

Salt and Boron  
Staff Report  
Attachment A



**SENT VIA EMAIL**

August 15, 2014

Framework Document, MOU, and MAA Comments  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670-6114  
[Brownell.James@waterboards.ca.gov](mailto:Brownell.James@waterboards.ca.gov)

Re: **Comments on the Framework Document, Memorandum of Understanding, and Management Agency Agreement, Regarding the Real Time Management Program for Meeting the Objectives of the Salt and Boron Total Maximum Daily Load for the Lower San Joaquin River**

Members of the Central Valley Regional Water Quality Control Board:

The San Joaquin Tributaries Authority ("SJTA") provides the following comments on the draft versions of the "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" ("MOU"), the "Management Agency Agreement Between the Central Valley Regional Water Quality Control Board and the United States Bureau of Reclamation" ("MAA"), and the "Salinity Real-Time Management Program Framework" (the "Framework Document"). The SJTA is generally satisfied with the draft versions of the MOU, MAA, and Framework Document, but has some concerns over the commitment of Reclamation to meeting the Vernalis salinity objective and the amount of information provided as to how Reclamation will comply. Thank you for taking the time to consider the comments made by the SJTA, below.

**Framework Document**

Page 5 of the Framework Document states: "*Water quality monitoring data collected by the Regional Board and other governmental agencies including the United States Geological Survey (USGS), Department of Water Resources (DWR), and Reclamation indicates that water quality objectives for salinity and boron are frequently exceeded during certain times of the year and under certain flow regimes. Consequently, the river no longer supports all of its designated beneficial uses.*" Figure 3 of the framework document shows that the salinity objective has been continually met at Vernalis since 1995 when the salinity objective was put into place by the State Water Resources Control Board. In addition, there is no boron objective at Vernalis and there is no monitoring data in the Framework Document that shows the levels being found. Therefore, it is unclear what is "frequently" being "exceeded" at Vernalis.

Page 6 of the Framework Document states: “*Operate under a waiver of waste discharge by participating in a*”. This is clearly incomplete and it is unclear what was meant.

Page 6 of the Framework Document states: “*The implementation of the Control Program also recognized the impact of salt loads from imported CVP deliveries and required that the Reclamation either enter into a Management Agency Agreement with the Central Valley Water Board clarifying how it would mitigate imported salt loads or also adhere to load allocations specified in WDRs*”. This appears to say that the MAA only deals with imported salts and not salt brought in previously or generated by the irrigation of higher salinity lands. This needs to be clarified.

Page 7 of the Framework Document states: “*The Vernalis objectives are currently set as a 30-day running average concentration: 700  $\mu$ S/cm from April 1 – August 31 and 1,000  $\mu$ S/cm from Sept 1 – March 31. Figure 3 shows the 30-day running average EC at Vernalis from 1985 through 2012. Since there are two seasons for the Vernalis objective, the first data point for the 30-day average starts 30 days after the beginning of the season.*” What is not said here, or shown in Figure 3, is that the salinity objective did not go into effect until 1995 and has been continually met since that time. This needs to be clarified.

Page 8 of the Framework Document states: “*The salinity objective at Vernalis has been met since 1994, in part through additional releases of fresh water by Reclamation from New Melones Reservoir into the Stanislaus River upstream of the Vernalis compliance point as well as through decreased discharges such as the GBP and the Irrigated Lands Regulatory Program.*” It is unclear whether these releases were made directly for salinity control or for other programs such as fishery releases and were jointly used for salinity control as well; this needs to be clarified.

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the first sentence is missing a word.

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the first paragraph states: “*The MOU is expected to be executed by July 28, 2014.*” Why are we being asked to comment on the document when the Board intends to execute the MOU prior to the expiration of the public comment period?

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the final paragraph states: “*Reclamation is continuing to participate and support the effort and has developed a draft Management Agency Agreement (MAA) with the Central Valley Water Board documenting their future activities.* It is unclear what the meaning of the phrase “continuing to participate and support the effort” means. The responsibility for salinity management on the San Joaquin River is the responsibility of Reclamation as defined in State Water Resources Control Board WR Order 1641 (“D-1641”). Responsibility does not mean “*continuing to participate and support the effort*”; it means finding a solution and implementing it.

Sections 3 and 4 of the Framework Document are exactly what the title describes--a framework. It is not a workplan and no workplan is presented or proposed for setting priorities or taking any action in the next year. The MAA adoption should be delayed until it is accompanied by a workplan for the first

year. It is unclear what Reclamation is planning for next year other than to “coordinate, support and participate”. None of these terms are clear or well defined. This is carried over into the language in the draft MAA. For example in section 2.1(a) and 2.1(b) of the draft MAA, which again emphasizes that Reclamation will “participate”, not lead or take responsibility. This is in contrast to sections 1.8 and 1.9 of the draft MAA which describes the previous MAA where Reclamation agreed “*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.*” Why is Reclamation adopting this less involved role, and how may it do so, considering its responsibilities under D-1641?

#### Management Agency Agreement (MAA)

The MAA is focused on meeting the Vernalis salinity objective. It must be recognized however that there is also a salinity problem upstream of Vernalis. The MAA must include that issue, as Reclamation and the CVP is primarily responsible for the upstream issue as well.

Section 1.15 of the Draft MAA should read “1994” or “1995” to be consistent with Figure 3 and the first sentence on page 8 of the Framework Document.

Section 1.15 of the Draft MAA states: “*The Vernalis objectives have been met since 2008*”. Reclamation is required to meet multiple water quality objectives at Vernalis. While it is true that Reclamation has continuously met the Vernalis salinity objective, it is false that Reclamation has met the Vernalis flow objective. This sentence should be rewritten to make clear it references only the Vernalis salinity objective (e.g. “The Vernalis salinity objective has been met since 1995”).

Section 2.3(d) of the Draft MAA defines the new reporting schedule that is being put into place. It is unclear whether the new reporting schedule is in line with the federal appropriations to ensure that next year’s workplan will reflect immediate needs.

Section 2.3(e) of the Draft MAA describes the “continuing Reclamation salinity management program” elements. It fails, however, to describe how Reclamation will deal with the increasing salinity load that is expected in the Lower San Joaquin River from the San Joaquin River Restoration Program efforts to mitigate for high water tables created along a major stretch of the Lower San Joaquin River. This needs to be included in the MAA.

Section 2.3(e) of the Draft MAA should have a space between “3” and “of” in the first bulleted paragraph.

Section 2.3(i) of the Draft MAA states: “*if either party terminates this agreement, the Central Valley Water Board may pursue traditional regulatory means of implementing provisions of the Basin plan, including those against Reclamation, to the extent they apply*”. Many of Reclamations permits to divert water are conditioned upon the satisfaction of the Vernalis salinity objective under D-1641. This section should be amended to state that Reclamation must cease diverting water under these permits if it is not meeting the Vernalis salinity objective.

Memorandum of Understanding

Section 7 of the Draft MOU requires “*the written consent of all other Regulated Parties*” before a new party to the MOU may be admitted. Other parties, including SJTA members will be regulated under the TMDL in the future, but are not members under the current MOU. The bar for entry should be lowered, so that other parties may more readily take part in the RTMP when they become the subject of regulation. This should have little negative effect on the existing parties to the MOU, as an entering party will simply be contributing to the RTMP group in an effort meet the requirements of the TMDL.

Very truly yours,  
**O’LAUGHLIN & PARIS LLP**

  
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JON A. CLANCY

cc: San Joaquin Tributaries Authority

August 27, 2014

VIA ELECTRONIC MAIL

Central Valley Regional Water Quality Control Board  
Attention: Mr. James Brownell  
11020 Sun Center Drive, #200  
Rancho Cordova, California 95670-6114  
E-mail: Brownell.James@waterboards.ca.gov

Re: Management Agency Agreement (MAA) with U.S. Bureau of Reclamation and  
Draft Real Time Management Program Framework Lower San Joaquin River

Dear Mr. Brownell:

The following comments are submitted on behalf of Stockton East Water District (Stockton East) to the Management Agency Agreement (MAA) between U.S. Bureau of Reclamation (Reclamation) and the Central Valley Regional Water Quality Control Board (Regional Water Board) and the Draft Salinity Real Time Management Program Framework (RTMP Framework) for the Lower San Joaquin River.

Introduction and Background

Over the past nearly twenty years, Stockton East has participated in countless Regional and State Water Board meetings, workshops and processes related to salinity in the San Joaquin River. Everyone working on San Joaquin River salinity issues recognize that this is a complex issue with very divergent opinions on how to solve the problem.

Stockton East's interest in San Joaquin River salinity stems from its 1983 contract with Reclamation for 75,000 acre-feet of water from the Stanislaus River, stored in New Melones Reservoir. In the early 1990s through 2009, Stockton East did not receive consistent deliveries under this contract due to the Reclamation's election to make releases of New Melones water for environmental purposes, including releases to satisfy the salinity objective at Vernalis. Even in light of the State Water Board's finding that the Stanislaus River basin contributes only a de minimus amount to the salinity problem in the San Joaquin River, Reclamation has released **in excess of 1,000,000 acre feet for water quality purposes from New Melones** to dilute the highly saline water in the San Joaquin River over the past 20 years.

The salinity problem is not easy to solve. Water deliveries to the Westside of the San Joaquin Valley, both for agriculture and to the wildlife refuges, have created the salinity problem in the San Joaquin River. These Westside water deliveries have continued, while CVP water deliveries to the Eastside of the valley, namely Stockton East, have been reduced due to the need to dilute the salty discharge that drains from these Westside lands. While this disproportionate impact to valley irrigators is primarily due to the Reclamation's own decisions, these decisions have been, and continue to be driven by the Regional Board and State Water Board's actions and inaction in developing and implementing meaningful salinity control measures and/or objectives upstream of Vernalis.

At the outset, I find myself compelled to once again clarify the repeated incorrect statements found both in the MAA and the RTMP Framework documents related to the findings in the State Water Board's Water Rights Order D-1641. In D-1641, the State Water Board made some significant findings about the cause of the salinity problem in the San Joaquin River. In D-1641 the State Water Board concluded that the salinity problem in the San Joaquin River is caused by operation of the CVP, and imposed the responsibility for maintaining the Vernalis salinity objective on the CVP, specifically concluding that CVP projects **other than New Melones** are **responsible** for the salinity problem:

The actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. . . .The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit. The capacity of the lower San Joaquin River to assimilate the agricultural drainage has been significantly reduced through the diversion of high quality flows from the upper San Joaquin River by the CVP at Friant. The USBR, through its activities associated with operating the CVP in the San Joaquin River basin, is responsible for significant deterioration of water quality in the southern Delta. [D1641, pg. 83]

As a result of their findings, the State Water Board imposed permit conditions on all of the CVP permits, including the permits for the San Luis Unit and the Friant Project that requires Reclamation to, at all times, meet the Vernalis water quality objectives for agricultural beneficial uses at Vernalis. Reclamation may meet these objectives through flows or other measures.

Furthermore, in D-1641 the State Water Board expressly found that the Vernalis salinity objectives could be attained through regulation of controllable factors (D-1641, pg. 81) – concluding that the objectives could be achieved by using measures to control the discharge of saline water to the river upstream of Vernalis (D-1641, pg. 83), and further concluded that: “Although releases of dilution water could help meet the

southern Delta objectives, regional management of drainage water is the preferred method of meeting the objectives" [D-1641, pg. 84].

The MAA and RTMP Framework erroneously state that Reclamation is required to make releases from New Melones Reservoir to meet the Vernalis objective, that is simply not the case. All CVP permits are conditioned upon meeting the Vernalis objective and Reclamation can employ a myriad of methods to achieve the objective, including providing dilution flows from the DMC, recirculation of water, acquiring water from other sources, requiring dischargers to provide mitigation flows for their saline discharges and whole array of other controllable factors. Reclamation may employ anyone of the above identified measures before looking to dilution flows from New Melones Reservoir, so to conclude that for the next five years Vernalis objectives will be met solely from releases from New Melones Reservoir is erroneous and must be stricken from both the MAA and RTMP Framework.

#### Real Time Management Program

Stockton East supports implementation of a Real Time Management Program (RTMP) to achieve the Vernalis salinity objective. The most significant concern about the MAA and the RTMP Framework is the ability of Reclamation to follow through with implementation in a timely manner in light of Reclamation's previous tract record. First, Reclamation was directed over **10 years ago** when the TMDL was adopted to develop the RTMP. To date we still have no RTMP in place and operational. The original MAA was entered into in December 22, 2008 calling for implementation of the RTMP, but establishing no timeline and still six years later there is no RTMP.

Recall, in 2011, Reclamation and Regional Board staff came to this Board with a Phase II MAA. The Regional Board did not act on the Phase II MAA because Reclamation assured the Board that within 6 months they would have the necessary studies to move forward with a RTMP program. It was a year and half later that the Regional Board staff had to sit down with upper level management at the Mid-Pacific Region and threaten proceeding with Waste Discharge Requirements, did we finally see some movement forward with the RTMP program.

This kind of tract record clearly illustrates that there must be firm commitments obligating Reclamation to a course of action. We respectfully request that you mandate full implementation in a much shorter time period. A more appropriate timetable would be to have full implementation of the RTMP occur in parallel with the Basin Plan amendment for the Lower San Joaquin River water quality objectives above Vernalis now slated for December 2015.

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## Framework Agreement

### *Section 1.0 Introduction*

The last paragraph of the Introduction must be revised to correct two glaring errors. First, as discussed above, D-1641 does not contain "operation requirements" mandating fresh water releases from New Melones Reservoir. Reclamation is required to comply with their water right permit requirements and can accomplish this in any fashion. As detailed above, there are a myriad of available options, so releases from New Melones Reservoir should be deleted and simply a reference to compliance with D-1641 is appropriate.

Second, it states that "those participating in the Central Valley Water Board approved RTMP will be considered in compliance with the Salt and Boron Control Program" as long as the salinity water quality objectives at Vernalis are met. This is not acceptable. Under this scenario, Reclamation could continue to dump water from New Melones to meet the Vernalis salinity objective and every participating agency need not do anything and would obtain a regulatory pass. Participation in the RTMP requires active involvement from participants to implement actions that will allow the naturally occurring assimilative capacity to be utilized to export salt out of the valley.

### *Section 2.1 The San Joaquin River Basin*

On page 3, the sentence reading "Dilution of drainage from the east side tributaries is provided by the east side tributary rivers - the Merced, Tuolumne and Stanislaus;" please clarify what is meant by this statement, it is unclear. In the last full paragraph on page 3 there is a discussion of contribution of salt loading by various sources; this section needs to provide a citation to reference documents to support these statements.

### *Section 2.2 History of Salinity Impairment and Adoption of a Control Program*

On page 5, third full paragraph should be expanded to include drainage from managed wetlands as a source of salinity impairment in the San Joaquin River. On page 6, the last bullet is an incomplete sentence.

On page 7, the last full paragraph needs to be corrected as the Vernalis objective is a 30 day running average, that doesn't start and stop on a monthly basis. It states no data point for April until April 30th and that is incorrect, it is a rolling average. On April 1 when the 0.7 EC objective is triggered, Reclamation has 30 days to achieve that objective.

### *Section 3.0 Real Time Management Program*

On page 10, correct misstatement of D-1641 relating to New Melones releases.

#### *Section 3.3.1.6 Wastewater Treatment Plants*

The Regional Board should require Reclamation to obtain real-time data from the Modesto wastewater treatment plant facility as it may influence the operations of the RTMP.

#### *Section 3.3.2.2 Develop Operation and Maintenance Requirements for the Monitoring Stations*

The second paragraph effectively repeats what is said in the first paragraph.

#### *Section 3.3.3.2 Grassland Bypass Project and Panoche Drainage District*

The first paragraph cites to certain percentage reductions from implementation of the project; the source document should be referenced. There should be additional discussion to accompany the salt load reduction of the corresponding increase in salinity concentrations from the resulting drainage into the San Joaquin River.

#### *Section 3.3.5 Management Agency Agreement Development*

It is essential that the identified workplan be made available to the public for input and comment. It states that the annual workplan will be completed a year in advance to prioritize needs. Where is it? The Regional Board should not move forward with approval of the MAA and RTMP Framework until this work is done.

#### *Section 4.4.1 Management Agency Agreement*

The sentence "virtually all of the activities within the Action Plan have been completed" should be stricken as that statement is completely inaccurate or a complete report should be required of Reclamation to substantiate this statement. Stockton East provided detailed comments on the Action Plan that were never addressed by Reclamation. The foundation of 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.

If all of the activities have been completed, we would like Reclamation to provide a summary of water acquired pursuant to the Water Acquisition Program or provide the Wetlands BMP plans required to be completed by Public Law 108-361 in 2004. Over ten (10) 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.

*Attachment A Draft Memorandum of Understanding (MOU)*

It is very difficult to effectively comment on the Draft MOU since much of the language notes "Placeholder for Discussion." However, work needs to be done on the Anticipated Activities, Steering Committee, eligible participants and the appropriate definitions, and contributions from Cooperating Agencies. Finally, it appears that this MOU is placing the majority of the burden on the Stakeholder community. This is misplaced. As noted above, Reclamation and its operation of the CVP is the principle cause for the salinity problem in the San Joaquin River and therefore needs to be the agency leading the effort including providing sufficient funding to ensure its effective and full implementation. Reclamation cannot pass its responsibility onto others.

Management Agency Agreement

*Section 1:*

STOCKTON EAST is outraged by the multiple misstatements of the obligations imposed upon Reclamation through State Water Board Water Rights Order D-1641. All references in Section 1 to New Melones Reservoir or required dilution flows must be deleted. D-1641 conditioned **ALL** CVP permits on meeting the Vernalis salinity objective, not simply New Melones Reservoir. Moreover, D-1641 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." [D-1641, 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 Reservoir; this is well beyond the Regional Water Board's legal authority.

*Section 2:*

Section 2.1 should include a requirement that Reclamation seek funding for water acquisitions to assist in providing assimilative capacity.

Section 2.3e should be deleted in total as Reclamation has been directed to revise its 2010 Action Plan. It appears that this section in part mimics what is contained in the Action Plan and is inappropriate since it will be revised. Moreover, the references to New Melones Reservoir, as I have repeatedly stated in the letter, are inaccurate. D-1641 does not require releases from New Melones Reservoir and this MAA should not call out that it is a requirement. Reclamation has a myriad of methods to achieve compliance with Vernalis salinity objective.

Section 2.3f should require specific reporting and an accounting of any "dilution" flows provided by Reclamation to meet the Vernalis salinity objective. Reclamation's existing quarterly reports counts 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." This must be

addressed by the Regional Board. There were a couple of competing proposals presented to the Regional Board on calculated "dilution credits" but no action was ever taken by the Regional Board. The current practice is clearly not what the Regional Water Board contemplated when it allowed for the use of dilution flows.

*Section 3:*

This Section should be deleted as it is woefully incomplete and inadequate list of the laws and regulations granting the authority to act under the Agreement. There is no reason why a listing of laws is required for this Agreement.

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. Stockton asserts dilution of pollution by New Melones Reservoir constitutes an unreasonable use of water, when there are other measures available and other sources for dilution.

We urge the Regional Board to reject the RTMP Framework and the MAA unless meaningful changes are made to both documents; Reclamation must take meaningful action to solve the salinity problem it caused. We appreciate the opportunity to comment on the RTMP Framework and the MAA and will endeavor to work with staff from both Reclamation and the Regional Board on revisions to the both documents prior to the Board's consideration.

Should you have any question, please feel free to contact me.

Very truly yours,



KARNA E. HARRIGFELD  
Attorney-at-Law

cc: Scot A. Moody, Stockton East Water District  
Pablo R. Arroyave, U.S. Bureau of Reclamation