

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

January 3, 2011

Via E-mail

jmartin@waterboards.ca.gov

Mr. Jim Martin
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: Phase II MAA - Salt and Boron TMDL

Dear Mr. Martin:

The South Delta Water Agency believes that the Regional Board's approach to implementing the salt and boron TMDL through a Management Agency Agreement is counter-productive and delays the required water quality improvements to the San Joaquin River. SDWA opposed the first MAA when proposed, and sees nothing in this re-worked MAA that would cause it to change its position.

Central to our position is the MAA and Salinity Management Plan's complete avoidance of HR 2828 which became Public Law 108-361. This law, known as the Calfed Bay-Delta Authorization Act included certain specific directives to the Bureau which relate to its obligations on the San Joaquin River, especially with regard to salinity management and the operation of New Melones reservoir.

In the recitals of the MAA, as well as in those of the Salinity Management Plan, the Regional Board and Bureau act as if Public Law 108-361 does not exist. To the contrary, it does. PL 108-361 provides that as a condition to any increase in exports pursuant to an intertie between the DMC and the California Aqueduct the Bureau:

“shall” develop and initiate a program to meet all existing water quality standards and objectives for which the CVP has responsibility;

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“shall” include recirculation for flow and salinity control (dilution);

“shall” reduce reliance on New Melones for meeting water quality and fishery flow objectives; and

“shall” include a program to purchase water to provide flow and dilute salt on the San Joaquin River. [See PL 108-361, Sec. 103. (d)(2)(D)]

Given that the intertie is under construction, the starting point for the Bureau is that it must have both developed and be implementing *a program to meet its water quality obligations* (including both the salt and boron TMDL and the four southern Delta salinity objectives), must be doing it in a manner that *reduces the use of New Melones*, and *must be including purchases and recirculation*. It is clear from the recitals from the MAA and the Salinity Management Plan that *none of these are being done*. The question therefore is why would the Regional Board embark upon an approach to implement its TMDL in a manner that excuses the Bureau from federal law?

Foot note 2 on the first page of the draft MAA indicates that the agreement is a method by which the Regional Board and the Bureau can “circumvent” the dispute as to whether the Regional Board can enforce the TMDL against the Bureau. Given that the Bureau is obligated under PL 108-361 to meet all of its obligations for water quality standards and objectives there should be no appreciable concern about whether the Regional Board can force the Bureau to meet the TMDL obligations previously adopted.

However, the Regional Board’s approach is instead through the MAA. The current version of the MAA, like the last is an “agreement to agree.” For example the document contains statements such as “*The Compliance Monitoring and Evaluation Plan is a living document ... (and) may change over time...*” “*At the end of the second phase, the Regional Water Board and Reclamation will review and update the agreement to better define future efforts ...*” “*will be jointly developed ...*” “*To continue to evaluate ..*” All of these indicate the Regional Board’s acquiescence to an approach that delays actual enforcement of the TMDL by giving the Bureau more and more time to look at, discuss, propose, and argue over what it wants to do. It does not require the Bureau to do what it must do.

The Bureau complains that other processes will likely affect its operations on the San Joaquin River, and thus it cannot agree to do anything until those other processes determine its limitations. This is of course backwards; the Bureau is obligated to meet all of its obligations, not to meet some of them and then inform the Regional Board of what it thinks is left over for salt control.

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It should be noted that the original MAA required the Bureau to mitigate 25% of any excess salt load it contributed, but that the new draft MAA removes an such incremental obligation/enforcement. Hence we see that just as predicted, the Bureau decides it does not want to do something and the Regional Board backs down. As a further indication of the Bureau's view of things, one need only read the foot note 1 from the amended Salinity Management Plan which states that the Bureau is "not committed to providing dilution flows beyond that in order to offset calculated salt loads in real time, since Reclamation believes this would result in over-compliance ... (and) be a waste of water."

First, this indicates that the Bureau is against the very nature of the MAA which is to have real time monitoring and real time actions to dilute DMC derived salts. Second, and just as important, the Bureau thinks that better water quality at Vernalis is a waste of water. This of course ignores the Bureau's other obligations to meet interior southern Delta salinity standards, which have been regularly violated in past years. To describe better water quality in the southern Delta (when standards are regularly exceeded) which improves export and local water quality as a "waste" of water is remarkable.

As referenced in the draft MAA, the Bureau has committed to convene and be part of a stakeholder process to evaluate technical and policy questions which relate to the Action Plan and the Monitoring and Evaluation Plan. SDWA has been unable to fully participate in the precursor to this process but will try to participate in the anticipated stakeholder process. Many serious issues remain with regard to those Plans.

The South Delta Water Agency recommends the Regional Board not approve the MAA and directs its staff to develop a more typical implementation plan for achieving compliance with the TMDL obligations imposed on the Bureau for its contribution to San Joaquin River salinity via the DMC.

Please feel free to contact me if you have any questions.

Very truly yours,



JOHN HERRICK