

DRAFT
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 "Regional Water Board"), acting through the Executive Officer, and the United States Bureau of Reclamation¹ (hereinafter "Reclamation"), acting through the Regional Director of the Mid Pacific Region, for the purpose of addressing certain salt imports to the Lower San Joaquin River (LSJR). The Agreement is a cooperative means of implementing relevant provisions of the Regional Water Board's *Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins – 4th Edition* (Basin Plan).

WHEREAS:

1. The Basin Plan sets load allocations for the Delta-Mendota Canal (DMC) and sets forth that the Regional Water Board can enter into a Management Agency Agreement (MAA) with Reclamation as part of its implementation plan.
2. Under the Basin Plan, the MAA is to require Reclamation to address salt imports from the DMC to the Lower San Joaquin watershed. The current timetable under the Basin Plan allows from 8 to 12 years (2014 to 2018) to achieve compliance with DMC load allocations, depending on water year type.
3. Through the MAA, Reclamation is to address DMC salt imports by implementing a plan to provide mitigation and dilution flows that create assimilative capacity for salt in the LSJR.
4. Proceeding in a cooperative basis is an efficient and effective means of achieving water quality goals.²

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 Regional 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.

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

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5. Salt and boron imported into the LSJR watershed via the DMC should be managed in a manner that is protective of both surface water and groundwater;
6. The goal of the Basin Plan is to reliably meet the salt and boron objectives established in the Basin Plan while maximizing the export of salt out of the basin.
7. 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 parties;
8. Reclamation and the Regional Water Board should work together with other responsible 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 basin;
9. The Regional Water Board is responsible for protecting water quality and beneficial uses of waters within the Central Valley Region;
10. Reclamation holds water rights that facilitate the operation of the Central Valley Project (CVP), including the DMC;
11. In 2006, a collaborative process, which included the Regional Water Board, other agencies, and stakeholders, called the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) was initiated. The goal of this ongoing effort is to develop a comprehensive, long-term salinity and nitrate management plan for the Central Valley;
12. Reclamation has prepared a document entitled *Actions to Address the Salinity and Boron TMDL Issues for the Lower San Joaquin River* (hereinafter "Action Plan"), dated July 2008, which describes Reclamation's past, current and planned practices and procedures to mitigate and manage adverse 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;
13. The Action Plan has been updated in 2010 and now also references new regulatory, planning, and construction activities that may impact salt loading, timing, and/or the ability of Reclamation to minimize or offset DMC salt loads;
14. Reclamation's Action Plan includes Reclamation's agreement to lead the effort to develop stakeholder interest in a real-time water quality management program (hereinafter "Real Time Program"). The Real Time Program would involve, among other things, Reclamation monitoring and modeling efforts to determine assimilative capacity of

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the Lower San Joaquin on a real-time basis. Stakeholders along the San Joaquin River which are subject to salt and boron load allocations in the Basin Plan will be encouraged to participate in the Real Time Program;

15. The issues involved are complex and there is uncertainty regarding the potential for establishing a Real Time Program for the river. To address this situation, a phased approach has been taken. The first phase lasted two years and served as an initial monitoring, quantification, and evaluation period. During the first phase, Reclamation developed a Compliance Monitoring and Evaluation Plan (May 2010) and a Compliance Monitoring and Evaluation Report (July 2010);
16. The second phase, lasting four years, will continue the monitoring, quantification, and evaluation of Reclamation activities until compliance with salt load allocations is required of other parties. At the end of the second phase, the Regional Water Board and Reclamation will review and update the agreement to better define future efforts;

NOW, THEREFORE, the parties hereto agree as follows:

1. Reclamation agrees:

- a. To provide mitigation and dilution flows to create assimilative capacity for salt in the San Joaquin River, to the degree that such flows can be provided under the 2008 and 2009 biological opinions on the operation of the Central Valley Project. This will include initiating stakeholder efforts to develop a Real Time Program;
- b. To track and report the percent of annual salt load reduction or mitigation achieved through Reclamation activities, following the accounting established in the Compliance Monitoring and Evaluation Plan. This salt load reduction goal will be used to measure Reclamation's progress toward meeting DMC load allocations contained in the Basin Plan;
- c. To implement its Action Plan in accordance with the schedule contained in the Action Plan;
- d. To submit reports to the Regional Water Board in accordance with the provisions of 3.e, below;
- e. To support stakeholders in seeking funding, including, but not limited to, grant funding, for additional 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 through Federal fiscal year 2014;

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- f. To provide in-kind services and supportive studies and monitoring to achieve Basin Plan objectives.
2. The Regional Water Board agrees:
- a. That Reclamation's successful and timely implementation of its Action Plan and this Agreement is a cooperative means of working to achieve DMC load allocations as set forth in the Basin Plan;
 - b. That the Real Time Program described in Reclamation's Action Plan will be a jointly developed program between Reclamation and stakeholders where stakeholders could join common efforts to meet salt and boron objectives without restricting the ability to export salt out of the San Joaquin basin;
 - c. To continue to evaluate Reclamation's progress toward the implementation of its Action Plan and this Agreement, the goals of which include establishing a comprehensive Real Time Program that would meet the approval of the Regional Water Board;
 - d. That Regional Water Board staff will make regular presentations to the Regional Water Board at publicly noticed meetings, which will describe Reclamation's activities and will assess Reclamation's progress toward establishing an acceptable Real Time Program. Reclamation shall receive personal notice of these meetings.
3. It is mutually agreed:
- a. That both agencies will comply with all State and Federal environmental compliance laws and regulations;
 - b. That both agencies will continue to participate in the CV-SALTS effort to the extent that their roles and resources allow. For Reclamation, this participation will include active involvement in the Salinity Leadership Group, CV-SALTS Executive and Technical Advisory Committees and sub-committees, and provision of in-kind services, projects and contracts that support the CV-SALTS effort;
 - c. That a four-year monitoring, reporting, and assessment program will be jointly implemented by Reclamation and the Regional Water Board. The purpose of this program will be to:
 - i. Continue to quantify the salt mitigation benefit of those activities and projects in Reclamation's Action Plan that are currently being implemented; and
 - ii. Assess the progress made toward establishing a viable Real Time Program.

- d. This agreement is expressly subject to modification following the four - year assessment period.
- e. That the monitoring, reporting, and assessment program will consist of the following:

- i. **Annual Activity and Monitoring Report**

- Reclamation will submit annual reports to the Regional Water Board by 45 days after the end of the calendar year. The annual report will include a summary of activities conducted by Reclamation during the year in conjunction with each element included in their Action Plan, including activities related to developing a Real Time Program. In addition Reclamation will include data collected relevant to DMC load evaluation.

- ii. **Annual Re-evaluation of Action Plan**

- Reclamation and the Regional Water Board will mutually re-evaluate and update the Action Plan on an annual basis, on a schedule similar to the Annual Activity and Monitoring Report.

- iii. **Quarterly Coordination Meetings**

- Reclamation will host quarterly coordination meetings to inform the Regional Water Board of Action Plan progress and quarterly estimates of salt loading and reduction/offset activities. Reclamation will also inform the Regional Water Board of any activities that may impair implementation of the Action Plan.

- f. That revisions to this Agreement must be approved by Reclamation and the Regional Water Board's Executive Officer in writing. Significant revisions will be made part of the Regional Water Board's public process, and will be subject to public review;
- g. That any revisions to Reclamation's Action Plan must be approved by the Regional Water Board or its Executive Officer. Such revisions will be effective at a date to be determined upon submittal of an acceptance letter from each party to the other party. The acceptance letters will include summaries of the mutually acceptable revisions and the date the revisions will go into effect. Where appropriate, these actions will be made subject to public review;
- h. That this agreement shall become effective as soon as it is signed by the parties hereto and shall continue in force until July 1, 2014 unless terminated by either party upon ninety (90) days notice in writing to the other of intention to terminate upon a date indicated;

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- i. That, if either party terminates this agreement, the Regional Water Board will pursue traditional regulatory means of implementing the provisions of the Basin Plan, including those against Reclamation, to the extent that they apply;
- j. That nothing herein shall be construed in any way as limiting the authority of the Regional Water Board in carrying out their legal responsibilities for management or regulation of water quality;
- k. 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 Bureau of Reclamation facilities and water management and delivery systems;
- l. 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;
- m. 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
U.S. Department of the Interior

Central Valley Regional Board
Regional Water Quality Control Board
State of California

By _____

By _____

Date: _____

Date: _____