



United States Department of the Interior

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

IN REPLY REFER TO:

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FEB 15 2017

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Proposal For Meeting San Joaquin River Flow Objectives in Future Years (Your Letter Dated January 19, 2017)

Dear Mr. Howard:

Reclamation is in receipt of the above-mentioned letter, which responds to Reclamation's November 22, 2016 letter submitting its proposal to contribute to San Joaquin River flow objectives pursuant to your April 19, 2016 approval of Reclamation's Temporary Urgency Change Petition (TUCP). Your letter states that it is in response to Reclamation's "plans to address its continuing difficulties with meeting its responsibilities under State Water Resources Control Board (State Water Board or Board) Decision 1641 (D-1641) for implementing the San Joaquin river flow objectives included in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary."

Statement of the issue in this manner makes it clear that the conflicting views of Reclamation and the State Board could lead to impasse. Reclamation has neither the legal authority, nor the legal obligation to implement the State Board's Water Quality Control Plan. Instead, California's Porter-Cologne Water Quality Control Act places that responsibility with the State Board. Cal. Water Code § 13242. In addition, the Water Quality Control Plan does not apply organically to the permits of the Central Valley Project (CVP). Instead, if the Board uses its authority over water rights to implement flow objectives in a water quality control plan, it is the Board's obligation to assign responsibility to water right holders, after a hearing, and to follow the law with respect to regulation of property interests, including federal property interests. In that regard, Reclamation does not believe that the Board's post-San Joaquin River Agreement (SJRA) interpretation of D-1641 is supported by sufficient procedural or substantive due process, and raises serious concerns for viable, sustainable operations of New Melones, and, therefore, could also conflict with clear Congressional directives for the CVP.

As you know, for the first twelve or more years following the Board's issuance of D-1641 in 2000, Reclamation paid water users on the Stanislaus River and the other tributaries under the San Joaquin River Agreement (SJRA) to make water available for contributions to the instream

spring pulse flows on the mainstem of the lower San Joaquin at Vernalis.¹ The SJRA was entered into in lieu of the Board holding a protracted adjudication process, and assisted the Board with its initial implementation of the instream flows in the lower San Joaquin. During the term of the SJRA, the Board was supposed to take actions necessary to permanently assign responsibility for the flow standards among other diverters. The Board did not do so. Since the expiration of the SJRA, the Board has taken the untenable position that the sole responsibility for the April/May San Joaquin river flows in the Water Quality Control Plan is on Reclamation's New Melones Reservoir, not on an "interim" basis, but until such time as it sees fit to establish an alternative implementation plan, now 17 years since the Board adopted D-1641. Reclamation, on the other hand, is willing to work with the Board to fashion a reasonable contribution to instream flow objectives for Reclamation in light of the circumstances, and is committed to continuing to meeting flows required by Appendix 2E of the National Marine Fisheries Service 2009 Biological Opinion (2009 NMFS BO).

The Board is well aware that New Melones is a multi-year facility with a re-fill period ranging anywhere from 2 to 17 years, depending on the hydrology of the Stanislaus River. When Reclamation first applied to the Board for water rights for New Melones, it estimated that the amount of water available for appropriation, after subtracting prior rights and using 1923-1953 hydrology, would range from 335,000 acre-feet to 1,198,000 acre-feet, with zero water available in nine years of this period. At that time, the fishery flow and water quality demands were capped at approximately 170,000 acre-feet per year.² Since that time, Reclamation has estimated that the amount of water needed for salinity control has been anywhere from two to three times the original 70,000 acre-feet requirement in D-1422. When the Board issued D-1641, modeling results in the Board's November 1999 Final Environmental Impact Report showed that even with the SJRA in place, carryover storage in New Melones would be reduced by an annual average of 151,000 acre-feet, including reductions of 356,000 acre-feet in critical drought periods. Those same modeling results show that if Reclamation were to be solely responsible for the instream flows on the mainstem San Joaquin contained in Table 3 of D-1641, using its available supplies on the Stanislaus, the reduction in carryover would be an average of 305,000 acre-feet, with a reduction of 593,000 acre-feet in critical drought periods. Operation of New Melones in this manner is unsustainable, drastically increasing the potential number of years that zero water will be available for storage, and does not result in durable instream flows on the mainstem. Reclamation believes that the 1999 modeling is flawed and underestimates the true impact of operating New Melones to these flow requirements. Such operations have not been vetted through a due process hearing, and threaten the ability of New Melones to store and deliver water to its federal contractors in all but the wettest years.

While we understand the Board's desire to manage and balance beneficial uses at New Melones on a monthly basis, Reclamation does not agree that simple management to an annual carryover target will result in durable contributions to the instream flows from New Melones, given the demands of prior rights, salinity control, dissolved oxygen, and other requirements. In addition,

¹ Reclamation paid approximately \$75 million to make water available for instream flow purposes during this period.

² See D-1422, pp. 10-11.

given the Board's view that it is Reclamation's sole responsibility to implement the San Joaquin river flows, this places a disparate impact of the flow requirements on our contractors. As usual, we would be happy to work with the Board on a reasonable contribution to the instream flows, especially the April/May pulse flow objectives for the San Joaquin, for various year-types, until the Board can complete its current basin planning and water rights process. However, we believe that such contribution should not disproportionately result in federal contractors shouldering the entire burden of the flows in many years when other similarly situated diverters in the San Joaquin River basin, who also impact river flows, experience no shortages.

With respect to 2017, your January 19 letter states 1) Reclamation's proposal "does not adequately address the requirements of condition 4 (of the TUCP approval) or Reclamation's water right requirements under D-1641"; 2) Reclamation "should strive to meet all of the requirements of its water right permits" and "should operate New Melones Reservoir in a manner that achieves a more reasonable balance between competing water right permit requirements. Further, Reclamation should meet all of its permit requirements before delivering any water under its own water rights."; 3) "Reclamation shall submit a revised proposal for the coming year by February 15, 2017, with monthly updates due by the first of each month for the following month. Prior to each monthly submittal, Reclamation shall consult with State Water Board staff regarding its proposal. Reclamation shall provide monthly updates on its plans to the State Water Board during its monthly drought updates at the Board's regularly scheduled Board meetings."; 4) "Reclamation shall prepare and submit a simple and clearly labeled monthly accounting on the first of each month starting on February 1, 2017, of diversions to New Melones Reservoir and releases from the reservoir from October 1, 2016 on. Specifically, the accounting should specify the amount of water in New Melones Reservoir that is stored under Reclamation's water rights and the amount that is stored under other water rights, all releases and losses from New Melones, the reason or purpose for those releases, and the water right under which they were made."

The abundant precipitation for Water Year 2016-17 is a welcome respite from the very dry conditions prevailing since 2012, and has allowed New Melones Reservoir to recover some storage. However, it would be a mistake to presume that this year's precipitation signals a return to "normal" weather patterns, and assume there will be sufficient precipitation in future years to support increased releases from New Melones Reservoir. Therefore, Reclamation's proposal for meeting San Joaquin flow objectives pursuant to condition 4 of the April 19 2016 approval remains the same as the proposal contained in its letter of November 22, 2016. In summary, Reclamation intends to make releases from New Melones Reservoir consistent with the provisions of Appendix 2E of the 2009 NMFS BO. Reclamation will work with Oakdale and South San Joaquin Irrigation Districts to make available flows in addition to those required by Appendix 2E (including fall attraction flows). In addition, Reclamation will continue to meet D-1641 salinity objectives at Vernalis.

Reclamation agrees to provide monthly updates on this proposal to State Board staff and as part of the monthly drought updates at regularly scheduled Board meetings. Reclamation will also provide the monthly accounting requested in your January 19 letter.

Reclamation looks forward to working with the State Board on this matter. Please contact me at (916) 978-5201, or via email at rwoodley@usbr.gov, if you have any questions.

Sincerely,



Richard J Woodley
Regional Resources Manager