

Attachment 1

Proposed MAA as Approved by the Board in July 2008 with Changes Requested by the Bureau

MANAGEMENT AGENCY AGREEMENT BETWEEN THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD AND THE UNITED STATES BUREAU OF RECLAMATION

This Management Agency Agreement (hereinafter "Agreement") is entered into by and between the Central Valley Regional Water Quality Control Board (hereinafter "Regional Water Board"), acting through the Executive Officer, and the United States Bureau of Reclamation¹ (hereinafter "Reclamation"), acting through the Regional Director of the Mid Pacific Region, for the purpose of addressing certain salt imports to the Lower San Joaquin River (LSJR). The Agreement is a **voluntary and cooperative** means of implementing relevant provisions of the Regional Water Board's *Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins – 4th Edition* (Basin Plan).

WHEREAS:

1. The Basin Plan sets load allocations for the Delta-Mendota Canal (DMC) and sets forth that the Regional Water Board can enter into a Management Agency Agreement (MAA) with Reclamation as part of its implementation plan.
2. Under the Basin Plan, the MAA is to require Reclamation to address salt imports from the DMC to the Lower San Joaquin watershed. The current timetable under the Basin Plan allows 8 -12 years for **Reclamation the DMC** to achieve compliance with DMC load allocations, depending on water year type.
3. Through the MAA, Reclamation is to address DMC salt imports by **implementing a plan to provide:**
 - ~~a. meeting the DMC load allocations prescribed in the Basin Plan Amendment; or~~
 - ~~b. providing mitigation and/or dilution flows to that create assimilative capacity for salt in the SJR equivalent to DMC salt loads in excess of their allocations.~~
4. Proceeding in a cooperative basis is an efficient and effective means of achieving water quality goals.²

¹ By entering into this agreement, Reclamation does not waive and specifically reserves any argument regarding whether the State of California, including the State Water Resources Control Board and the Regional Water Quality Board, can regulate and enforce state nonpoint source standards, objectives, or load allocations against Reclamation owned facilities in the manner contemplated in the current Basin Plan. **Reclamation has historically and continues to object to the TMDL load allocation on both legal and technical bases.**

² The Regional Water Board and Reclamation have agreed to proceed on a cooperative basis, which circumvents any dispute as to whether the Regional Water Board can enforce DMC load allocations against Reclamation. By entering into this agreement, the Regional Water Board

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5. Salt and boron imported into the LSJR watershed via the DMC should be managed in a manner that is protective of both surface water and groundwater;
6. Salt and boron objectives prescribed in the Basin Plan for the San Joaquin River at the Airport Way Bridge near Vernalis should be achieved through the actions of Reclamation under this agreement and through the actions of other **responsible** parties ~~in meeting their obligations prescribed in the salt/boron TMDL basin plan amendment~~;
7. Reclamation and the Regional Water Board should work together with other responsible parties to achieve compliance with the San Joaquin River salt and boron objectives while facilitating the export of the maximum amount of salt out of the San Joaquin basin;
8. The Regional Water Board is responsible for protecting water quality and beneficial uses of waters within the Central Valley Region;
9. Reclamation holds water rights that facilitate the operation of the Central Valley Project (CVP), including the DMC;
10. Reclamation has prepared a document entitled *Actions to Address the Salinity and Boron TMDL Issues for the Lower San Joaquin River* (hereinafter "Action Plan"), which describes Reclamation's past, current and planned practices and procedures to mitigate and manage adverse impacts of salt and boron imported into the San Joaquin basin via the DMC in order to help achieve compliance with the objectives contained in the Basin Plan;
11. Reclamation's Action Plan includes Reclamation's agreement to lead the effort to develop stakeholder interest in a real-time water quality management program (hereinafter "Real Time Program"). The Real Time Program would involve, among other things, Reclamation monitoring and modeling efforts to determine assimilative capacity of the Lower San Joaquin on a real-time basis. **Stakeholders along the San Joaquin which are subject to salt and boron load allocations in the Basin Plan must participate in the Real Time Program to qualify for conditional waivers of waste discharge requirements.**
12. The issues involved are complex and there is uncertainty regarding the potential for establishing a real-time water quality program for the river. To address this situation, a phased approach will be taken. The first

does not circumscribe the extent of its legal authority to enforce water quality provisions against any entity, including Reclamation.

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phase, which would last two years and is the focus of this agreement, would be an initial monitoring, quantification, and evaluation period. At the end of this phase, the Regional Water Board and Reclamation will review and update the agreement to better define future efforts.

NOW, THEREFORE, the parties hereto agree as follows:

1. Reclamation agrees:

- a. To ~~meet its load allocations, or~~ provide mitigation and/or dilution flows ~~equivalent to its excess load as prescribed in the Basin Plan to create assimilative capacity for salt in the San Joaquin River. This will include initiating stakeholder efforts to develop a Real Time Management Program.;~~
- b. To continue to implement existing projects that will offset a minimum of 25% of the ~~if~~ excess DMC salt load **as defined in the Basin Plan** by July 1, 2010, **provided that accounting rules for offsets allow for non-consumptive use releases; participation in projects that reduce salt load into the river; and other actions to provide assimilative capacity in the river.** This salt load reduction goal will be used to measure Reclamations progress toward meeting DMC load allocations contained in the Basin Plan.
- c. To implement its Action Plan in accordance with the schedule contained in the Action Plan;
- d. To submit reports to the Regional Water Board in accordance with the provisions of 3.d, below.
- e. To seek **grant** funding for additional salinity control efforts in the Lower San Joaquin River watershed.

2. The Regional Water Board agrees:

- a. That Reclamation's successful and timely implementation of its Action Plan and this Agreement is a cooperative means of working to achieve DMC load allocations as set forth in the Basin Plan;
- b. That the Real Time Program described in Reclamation's Action Plan will be a jointly developed program between Reclamation and stakeholders where stakeholders could join common efforts to meet salt and boron objectives without restricting the ability to export salt out of the San Joaquin basin.

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- c. To continue to evaluate Reclamation's progress toward the implementation of its Action Plan and this Agreement, the goals of which include establishing a comprehensive Real Time Program that would meet the approval of the Regional Water Board;
 - d. That Regional Water Board staff will make regular presentations to the Regional Water Board at publicly noticed meetings, which will describe Reclamation's activities and will assess Reclamation's progress toward ~~meeting their DMC load allocation and~~ establishing an acceptable Real Time Program. Reclamation shall receive personal notice of these meetings.
3. It is mutually agreed:
 - a. That both agencies will comply with all **valid and enforceable** State and Federal environmental compliance laws and regulations;
 - b. That an initial two-year monitoring, reporting, and assessment program will be jointly implemented by Reclamation and the Regional Water Board. The purpose of this program will be to:
 - i. Establish the information, data, and methodologies needed to evaluate the salt loads from DMC operations and salinity offset credits to be applied to the various elements of Reclamation's Action Plan.
 - ii. Quantify the salt mitigation benefit of those activities and projects in Reclamation's Action Plan that are currently being implemented or that have been implemented in the past; and
 - iii. Assess the progress made toward establishing a viable Real Time Program.
 - c. This agreement ~~will be reviewed and updated~~ **is expressly subject to modification** following the initial 2-year assessment period.
 - d. That the initial monitoring, reporting, and assessment program will consist of the following:
 - i. **Quarterly Activity and Monitoring Reports**

Reclamation will submit quarterly reports to the Regional Water Board by 45 days after the end of the calendar quarter. The quarterly reports will include a summary of activities conducted by Reclamation during the quarter in conjunction with each

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element included in their Action Plan, including activities related to developing a Real Time Program. In addition Reclamation will include data collected relevant to DMC load evaluation.

ii. **January 1, 2009 – Submittal of Reclamation’s Draft Compliance Monitoring and Evaluation Plan**

Reclamation will submit a *Draft Compliance Monitoring and Evaluation Plan* to the Regional Water Board. Where appropriate, the draft plan will propose the data and quantification methods used to evaluate the salt loads from DMC operations and salinity offset credits to be applied to the various elements of Reclamation’s Action Plan.

Data will include monitoring locations, parameters monitored, data collection methods, and data quality control. Included with the proposed quantification methods for salt load offset credits for each element of Reclamation’s Action Plan will be a description of the salt mitigation benefit of each element and a clear explanation of how the proposed quantification method accurately quantifies the salt load effect.

iii. **July 1, 2009 - Deadline for Regional Water Board approval of Reclamation’s Compliance Monitoring and Evaluation Plan**

Regional Water Board staff will review and evaluate Reclamation’s *Draft Compliance Monitoring and Evaluation Plan*, provide comments and negotiate revisions needed to ensure the data is adequate to evaluate the salt loads from DMC operations and salinity offset credits to be applied to the various elements of Reclamation’s Action Plan. Approval of the plan can be granted by the Regional Water Board’s Executive Officer.

iv. **January 1, 2010 – Submittal of Reclamation’s Draft Compliance Monitoring and Evaluation Report**

Reclamation will submit a *Draft Compliance Monitoring and Evaluation Report* to the Regional Water Board. Where appropriate, the draft report will include the data and quantification methods used to evaluate the salt loads from DMC operations and salinity offset credits to be applied to the various elements of Reclamation’s Action Plan. The Regional

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Water Board acknowledges that Reclamation has been implementing measures in the Action Plan for years prior to adoption of the current TMDL. At Reclamation's option, the draft report may quantify the results of past actions to assist with future evaluation of the DMC load allocation.

Additionally, the draft report will summarize the activities conducted and resources provided by Reclamation in implementing the Real Time Program of its Action Plan, the progress and status of efforts to establish a viable Real Time Program, and a schedule and milestones for planned activities.

v. **July 1, 2010 – Submittal of Reclamation's Final Compliance Monitoring and Evaluation Report**

Reclamation will submit a *Final Compliance Monitoring and Evaluation Report* to the Regional Water Board. Where appropriate, the report will include the data and quantification methods used to evaluate the salt loads from DMC operations and salinity offset credits to be applied to the various elements of Reclamation's Action Plan. The Regional Water Board acknowledges that Reclamation has been implementing measures in the Action Plan for years prior to adoption of the current TMDL. At Reclamation's option, the report may quantify the results of past actions to assist with future evaluation of the DMC load allocation.

Additionally, the report will summarize the activities conducted and resources provided by Reclamation in implementing the Real Time Program element of its Action Plan, the progress and status of efforts to establish a viable Real Time Program, and a schedule and milestones for planned activities.

- e. That revisions to this Agreement must be approved by Reclamation and the Regional Water Board's Executive Officer in writing. Significant revisions will be made part of the Regional Water Board's public process, and will be subject to public review;
- f. That any revisions to Reclamation's Plan must be approved by the Regional Water Board or its Executive Officer. Such revisions will be effective at a date to be determined upon submittal of an acceptance letter from each party to the other party. The acceptance letters will include summaries of the mutually acceptable revisions and the date

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the revisions will go into effect. Where appropriate, these actions will be made subject to public review;

- g. To meet no less than quarterly to maintain coordination and communication, report on Reclamation's progress toward establishing an acceptable Real Time Program, review proceedings under this agreement, and consider revisions to this Agreement and/or Reclamation's Plan as requested by either party;
- h. That this agreement shall become effective as soon as it is signed by the parties hereto and shall continue in force unless terminated by either party upon ninety (90) days notice in writing to the other of intention to terminate upon a date indicated.
- i. That, if either party terminates this agreement, the Regional Water Board will pursue traditional regulatory means of implementing the provisions of the Basin Plan, including those against Reclamation, to the extent that they apply.
- j. That this agreement may be suspended in an emergency. "Emergency" means an extraordinary occurrence or combination of circumstances that was unforeseen and unexpected at the time that this Agreement was entered into, and that substantially affects the ability of either of the parties to fulfill their obligations under this agreement.
- k. That nothing herein shall be construed in any way as limiting the authority of the Regional Water Board in carrying out their legal responsibilities for management or regulation of water quality;
- l. That nothing herein shall be construed as limiting or affecting in any way the legal authority of Reclamation in connection with the proper administration and management of Bureau of Reclamation facilities and water management and delivery systems;
- m. That funding under this agreement is subject to the requirements of the Anti-Deficiency Act, 31 USC §§ 1341 et seq., and other applicable law. Nothing in this agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds from the United States Treasury, except as otherwise permitted by applicable law. Nothing in this agreement may be construed to obligate the United States Department of the Interior or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate

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the Department of the Interior or the United States to spend funds on any particular project or purpose, even is funds are available.

- n. That nothing herein shall be construed in any way as subjecting Reclamation to any requirement, process, or sanction for which Congress has not waived sovereign immunity under section 313 of the federal Clean Water Act, 33 USC § 1323.

IN WITNESS WHEREOF, the parties hereto, by their respective duly authorized officers, have executed this Agreement in duplicate on the respective dates indicated below.

Mid-Pacific Region
Bureau of Reclamation
U.S. Department of the Interior

Central Valley Regional Board
Regional Water Quality Control Board
State of California

By _____

By _____

Date: _____

Date: _____