United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:

MP-740
RES-8.00

OCT 30 2014

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Jeanne Chilcott
Senior Environmental Scientist
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670
jeanne.chilcott@waterboards.ca.gov

Subject: Transmittal of Final Draft Management Agency Agreement and Draft Annual Work Plan for the Water Quality Control Plan for the San Joaquin River

Dear Ms. Chilcott:

Please find enclosed the Final Draft updated Management Agency Agreement (MAA) and Draft Annual Work Plan for the Water Quality Control Plan for the San Joaquin River, both dated October 31st 2014. These documents are submitted for you to include in the resolution package for the December 2014 Water Board Meeting. On October 31, 2014, Michael Mosley will send a redline strikeout version of the MAA document in a separate email.

We value the continued collaboration with your agency as we strive to address the salinity issues in the San Joaquin River. If you have any questions, please contact Mr. Michael Mosley at 916-978-5119 or mmosley@usbr.gov.

Sincerely,

Michelle H. Denning
Regional Planning Officer

Enclosures

cc: James Brownell (james.brownell@waterboards.ca.gov)

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 "Central Valley Water Board"), acting through the Executive Officer, and the United States Bureau of Reclamation (hereinafter "Reclamation"), acting through the Regional Director of the Mid Pacific Region, for the purpose of addressing certain salt load responsibilities for the Lower San Joaquin River (LSJR). The Agreement is a cooperative means of implementing relevant provisions of the Central Valley Water Board's Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins -4th Edition (Basin Plan) as they pertain to Reclamation.

Section 1: WHEREAS

1.1 The Basin Plan sets load allocations for the Delta-Mendota Canal (DMC) and sets forth that the Central Valley Water Board can enter into a Management Agency Agreement (MAA) with Reclamation as part of its implementation plan;

1.2 Under the Basin Plan, the MAA is to require Reclamation to address salt load responsibilities associated with salt imports from the DMC to the San Joaquin River watershed. The timetable under the Basin Plan allows 8-12 years to achieve compliance with salt load allocations related to the salt imports from the DMC, depending on water year type, or participate in a Board approved real-time management program;

1.3 Reclamation holds water rights for the operation of the Central Valley Project (CVP) that are conditioned upon meeting the salinity objective at Vernalis;

1.4 Under the Basin Plan, the MAA must include provisions requiring Reclamation to meet DMC load allocations or provide mitigation and/or dilution flows to create additional assimilative capacity in the LSJR.

1.5 Proceeding on a cooperative basis is an efficient and effective means of achieving water quality goals;[1]

1.6 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 through a memorandum of understanding or other direct action;

1.7 The Central Valley Water Board should work together with Reclamation and all responsible or interested 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 River watershed;

[1] 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 Central Valley 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.

1.8 The Central Valley Water Board is responsible for protecting water quality and beneficial uses of waters within the Central Valley Region[2];

1.9 On July 9, 2008, Reclamation prepared a document entitled *Actions to Address the Salinity and Boron TMDL Issues for the Lower San Joaquin River* (hereinafter "Action Plan"), which described Reclamation's planned actions to mitigate the 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;

1.10 The Action Plan included Reclamation's agreement to lead the effort to develop a real-time water quality management program (hereinafter "RTMP") and promote the program in an attempt to create stakeholder interest in RTMP. This included monitoring and modeling efforts to determine the assimilative capacity of the LSJR and encouraging stakeholders subject to salt and boron load allocations to participate in the RTMP;

1.11 On December 22, 2008, Reclamation and the Central Valley Water Board signed an MAA that included implementing the Action Plan, including projects to offset a minimum of 25% of the excess DMC salt load; regularly report progress to the Central Valley Water Board; and seek funding for additional salinity control efforts;

1.12 Since 2008, Reclamation has implemented the Action Plan and adhered to the conditions of the existing MAA. The issues involved in establishing the RTMP for the LSJR are complex. To address this situation, a phased implementation approach was established and is described in the San Joaquin River RTMP Framework document;

1.13 Reclamation has been addressing DMC salt imports through the MAA, its authority, Division of Water Rights Permits, and Water Right Decision D-1641, which requires Reclamation to meet the Vernalis water quality objectives for agricultural beneficial uses through flows or other measures;

1.14 State Water Board Revised Water Right Decision 1641 (D-1641) provides Reclamation wide latitude to maintain the salinity standards at Vernalis, including dilution flows from authorized sources available to Reclamation and other means of reducing the salinity concentration. , noting that regional management of drainage water is the preferred method of meeting the objectives;

1.15 The 2008 MAA established a period of monitoring, quantification, and evaluation for potential establishment of a RTMP for the LSJR and specified that, at the end of the period, the Central Valley Water Board and Reclamation would review and update the MAA to define future efforts;

1.16 The Vernalis salinity objectives have been met since the Phase 1 MAA was executed in December 2008;

1.17 Based on the efforts to date and the current status of the RTMP, it is appropriate to update the 2008 MAA.

Section 2: NOW, THEREFORE, the parties hereto agree as follows:

[2] The Central Valley Water Board and Reclamation have agreed to proceed on a cooperative basis, which circumvents any dispute as to whether the Central Valley Water Board can enforce DMC load allocations against Reclamation. By entering into this agreement, the Central Valley Water Board does not circumscribe the extent of its legal authority to enforce water quality provisions against any entity, including Reclamation.

2.1. Reclamation agrees:

2.1a. To continue to implement projects that will offset a minimum of 25% of the excess DMC salt load as defined in the Basin Plan, lead efforts that result in projects that reduce overall salt load in the river and improve scheduling of discharges, and take other actions, as appropriate and authorized to provide assimilative capacity in the SJR;

2.1b. To actively support the Central Valley Water Board approved RTMP for the LSJR;

2.1c. To replace the 2008 Action Plan by creating annual Work Plans and annual Reports that incorporate specific activities to be conducted in support of the RTMP, including but not limited to actions identified in 2.3e below;

2.1d. To implement the Annual Work Plan in accordance with the schedule contained therein, subject to appropriations;

2.1e. To submit reports and work plans to the Central Valley Water Board in accordance with the provisions of 2.3d and 2.3f below;

2.1f. To pursue funding, including but not limited to grant funding, for salinity control efforts in the Lower San Joaquin River watershed. Nothing in this agreement should be construed to obligate Reclamation to seek any additional funding through its budget process.

2.2 The Central Valley Water Board agrees:

2.2a. That the successful and timely implementation of this Agreement is a cooperative means of achieving the requirements set forth in the Basin Plan;

2.2b. That the RTMP will be a jointly developed program between the Central Valley Water Board, Reclamation, and stakeholders where stakeholders can join common efforts to meet salt and boron objectives without restricting the ability to export salt out of the San Joaquin basin;

2.2c. To continue to evaluate Reclamation's progress and support Reclamation's efforts toward the implementation of this Agreement

2.2d. That Central Valley Water Board staff will make regular presentations to the Central Valley Water Board at public meetings, which will describe Reclamation's activities and assess the RTMP. Reclamation shall receive notice at least 15 days in advance of these presentations.

2.3. It is mutually agreed:

2.3a. That both agencies will comply with all applicable State and Federal laws and regulations;

2.3b. That Reclamation and the Central Valley Water Board have evaluated mechanisms of salt management and viability of a RTMP effort as specified under the first MAA, and that current circumstances warrant an update of the MAA;

2.3c. That revisions to this Agreement must be approved by the Mid-Pacific Regional Director and the Central Valley Water Board Executive Officer in writing. Significant revisions will be made part of the Central Valley Water Board public process and will be subject to public review;

2.3d. That Reclamation actions will be detailed in both an Annual Report and Annual Work Plan. The Annual Report will document activities from the previous federal fiscal year and be submitted 90 days after the end of the Federal fiscal year. The Annual Work Plan will propose activities to occur during the following federal fiscal year, undergo a public review process and be reviewed by the appropriate staff at Reclamation and the Central Valley Water Board before it is finalized. The first Work Plan covering work to be conducted between 1 October 2014 and 30 September 2015 is to be submitted to the Central Valley Water Board Executive Officer on or before 31 December 2014, and thereafter 90-days prior to the beginning of the next federal fiscal year;

2.3e. That the continuing Reclamation salinity management program will consist of the following:

- Providing Flows to the System –Reclamation will continue to provide mitigation and dilution flows as needed while the RTMP is being fully developed and implemented.

- Salt Load Reductions – Actions taken by Reclamation or through resources provided by Reclamation to reduce the load of salt going into the San Joaquin River
    - Grassland Bypass Project
    - Westside Regional Drainage Plan
    - WaterSMART Water and Energy Efficiency Grants
    - Water Conservation Field Services Program
    - CALFED Water Use Efficiency Program

- Mitigation – Actions taken by Reclamation to promote and support practices to predict and mitigate the effects of salt loads within the watershed
    - Support activities under an approved RTMP
    - Provide technical support, expertise to stakeholders in the development of RTMP monitoring, and forecast modeling systems
    - Provide assistance to stakeholders in writing grant proposals for salinity management
    - Provide resources to assist Federal Refuges and Federal Water Supply Contractors in managing salinity
    - Continue to provide resources to develop, improve and implement the RTMP forecast model

- CV-SALTS – Participation in Central Valley Salinity Alternatives for Long-term Sustainability (CV-SALTS)

- San Joaquin River Restoration Program – Program management and schedule of activities that may occur in the future

- Other actions – To be determined at a future date, as necessary or required

2.3f That the two reports submitted by Reclamation will at a minimum contain each element listed below.

- Reclamation Annual Report

The annual report will remain in the format currently utilized in the quarterly report and contain the following information:

- Mitigation and Dilution Flow Actions
    - New Melones Reservoir Operations – Quantification of Environmental Flow Releases
    - Other sources of flow
    - Water Acquisitions
    - Other Activities

- Salt Load Reduction Actions
    - Grassland Bypass Project
    - Westside Regional Drainage Plan
    - Conservation Efforts

- Mitigation Actions
    - RTMP actions
    - Salinity management assistance to Federal Refuges and Federal Water Supply Contractors
    - Participation in CV-SALTS
    - Other Activities

- Central Valley DMC Project Delivery Load Calculations

- Other Salt Load Reduction Actions

- Report of Annual Work Plan Activity Performance

- References

The format for the Annual Report may be changed with prior consent from both parties; these changes may also be included as an addendum to the MAA.

- Reclamation Annual Work Plan

The annual work plan will utilize a format that is similar to one used for Central Valley Project Improvement Act reporting requirements. The goal of this report is to enable adaptive management while giving visibility to progress and planned activity.

- Responsible Entities

- Program Goals and Objectives for Fiscal Year

- Status of the Program

- Proposed Funding by Source

- Proposed: Activities; Allocated Budget to Perform Activities; Schedule for Completion; and Options for Funding Anticipated Shortfalls

- Documentation of Public Review and Response to Comments

2.3g. To meet no less than quarterly to maintain coordination and communication, review proceedings under this agreement, evaluate status and effectiveness of the RTMP, and consider revisions to this Agreement as requested by either party;

2.3h. That this agreement shall only become effective when signed by both parties hereto and shall continue in force unless terminated by either party upon a 90-day notice in writing to the other of their intention to terminate upon a date indicated;

2.3i. That, if either party terminates this agreement, the Central Valley Water Board may pursue traditional regulatory means of implementing the provisions of the Basin Plan, including those against Reclamation, to the extent that they apply;

2.3j. 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;

2.3k. That nothing herein shall be construed in any way as limiting the authority of the Central Valley Water Board in carrying out its legal responsibilities for management or regulation of water quality;

2.3l. 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 Reclamation facilities and water management and delivery systems;

2.3m. 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 the Department of the Interior or the United States to spend funds on any particular project or purpose, even if funds are available;

2.3n. 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
US Dept. of the Interior

Date:

Central Valley Regional Water Quality Control Board
State of California

Date: