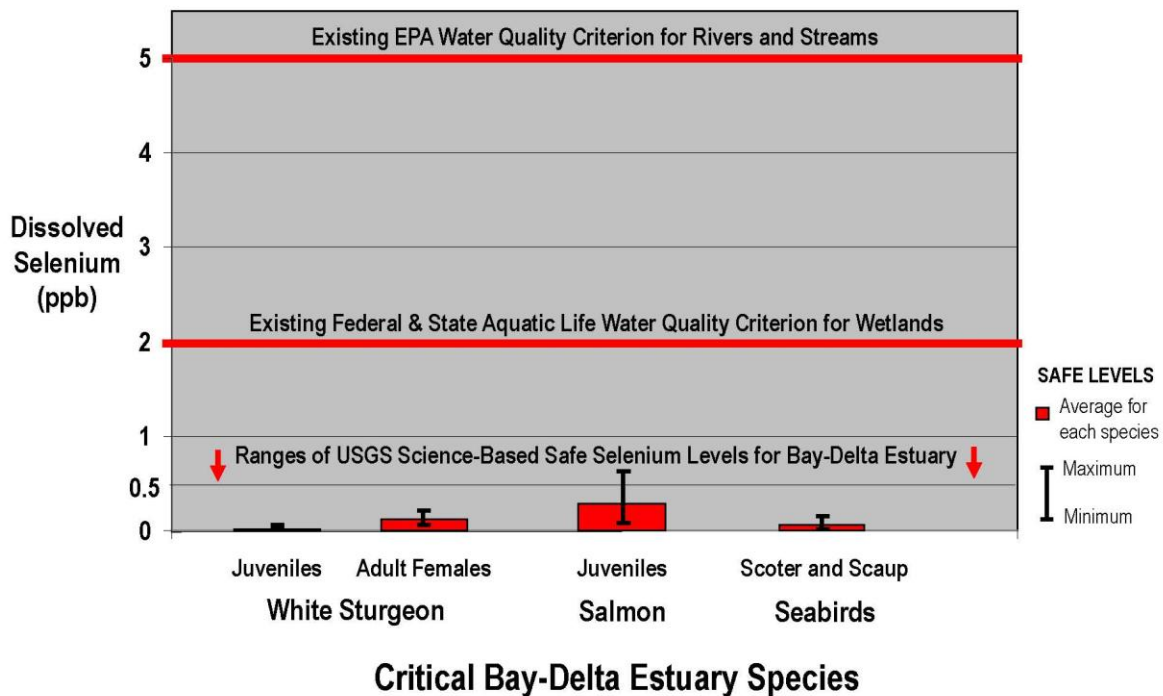
Data Collection and Review Team

Interested Parties

Attachment A:

Existing Selenium Water-Quality Standards Do Not Protect Bay-Delta Species:

A new USGS study, which will be used by EPA to revise standards, shows that much lower levels of selenium will be required to protect critical species.



Since 2002, under the Clean Water Act, Section 303, and the Endangered Species Act, the United States Environmental Protection Agency (EPA) has been required to adopt acute and chronic aquatic life criteria for Selenium taking into account the bioaccumulation of this contaminant as it magnifies throughout the food chain often causing reproductive failure, teratogenic effects and death. The terms

and conditions also included reevaluating and revising selenium criteria for the protection of semi-aquatic wildlife. The just released peer reviewed United States Geological Survey (USGS) study, also part of the terms and conditions, models the fate and transport of selenium in the San Francisco Bay-Delta Estuary and as agreed, the report will serve as the basis for revised water quality criteria for the protection of wildlife species. <http://www.epa.gov/region9/water/ctr/>

**** The above graph prepared by CSPA & CWIN is directly based on the results from the U.S. Geological Survey (USGS) study. http://www.epa.gov/region9/water/ctr/selenium-modeling_admin-report.pdf The USGS study evaluated a series of selenium exposure scenarios using a set of specific guidelines and modeling choices from the range of temporal hydrodynamic conditions, geographic locations, food webs, and allowable dissolved, particulate, and prey Se concentrations (which we have referred to as “safe levels”). According to the USGS, “The specificity of these scenarios demonstrates that enough is known about the biotransfer of Se and the interconnectedness of habitats and species to set a range of limits and establish an understanding of the conditions, biological responses, and ecological risks critical to management of the Bay-Delta”.*

The following scenarios were evaluated by USGS for a range of hydrologic conditions and residence times (See Tables 17, 18 and 19 in the USGS report):

- *Predicted allowed dissolved Se concentrations for Bay-Delta transects at different effect guidelines and associated levels of protection (USFWS, 2009b) for a suspended particulate material>C. amurensis>sturgeon food web.*
- *Predicted allowed dissolved Se concentrations for Bay-Delta transects at different effect guidelines and associated levels of protection (USFWS, 2009b) for a suspended particulate material>C. amurensis>clam-eating bird species food web.*
- *Predicted allowed dissolved Se concentrations for landward transects at different effect guidelines and associated levels of protection (USFWS, 2009b) for a suspended particulate material>aquatic insect>juvenile salmon food web.*

The CSPA-CWIN summary graphic of this data shows the results for critical Bay-Delta species, aggregated across all combinations of target tissues (eg. Whole body, eggs, or diets) that have known levels of concerns, as summarized by the U.S. Fish and Wildlife Service. Results are also combined across all hydrologic conditions for each species.

The ranges of “allowable” or safe levels of dissolved selenium clearly show that, although EPA will need to specify exact safety levels, flow conditions, and species, new standards for the Bay-Delta will need to be substantially less than 0.5 parts per billion dissolved selenium to be protective.

Endnotes:

¹http://www.swrcb.ca.gov/centralvalley/water_issues/swamp/water_quality_reports/gbp_04_05_wq_c_hptr.pdf

“Modifications to the Water Quality Monitoring Program. During the Phase I of the GBP a number of issues were resolved with respect to the water quality monitoring program. These modifications and clarifications to the monitoring program are discussed in the previous Annual Reports (USBR, 1998 and SFEI, 1999, 2000, 2001, 2003, and 2004). Prior to August 2003, nutrient samples were collected at Stations B and D as part of a research program external to the GBP water quality monitoring program. In an effort to minimize program costs, the DCRT agreed to incorporate that data into the water quality monitoring program. Frequently, due to reasons outside of the control of the DCRT, these data were unavailable. In August 2003, in an effort to prevent this loss of data, routine collection of nutrient samples at Stations B and D was assumed by the CVRWQCB.

DCRT Proposed monitoring changes in 2005:

http://swrcb2.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/0504/gbp/gbp-staff-report-3.pdf

U.S. Bureau of Reclamation, et. al. June 2002, Monitoring Program for the Operation of the Grassland Bypass Project, Prepared by the Grassland Bypass Project Data Collection and Review Team. See http://www.usbr.gov/mp/grassland/documents/monitoring_program_phase_2.pdf

² Sierra Club California, California Water Impact Network, Friends of the River, the Southern California Watershed Alliance and the California Sportfishing Protection Alliance filed A Freedom of Information Act request on August 3, 2011, for the times, places, agendas, meeting notes and attendees for the Grassland Project Oversight Committee meetings from 2000-2010. We were informed the request was “complex” and thus is in the “QUE” behind 18 other complex requests and likely will not adhere to the 20-day response period.

³<http://legacy.sfei.org/grassland/reports/gbpdfs/AnnualReports/GBP%20Annual%20Report%200405.pdf>

⁴ http://calsport.org/cspa_files/CSPA_CWIN-SJR%20SeleniumCont.pdf

⁵ <http://www.pcl.org/files/GrasslandMonitoring.pdf>

⁶ *“In 2003, a series of events led to a worst-case scenario in one field within the SJRIP. A channel broke Water collected in one end of the field and remained for several weeks (late April through mid-May) during the nesting season. Eggs were collected, as they have been since 2001, but because there was standing water present, more nests were observed than had been in previous years. These eggs were found to have selenium at concentrations similar to egg concentrations found in Kesterson years earlier. Subsequent conversations with US Fish & Wildlife Service confirmed that at these concentrations, embryo viability would be severely compromised. A “take” had occurred.”*

http://swrcb2.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/0504/gbp/gbp-staff-report-3.pdf

<http://www.calsport.org/7-23-08.pdf>

http://www.swrcb.ca.gov/rwqcb5/water_issues/grassland_bypass/usfws_att_d.pdf Deformed embryos found at the project in 2008 with selenium content of the egg greater than 70 ppm, greater than Kesterson levels.

High Selenium concentrations in eggs found 2003-2006

http://www.lloydgcarter.com/files_lgc/Drainage%20letter.pdf

⁷ *"The GBP Oversight Committee (OC) consists of representatives from USBR, USFWS, CDFG, CVRWQCB, and USEPA. The role of the OC is to evaluate overall operations of the GBP, to assess monetary charges to SLDMWA for selenium loads exceeding those specified in the UA II, and to act on other issues brought to them by the Technical and Policy Review Team (TPRT) and/or the public. Specific charge or mission to the OC is found in the UA II."*

http://www.usbr.gov/mp/grassland/documents/monitoring_program_phase_2.pdf

⁸ <http://www.epa.gov/region9/water/ctr/>

⁹ http://www.c-win.org/webfm_send/188

¹⁰ http://swrcb2.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/0504/gbp/gbp-staff-report-3.pdf *"The WDRs for the project state "During water year 2000, releases from the (San Luis) Drain contributed 97% of the selenium, 55% of the boron, 36% of the salt and 13% of the volume of water discharged to the San Joaquin River from the Grassland Watershed."*

¹¹ <https://www.c-win.org/selenium-press-room.html>

http://www.c-win.org/webfm_send/187 & http://www.c-win.org/webfm_send/186