



April 6, 2015

David Murillo, Regional Director
Mid-Pacific Director
U.S. Department of the Interior
Bureau of Reclamation
2800 Cottage Way
Sacramento CA 95825-1898

Re: New Melones Operations 2015

Dear Mr. Murillo:

Oakdale and South San Joaquin Irrigation Districts (Districts) received 48 hour notice to change the release schedule below Goodwin Dam. The Districts thank the United States Bureau of Reclamation (Reclamation) for the 48 hour notice. The Districts are concerned with implementing the requested change. This concern is due to the uncertainty regarding the potential requirements the State Water Resources Control Board (State Board or SWB) is contemplating in approving Reclamation's Temporary Urgency Change Petition (TUCP). If the State Board includes minimum storage levels for New Melones in its TUCP approval, the water Reclamation is requesting the Districts release may not belong to Reclamation, but may belong to the Districts. So, before the change order is made by the Districts, they have a question for Reclamation to answer: "Whose water will be released down the Stanislaus River to satisfy the second pulse flow?"

As you are aware, several weeks ago Reclamation, NMFS, and the Districts reached an agreement on 2015 operations. This agreement included two pre-conditions to the release of the second pulse and third pulse flows: (1) DWR's forecasted run-off for April; and (2) State Board approval of the TUCP. It appears the first condition will be satisfied shortly. The Districts understand that the revised DWR forecast will be available April 9, 2015. The Districts have been working with CVP operations on revised forecasting analysis and project operations in response to the SWB's request for additional information.

The second pre-condition has not been satisfied and presents a serious operational risk to which the Districts have not agreed. Reclamation petitioned the State Board for emergency relief from D-1641 requirements. The State Board conditionally approved the TUCP for a short period of time. Currently, New Melones is operating under this temporary approval. The State Board requested additional information from Reclamation to address SWB's staff concerns regarding operations at New

Melones. Mr. Howard, who issued the TUCP, warns: "Please do not view this temporary [approval] as any indication of what permanent action I may take on the TUCP request."

The Districts are working with Reclamation to respond to the SWB's request for information. The Districts performed sonar soundings and imaging of Old Melones Dam to determine the extent of sediment. The Districts analyzed various model runs relating to hydrology, New Melones operations and water temperatures. The Districts discussed with Reclamation and are awaiting from Reclamation a request for potential conservation measures. The Districts believe the requested information can be developed and submitted to the SWB prior to April 15, 2015 for review and consideration by the SWB Executive Officer to support a final order.

A final order by the SWB Executive Officer on the TUCP is necessary because it will determine the amount of water Reclamation has available for pulse flows, like the one for which Reclamation is currently requesting water. The parties to the Agreement recognized the approval of the TUCP as proposed was critical; any amendments to the TUCP would likely unwind the Agreement because the scarcity of water in the system and projected low run-off. Unfortunately, in its letter of concurrence, NMFS requested additional carryover storage. If the SWB were to condition its approval of the TUCP on increased end of month storage in September (EOMSS) levels above 115,000 acre-feet, then Reclamation's available water supply for 2015 would be fully allocated and Reclamation would not have any water available for a pulse flow.¹

This situation is difficult. It is unfortunate, but entirely avoidable, that we have arrived at this juncture. The Districts sued NMFS and Reclamation on these very issues. Four years ago, Judge Wanger entered his Order on Plaintiffs' and Defendants' cross-motions for Summary Judgment.

The Court found:

"The RPAs in question here require Reclamation to use its own water resources for particular purposes. Reclamation has reasonably examined past patterns of Project water use by third parties and concluded that water will be available to implement the RPAs . . . Plaintiffs have not demonstrated that reliance on past practice is unreasonable. If, however, Reclamation's predictions prove incorrect and make the RPAs' implementation infeasible, the burden cannot be imposed on senior water rights holders. Rather, Reclamation must then re-initiate consultation."
{Emphasis added.}

¹ On April 1, 2015, New Melones had 550,000 acre-feet of storage. The Districts, pursuant to the '88 Agreement, are entitled to approximately 400,000 acre-feet from April 1, 2015 through September 30, 2015. This leaves 150,000 acre-feet. Table 2e flows are approximately 73,000 acre-feet from April 1st through September 30th. This would leave 77,000 acre-feet in storage. Projected inflow is 50,000-77,000 acre-feet from April 1st through September 30th providing approximately 127,000 – 154,000 of EOMSS. If the SWB requires more storage, then Reclamation will need to release less water for Table 2e, or stop Table 2e flows altogether.

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Federal Defendants have reasonably explained the remaining modeling assumptions about acquisition of waivers from the SWRCB regarding dissolved oxygen and D-1641 flow and salinity requirements. Fifth Milligan Decl., Doc. 497 at ¶ 7-8; Hilts Decl., Doc. 48 at ¶ 12 (explaining it is —reasonable to assume the SWRCB will take a holistic approach and grant such petitions under relevant conditions). This is speculation and may be mistaken, however the law does not require more. If no Petitions are granted, absent available existing water, NMFS must reinitiate consultation. SR Plaintiffs have not demonstrated that these assumptions were clearly erroneous.” (*USDC Case No.: 1:09-cv-01053-OWW-DLB Document 633, at Pages 240-241.*)

Thus, the Court requires Reclamation and NMFS bear the risk and burden of acquiring waivers from the SWB – not the Districts. If the SWB conditions the approval of the TUCP on increased EOMSS, then Reclamation does not have sufficient water to meet its OCAP-BO RPA Table 2e flows and must reinitiate consultation; Reclamation is prohibited from taking District water.² (*Ibid*, p. 241.)

Until the SWB issues a final Order on the TUCP, the Districts are unwilling to bear the risk that District water will be taken from them and sent down the Stanislaus River to meet OCAP-BO RPA Table 2e flows.

The Districts are ready to work with Reclamation and other interested parties to develop and submit the requested information to the SWB as soon as possible. Hopefully, the sooner such information is submitted, the sooner the SWB Executive Office will issue an Order on the TUCP, at least in regards to New Melones Operations.

Very truly yours,

O’LAUGHLIN & PARIS LLP



TIM O’LAUGHLIN

TO/llw
Attachment (*David Murillo letter*)

² If New Melones is required to have 200,000 acre-feet EOMSS, then as of April 1, 2015, Reclamation has no water available to send downstream. Active storage is 120,000 acre-feet, plus dead pool of 80,000 acre-feet, for a total storage of 200,000 acre-feet EOMSS. The Districts’ right is 400,000 acre-feet. The combination equals 600,000 acre-feet. Current storage is 540,000 acre-feet. Add 55,000 – 75,000 acre-feet of run-off and that equals 595,000 – 615,000 acre-feet. This is without any Table 2e flows. The simple mass balance shows there is no water available for Reclamation to meet Table 2e flows.

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cc: Will Stelle (*Via Email only*)
Sunny Snider (*Via Email only*)
Maria Rea (*Via Email only*)
Jeff Denham (*Via Email only*)
Tom McClintock (*Via Email only*)
Chris Tudor (*Via Email only*)
Igor Birman (*Via Email only*)
Jason Larrabee (*Via Email only*)
Ron Milligan (*Via Email only*)
Drew Lessard (*Via Email only*)
Jeff Shields (*Via Email only*)
Steve Knell (*Via Email only*)
Ron Berry (*Via Email only*)

From: "Murillo, David" <dmurillo@usbr.gov>
Date: April 4, 2015 at 12:52:26 AM EDT
To: "Larrabee, Jason" <Jason.Larrabee@mail.house.gov>
Cc: "maria.rea@noaa.gov" <maria.rea@noaa.gov>, "will.stelle@noaa.gov" <will.stelle@noaa.gov>, "Sunny Snider - NOAA Federal (sunny.snider@noaa.gov)" <sunny.snider@noaa.gov>, "Maucieri, Mathew" <mmaucieri@usbr.gov>, "Birman, Igor" <Igor.Birman@mail.house.gov>, "Tudor, Chris" <Chris.Tudor@mail.house.gov>, Angela Slaughter <aslaughter@usbr.gov>, "Shane Hunt" <shunt@usbr.gov>
Subject: Re: 2nd New Melones Pulse Flow request

Jason, it was a pleasure talking to you today. Based on our conversation I believe I have a good grasp of the pressure Congressman Denham us under and you of ours. As I mentioned on the phone this is the follow up email I was planning on sending you that highlights a few of my take a ways from our discussion. They are as follows:

1. In a previous email I indicated to you that we do coordinate with the District on operational decisions. In a follow up email you sent me, you attached a NMFS letter that indicated another pulse flow was needed and why we did not communicate that request to the District once received.

As I indicated we do not communicate to our stakeholders all requests that are made to us with respect to operations. Once we receive a request we discuss it and if we believe it has merit we may communicate that request to the affected party. If not nothing is communicated. In this case we view the letter that NMFS sent a little differently than you do. I believe you viewed it as a request being made by NMFS. We viewed it as NMFS expressing their concern over the forecasted hydrology and potential effects to in steam flows based on our operations. In addition, the letter reiterates what we stated all along and that is that there is a volume of water that is identified for pulse flows and that we must consider that volume of water in our operations this year. We have communicated that point to the District. The additional concern you raised of that letter is the potential ask of increased storage which could impact the District allocation. I agree that is a concern however no decision has been made.

2. In one of your emails you questioned our continued effort towards being transparent and coordinating with the District since a pulse flow was scheduled for today and stakeholders and others did not know about it. A pulse flow was schedule to begin today however we have delayed it until early next week due to operational efficiencies. We have been working with the District and they are aware of the next pulse flow occurring.

With respect to coordinating with the District, I believe we have demonstrated with the first and now this pulse flow we are being transparent and the District is aware of our operations prior to it occurring. As a matter of fact the District has helped us develop the TUCP that is being submitted to the board.

3. With respect to the additional storage that may be asked by the board. We have not made any decision on that matter and we are also concerned of the impacts that request may have on the allocation. We will be working with the board, fisheries, and the District to determine if there is an acceptable plan that addresses the fish concerns and protects the allocation.

4. Finally you asked why we can't wait to provide any more pulse flows until an agreement is reached and signed by all affected parties. Unfortunately for Reclamation we are required to comply with the law and at this time the conditions in the river do not provide us the luxury of waiting until some agreement is developed and signed. And for that reason we are moving forward with the pulse flow next week.

Jason, I hope these take a ways help and if you have any more questions please let me know.

Thanks

*David G. Murillo
Bureau Of Reclamation
Mid Pacific Regional Director
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