

January 3, 2011

VIA ELECTRONIC MAIL

Mr. Jim Martin
Central Valley Regional Water Quality Control Board
11021 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

Re: Revised Management Agency Agreement with U.S. Bureau of Reclamation
Addressing Salinity in the Lower San Joaquin River

Dear Jim:

The following comments are provided on behalf of Stockton East Water District (SEWD) to the Revised Management Agency Agreement between Agreement between the Central Valley Regional Water Quality Control Board (Regional Water Board) and the United States Bureau of Reclamation (Reclamation) addressing salinity in the Lower San Joaquin River and related documents.

Revised Management Agency Agreement (Revised MAA)

SEWD is outraged by the suggested revision to Section 1a of the Revised MAA. First, we have expressed during development of the TMDL and during each and every stakeholder meeting relating to implementation of the TMDL that continuation of the status quo, that is, diluting the salinity pollution caused by others cannot exclusively fall on New Melones Reservoir as Reclamation has done in the past.

Second, the suggested revision is a misstatement of the obligations imposed upon Reclamation through State Water Resources Control Board Decision 1641. Decision 1641 conditioned **ALL** CVP permits on meeting the Vernalis salinity objective, not simply New Melones Reservoir. Moreover, D1641 does not mandate releases from New Melones Reservoir to meet the Vernalis water quality objective if "other sources of water or other measures to meet the conditions." [D1641, page 160] The Regional Water Board cannot mandate releases from New Melones Reservoir, nor should it tie Reclamation hands by setting forth in an agreement that flows shall be provided from New Melones; this is well beyond the Regional Water Board's legal authority.

Finally, the proposed language also violates federal law requiring Reclamation to reduce the amount of water used from New Melones to meet the water quality objectives. Specifically, on October 25, 2004, President Bush signed into law HR 2828 (Public Law 108-361), which contains important direction for the Secretary of the Interior and Reclamation regarding operation of New Melones Reservoir. Public Law 108-361 directs the Reclamation, with the assistance of the State, to initiate and implement actions to achieve the Bay-Delta water quality objectives while reducing the demand on water from New Melones Reservoir for meeting these objectives. The fundamental purpose for this legislation is to provide Reclamation with greater flexibility in meeting the existing standards **so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to CVP contractors from the New Melones project.** Continuing to rely on releases from New Melones Reservoir as is contemplated in the Revised MAA directly contradicts the Congressional authorization.

SEWD suggests the language be revised as follows:

Revised Section 1a: This section should read:

~~"To continue to provide flows from New Melones Reservoir required to meet Vernalis water quality objectives from salinity as required by its water right permits and to assess the extent to which releases under other programs and activities involving Reclamation will create dilution flows in the San Joaquin River; To~~ provide mitigation and dilution flows to create assimilative capacity for salt in the San Joaquin River; Reclamation further agrees to implement mitigation activities for salts imported through the Delta Mendota Canal, including initiating stakeholder Real Time Program and implementation of wetland best management practices.

SEWD believes it is ill-advised to delete the requirement that Reclamation offset a minimum percentage of excess DMC salt load. The Regional Board members were adamant that a minimum threshold be included to ensure Reclamation pursues aggressive action.

SEWD suggests the language be revised as follows:

Revised Section 1b.: This section should read:

"To track and report the percent of annual dilution flow offset allocations and salt load reductions achieved under Reclamation's Action Plan following the accounting established in the compliance Monitoring and Evaluation Plan. Reclamation shall achieve a minimum reduction of 25% of the excess DMC salt

load as defined in the Basin Plan on an annual basis. This salt load reduction goal..."

The reference in Section 1.d to Section 3.e should be changed to 3.f.

Reclamation's Salinity Management Plan - Revised November 2010 (Action Plan)

SEWD submitted detailed comments on the original Action Plan and requested specific answers to questions. Two and one-half (2 ½) years have gone by and Reclamation has never responded to SEWD's letter. The current version of the Action Plan continues to fail miserably at comprehensively addressing the salinity problem in the San Joaquin River. Instead of providing a plan to manage the salts imported in the basin, the Action Plan relies on the status quo, that is, releases from New Melones Reservoir and takes credit for actions taken by other interested stakeholders attempting to mitigate their salinity discharges into the San Joaquin River.

Reclamation also misstates the purpose for which New Melones Reservoir was constructed, namely they assert that one of the purposes for construction is water quality. Congress did not authorize New Melones for water quality purposes. Rather, Congress directed the Army Corps of Engineers (Army Corps) to consider the "advisability of including storage for regulation of stream flow for the purpose of downstream water quality control," which it did. In 1965, the Army Corps concluded that no more than 48,500 acre feet annually would ever be required to control salinity at Vernalis. Relying on that conclusion, the Regional Director of Reclamation concluded that provision of limited water quality benefits "will not affect the project's yield," and that the New Melones Project "should not be considered as a complete solution to this problem." Based upon these and other findings, the Regional Director conditionally recommended including water quality as an authorized purpose of New Melones as follows:

Accordingly, I recommend that the . . . water quality objectives be incorporated into the New Melones Unit with the stipulation that, during its 50 year repayment period, these objectives will not require releases exceeding 70,000 acre feet in one year.

Based on the recommendation with this stipulation, the Army Corps recommended inclusion of water quality as one of the authorized purposes for New Melones. The project proceeded to be built on that assumption and conclusion, and Congress took no further action. This misstatement should be corrected.

The Action Plan should be revised to include in the Water Acquisitions section a discussion of acquiring water for water quality purposes. Additionally, the Action Plan should include a comprehensive discussion of the Program To Meet Standards required by Public Law 108-361, which among other things, provides authority for the acquisition of water for water quality purposes.

The Action Plan describes the San Joaquin River Restoration Program and notes that Friant parties have the option to divert flows for agricultural use. The Regional Water Board should not allow this diversion to occur above Vernalis if Reclamation is making releases from New Melones Reservoir to meet the Vernalis salinity objective. This water should contribute to the "dilution flow" at Vernalis to assist in meeting the water quality objective.

The Action Plan discusses the Wetlands BMP Plan. These BMP plans were required to be completed by Public Law 108-361 in 2004. Over six (6) years have passed and we are not any closer to having these approved plans which are essential to improving water quality in the San Joaquin River. The Regional Water Board should demand more and require implementation of Wetland BMP plans, and if the Wetlands groups fail, then WDRs should be issued for the discharges.

Compliance Monitoring and Evaluation Plan (Plan) and Compliance Monitoring and Evaluation Report, WY 2000 to Present (Report)

In both the Plan and Report on page 3 in Section A. Flow Actions, Reclamation misstates the requirements imposed by the State Water Board in Decision 1641 on New Melones Reservoir. D1641 did not order Reclamation to release water from New Melones to meet the Vernalis salinity objective. Instead, it conditioned ALL CVP permits on meeting the Vernalis salinity objective, not simply New Melones Reservoir. D1641 did not mandate releases from New Melones Reservoir to meet the Vernalis water quality objective if "other sources of water or other measures to meet the conditions." [D1641, page 160] This gross misstatement must be corrected.

Finally, Reclamation proposes to count as "dilution flows" all water released from New Melones Reservoir for non-consumptive purposes above the TMDL design flows. Meaning any water released for fishery purposes will be counted as "dilution flows." Is this really what the Regional Water Board contemplated when it allowed for the use of dilution flows? As you can see from the Report, when allowed to count essentially every drop of water from New Melones Reservoir, Reclamation achieves well over 50% of reduction in its excess load. Is this what the Regional Water Board intended when it developed the TMDL?

Conclusion

The Regional Board should demand more than simply a continuation of the status quo. At present, Reclamation utilizes New Melones Reservoir to mitigate for ALL of the CVP impacts to the San Joaquin River. This is fundamentally unfair and violates the California Constitutional requirement to place water to reasonable use. SEWD asserts dilution of pollution by New Melones Reservoir as provided for in the Action Plan constitutes an unreasonable use of water, when there are other measures available and other sources for dilution.

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We urge the Regional Board to reject the Revised MAA, and require Reclamation take meaningful action to solve the problem.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. E. Harrigfeld', written in a cursive style.

KARNA E. HARRIGFELD
Attorney-at-Law

KEH:lac

cc: Mr. Kevin Kauffman, Stockton East Water District
Mr. Lee Mao, U.S. Bureau of Reclamation
Ms. Lisa Holmes, U.S. Bureau of Reclamation