

MEMORANDUM OF UNDERSTANDING
FOR PARTICIPATION IN REAL TIME MANAGEMENT PROGRAM
FOR MEETING THE OBJECTIVES OF THE
SALT AND BORON TOTAL MAXIMUM DAILY LOAD FOR
THE LOWER SAN JOAQUIN RIVER

This Memorandum of Understanding is entered into by and between the San Joaquin Valley Drainage Authority, a California joint powers agency, on behalf of its members and participating parties in the Westside San Joaquin River Water Quality Coalition (WWC); the San Luis & Delta-Mendota Water Authority, a California joint powers agency, on behalf of its members participating in the Grassland Drainage Management Activity Agreement (“GBD”); the United States, Department of the Interior, Bureau of Reclamation (Reclamation); and the California Department of Water Resources (DWR) each of which may be referred to herein individually as a “Party” or jointly as the “Parties.”

RECITALS

A. The California Regional Water Quality Control Board, Region 5, Central Valley Region has heretofore adopted a Basin Plan Amendment setting forth its Control Program for Salt and Boron Discharges into the Lower San Joaquin River, also known as the Salt and Boron Total Maximum Daily Load for meeting the water quality objectives for salt and boron at Vernalis.

B. The Basin Plan Amendment provides that the Regional Board shall use waivers of waste discharge requirements or waste discharge requirements to apportion load allocations to each of seven geographic subareas that comprise the Lower San Joaquin River, including 1) the San Joaquin River Upstream of Salt Slough; 2) Grassland; 3) Northwest Side; 4) East Valley Floor; 5) Merced River; 6) Tuolumne River and 7) Stanislaus River, as well as to the Delta-Mendota Canal.

C. The Basin Plan Amendment prioritizes application of the Total Maximum Daily Load such that the compliance date for the Northwest Side; Grassland and Delta Mendota Canal must be met by July 28, 2014 for Wet through Dry Year Types/July 28, 2018 for Critical Years.

D. The Basin Plan Amendment sets the compliance date for the Tuolumne River as July 28, 2018 for Wet through Dry Year Types/July 28, 2022 for Critical Years.

E. The Basin Plan Amendment sets the compliance date for San Joaquin River Upstream of Salt Slough the East Valley Floor, the Merced River and the Stanislaus River as July 28, 2022 for Wet through Dry Year Types/July 28, 2026 for Critical Years.

F. Stakeholders participating in this MOU through the WWC in the Regional Board’s Irrigated Lands Regulatory Program within the Grassland and Northwest Side sub-areas include the Del Puerto Water District, Patterson Irrigation District, San Joaquin River Exchange

Contractors Water Authority, San Luis Water District, Tranquillity Irrigation District, Twin Oaks Irrigation District, West Stanislaus Irrigation District; Grassland Resource Conservation District on behalf of special project participants Grassland Water District, California Department of Fish and Wildlife (CDFW), the United States, Department of the Interior, Fish and Wildlife Service (USFWS), and other non-member participating agencies and individuals.

G. Stakeholders participating in this MOU through the GBD in the Grassland sub-area include the Camp 13 Drainage District, Charleston Drainage District, Firebaugh Canal Water District, Pacheco Water District and Panoche Drainage District.

H. A provision of the Basin Plan Amendment allows stakeholders to obtain a waiver from salt load limits and waste discharge requirements if there is a real time management program in place that has been approved by the Regional Board prior to the date for implementation of discharge limitations under the Total Maximum Daily Load.

I. Reclamation in coordination with the other Parties has developed the Real-Time Salinity Management Program Draft Framework for Meeting the Objectives of the Salt and Boron Total Maximum Daily Load for the Lower San Joaquin River.

J. By this Memorandum of Understanding the Parties intend to set forth their mutual understandings and commitments to organize themselves to participate in a Real Time Salinity Management Program in order to comply with the Basin Plan Amendment and Total Maximum Daily Load.

K. The Parties anticipate that additional Regulated Agencies in the Tuolumne River sub-area may wish to enter into this MOU now or in the future for purposes of participating in the real time management alternative for the Total Maximum Daily Load.

L. The Parties anticipate that additional Regulated Agencies for San Joaquin River Upstream of Salt Slough, the East Valley Floor, the Merced River and the Stanislaus River sub-areas may wish to enter into this MOU now or in the future for purposes of participating in the real time management alternative for the Total Maximum Daily Load.

M. The Parties wish to accommodate participation in the MOU by the additional stakeholders described above and acknowledge the need to coordinate with such sub-areas in order to fully implement a Real Time Salinity Management Program.

NOW, THEREFORE, the Parties, on the terms and conditions set forth herein, agree as follows:

Section 1. Definitions:

(a) "Basin Plan Amendment" shall mean that certain Amendment included in the Water Quality Control Plan (Basin Plan) for the California Water Quality Control Board Central Valley Region, Fourth Edition (Revised October 2011 with Approved Amendments)

Sacramento River Basin and San Joaquin River adopted September 10, 2004, Pages IV-32.00-IV-32.07, setting a Total Maximum Daily Load for Salinity and Boron in the Lower San Joaquin River, as such amendment may be changed by action of the Regional Board approved by the State Water Resources Control Board from time to time.

(b) “Cooperating Agencies” shall mean the California Department of Water Resources, Reclamation, and any other state or federal agencies participating in the MOU that are not Regulated Agencies.

(c) “Fiscal Year” shall mean the period from March 1 of a calendar year through the last day in February of the ensuing calendar year.

(d) “Lower San Joaquin River” or “LSJR” shall mean the area subject to the TMDL, which is a 130-mile reach of the LSJR extending from downstream of the Mendota Dam to the Airport Way Bridge near Vernalis (Figure 1-1).

(e) “Memorandum of Understanding” or “MOU” shall mean this document.

(f) “Party” shall mean a signatory to this MOU and “Parties” shall mean more than one of such signatories.

(g) “Real Time Salinity Management Program” or “RTMP” shall mean the program developed pursuant to the Real-Time Salinity Management Program Draft Framework for Meeting the Objectives of the Salt and Boron Total Maximum Daily Load for the Lower San Joaquin River developed by Reclamation with other parties and submitted for approval by the Regional Board, the current version of which is attached to this MOU as Attachment 1, as the same may be modified or amended from time to time.

(h) “Reclamation” shall mean the United States, Department of the Interior, Bureau of Reclamation, acting through the Regional Director, Mid-Pacific Region, or such employee as shall be designated by the Regional Director.

(i) “Regional Board” shall mean the California Water Quality Control Board, Region 5, Central Valley Region.

(j) “Regulated Parties” shall mean the state, federal and local agencies to whom the Regional Board assigns a salt load allocation under the TMDL for the LSJR who have executed the MOU, except Reclamation.

(k) “Total Maximum Daily Load” or “TMDL” shall mean the Salt and Boron Total Maximum Daily Load adopted as part of the Basin Plan Amendment existing on the effective date of this MOU.

Section 2. Purpose: The purpose of this MOU is to provide the principles and terms under which the Parties will organize themselves to develop and implement a Regional Board-

approved Real Time Management Program for Salinity in the LSJR as described in the Recitals above.

(a) Key Principles:

(1) This MOU is not intended to form a new legal entity.

(2) Reclamation expects to satisfy its obligations under the Regional Board TMDL by means of its Management Agency Agreement (the “MAA”) between Reclamation and the Regional Board by cooperating in this MOU, but does not enter into this MOU as one of the Regulated Agencies.

(3) The funding plan for the RTMP shall consist of any MOU budgets approved by the Steering Committee in consultation with the Cooperating Parties, together with the approved budgets for RTMP purposes of each Party or, as appropriate, the stakeholders participating through a Party. Each Party retains full responsibility for its own budgets and expenditures for purposes of the RTMP, including but not limited to expenditures for infrastructure improvements within such Party’s own jurisdictional area. The Parties may also agree to jointly fund or to jointly obtain sources of funding for a particular RTMP measure or activity.

(4) No Party shall be bound by the terms of this MOU to incur costs or modify its operations for purposes of the RTMP, but each Party acknowledges that its failure to implement measures required for implementation of the RTMP may result in the Regional Board subjecting it or stakeholders participating through such Party to direct Regional Board regulation, including but not limited to, individualized salt load allocations consistent with the TMDL.

(5) Each Party agrees to cooperate and coordinate with all other Parties in order to share information and work in good faith on the development of protocols, collection of data, development of models, networking of information, and to share information on operational planning to support development and implementation of the RTMP.

(6) The Regulated Parties are at significantly different levels of salinity management capabilities at the initiation of this MOU. Some have already dedicated a high level of financial resources, developed extensive salinity management tools and are already at or near to full compliance with likely TMDL loading requirements from their geographic areas, whereas other areas do not yet have such capabilities.

(7) The contributions of each Party may be through in-kind services, funding within such Party’s jurisdictional boundaries, financial contributions to support RTMP activities or any other form of consideration; such contributions need not be equal or proportionate based on areas served but instead shall be of a cooperative nature, taking into account such Party’s respective organizational and funding constraints, available expertise, and level of salinity management and investments already implemented.

(b) Anticipated Activities: The activities authorized to carry out the purposes of this MOU specifically include, but are not be limited to, the following:

(1) Develop and share data, contribute in-kind services and/or employ consultants as determined by the Steering Committee pursuant to authorized Budgets for purposes of developing and implementing the RTMP.

(2) Identify the respective contributions each Party will make in furtherance of the purposes of this MOU.

(3) Provide a forum and organization for such other and additional forms of cooperation, coordination and funding as may be necessary or convenient to the Parties in addressing water quality issues and/or regional drainage management as needed to comply with the TMDL. Such activities may include, for example, the following

a. Maintain, directly or through the services of a Party or consultant, information about assimilative capacity within the LSJR at a given time.

b. Provide, directly or through the services of a Party or consultant, information concerning coordination of discharges needed to remain within the assimilative capacity of the LSJR at a given time.

c. Provide, directly or through the services of a Party or consultant, annual progress reports to the Regional Board by December 31 of each year.

(4) Conduct outreach and invite cooperation and coordination with other stakeholders and potential new Regulated Parties interested in the RTMP.

Section 3. Organization:

(a) Steering Committee. : The business required to implement the MOU shall be conducted by a Steering Committee consisting of Member(s) appointed by the Regulated Parties. The initial Steering Committee shall have 7 Members, comprised of 2 Members appointed by the GBD and 5 Members appointed by the WWC. If additional Regulated Parties enter into the MOU, the Regulated Parties shall among themselves determine the appropriate representation per stakeholder to limit the maximum Steering Committee size to 11 Members while achieving equitable representation for various geographic sub-areas. Provided, that with the approval of the Regulated Parties, the Steering Committee may be expanded upon the addition of new Parties if required to achieve equitable representation, without formal amendment of this MOU being required. Members of the Steering Committee shall be appointed by action of the governing body or other appointing authority of the Party, and shall be effective upon the appointment date as communicated in writing to the other Parties. Each member shall serve on the Steering Committee from the date of appointment at the pleasure of such governing body or other appointing authority of the Party. Each Party may also select one Alternate Committee Member, who may act in the place of the Party's Appointed Steering Committee

Member, when such Member is absent. Alternate Steering Committee Members shall be appointed and remain in office in the same manner as the Steering Committee Member.

(b) Steering Committee Participation by Cooperating Agencies. The Cooperating Agencies each agree to designate one representative to attend and participate in the presentations, discussions and deliberations of the Steering Committee, who shall serve from the date of appointment of the Cooperating Agency at the pleasure of its appointing authority. Each Cooperating Agency also agrees to select one Alternate representative to the Steering Committee to attend and participate when the Cooperating Agency's representative is absent. Alternate Steering Committee Members shall be appointed and remain in office in the same manner as the Cooperating Agency's representative.

(1) Cooperating Agency representatives shall receive notice of meetings in the same manner as Steering Committee Members.

(2) Cooperating Agency representatives shall not be entitled to vote on action items before the Steering Committee but shall be afforded the opportunity to provide the viewpoint, guidance, and recommendations of the Cooperating Agency prior to any such decision; provided, the Steering Committee may take action without such input in the event the Cooperating Agency representative or Alternate representative fails to attend a noticed Steering Committee meeting.

(c) Meetings. The Steering Committee shall meet regularly on a designated meeting date selected by the Committee from time to time. In addition, The Chairman of the Steering Committee or a majority of a quorum of the members of the Steering Committee, are authorized to call special meetings of the Steering Committee as necessary. All such special meetings shall be scheduled upon at least 72 hours' written notice to all Steering Committee Members, Cooperating Agency representatives, and interested parties who have requested such notice. Attendance by a quorum of the members of the Steering Committee is required for a meeting. All such meetings shall be open to the public and afford the opportunity for public comment. Meetings may be conducted by telephone or teleconference, and Steering Committee Members may participate by telephone or in-person meetings.

(1) Informational sessions may be conducted by fewer than a quorum of the Steering Committee Members.

(2) The Steering Committee Chairman may appoint, with the concurrence of a quorum of the Steering Committee, such ad hoc or technical committees as may be useful from time to time.

(3) The Secretary of the Steering Committee shall prepare meeting notes to generally document the matters addressed at each meeting and the outcome of any votes taken; no formal minutes will be prepared. Such notes shall be available to the public and retained for the lesser period of the duration of this MOU or five (5) years.

(d) Quorum and Voting. A majority of the then-appointed representatives of the Regulated Agencies constitutes a quorum of the Steering Committee. Each Steering Committee member shall have one (1) vote. All actions of the Steering Committee must be taken by majority vote of the members present.

(e) Officers. The Steering Committee shall select from among its members a Chairman, who shall act as presiding officer, and a Vice Chairman, to serve in the absence of the Chairman. There also shall be selected a Secretary, who may, but need not be, a member of the Steering Committee. All elected officers shall remain in office at the pleasure of a majority vote of the Steering Committee.

(f) Approval by a Regulated Party. When the terms of this MOU or applicable law require the approval of a Regulated Party, documentation of such approval, whether by Resolution, motion, or other form of authorization, must be provided to each of the other Regulated Parties. The approval required to carry such action shall be a majority of the Regulated Parties. Authorization of all other actions will be established by the majority vote of the Steering Committee.

(g) Powers and Limitations Thereon. Subject to the authorization from their respective appointing powers, the Steering Committee shall determine the actions necessary for carrying out the MOU, including but not limited to making budget recommendations in conjunction with designated staff or consultants; determining the need for a budget for and basis for sharing in joint administrative expenses for each Fiscal Year, and the timing required for payments of obligations hereunder; employing consultants and otherwise authorizing expenditure of funds within the parameters of the budget approved for the MOU; developing recommended management practices, quality assurance and control parameters, guidelines, rules or regulations for adoption by the Regulated Agencies or their respective participants; and such other actions as shall be reasonably necessary or convenient to carry out the purposes of the MOU.

Section 4. Administrative Services: Services required for implementation of this MOU, including providing necessary staff and accounting services, may be provided by a Party or may be implemented by a consultant hired by the Steering Committee.

Section 5. Term: This MOU shall take effect on the date executed by any two Parties and shall remain in effect so long as the Real Time Salinity Management Program remains in effect or until terminated by agreement of the Parties.

Section 6. Withdrawal/Termination From Further Participation:

(a) A Party may withdraw from this MOU at any time upon 60 days' notice to each other Party. The withdrawal is effective upon expiration of such 60 days' notice. A withdrawing Party shall be obligated to pay for such Party's allocated share of any MOU budget obligations for the current Fiscal Year or cost incurred under any agreed MOU funding obligation through the withdrawal effective date.

(b) The MOU participation of a Regulated Party that fails to actively participate in this MOU or that fails to implement actions necessary for the RTMP may be terminated by the unanimous vote of the remaining Regulated Parties communicated to the Steering Commitments. Such termination shall be effective on the date communicated by or on behalf of the MOU Steering Committee to the terminated Party. A terminated Party shall be obligated to pay for such Party's allocated share of any current year budget obligations or cost incurred under any agreed MOU funding obligation through the termination effective date.

Section 7. Admission of New Members: Additional Regulated Agencies or Cooperating Agencies may become Parties upon reasonable terms and conditions recommended by the Steering Committee and with the written consent of a majority of the other Regulated Parties.

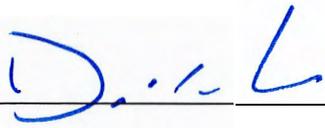
Section 8. Amendments: This MOU may be amended in writing by the Parties hereto. Any amendments to this MOU must be provided in writing to the Executive Officer of the Regional Water Board within 30-days of approval.

Section 9. Assignment; Binding on Successors: Except as otherwise provided in this MOU, the rights and duties of the Parties may not be assigned or delegated without the written consent of the remaining Parties. Any attempt to assign or delegate such rights or duties in contravention of this MOU shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Parties made through this MOU then in effect. This MOU shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

Section 10. Counterparts: This MOU may be executed any number in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 11. Reasonable Cooperation: The Parties agree that they will reasonably cooperate with each other to perform the obligations and to carry out the purpose and intent of this MOU.

San Joaquin Valley Drainage Authority, on behalf of the
Westside San Joaquin River Watershed Coalition

By:  _____

Dated: 10/20/14

[Signatures continue on next page]

San Luis & Delta-Mendota Water Authority, on behalf
of its members participating in the Grassland Basin
Drainage Management Activity Agreement

By: 

Dated: 10/20/14

California Department of Water Resources

By: _____

Dated: _____

Bureau of Reclamation

By: _____

Dated: _____

SIGNATURE PAGES FOR ADDITIONAL REGULATED AGENCIES

East San Joaquin Water Quality Coalition

Dated: _____

By:

Dated: _____

By:

Dated: _____

By:

Dated: _____

By: