



Consisting of 240,000 acres on the Westside of the San Joaquin Valley

May 30, 2008

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VIA FACSIMILE & U.S. MAIL
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Mr. Rudy Schnagl
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive # 200
Rancho Cordova, CA 95670-6114

RE: *Draft Management Agency Agreement (MAA) between the Central Valley Regional Water Quality Control Board and the United States Bureau of Reclamation (April 2008)*

Dear Mr. Schnagl:

These are the comments of the San Joaquin River Exchange Contractors Water Authority and its members Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company (Exchange Contractors) regarding the Draft Management Agency Agreement (MAA) between the Central Valley Regional Water Quality Control Board (CVRWQCB) and the United States Bureau of Reclamation (USBR).

SUMMARY:

The Regional Board should reject the Draft MAA proposed by the USBR. As currently written, the MAA is nothing but a proposal to plan further study. It does not require the USBR to implement any salinity control projects on the San Joaquin River. Given USBR's track record of continuous inability to implement drainage reduction projects in the region, the Regional Board must demand an MAA with specific enforceable provisions requiring the USBR to implement an aggressive San Joaquin River salinity control program that contains real salinity removal projects. The salinity control program must go beyond studies and reports and require real projects that reduce salinity discharges to the river. For decades, the USBR has ignored their legal requirement to provide a drainage solution that resolves their responsibility to the San Joaquin River's long standing water quality

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problems. The unmistakable reality is that the USBR will not act to resolve this problem until it is forced to act.

USBR's CONTINUOUS FAILURE TO PROVIDE DRAINAGE SERVICE:

Unfortunately, the USBR has a long track record of failing to provide drainage service to lands that drain to the San Joaquin River. Despite the fact that Congress in the San Luis Act, the California State Water Resources Control Board in D-1641, the Central Valley Regional Water Quality Control Board (Basin Plan Cite Page IV 32.01 Section 8) and the federal courts (Firebaugh vs. United States, 203 F.3d 568 (2000)) have repeatedly demanded that the USBR implement a drainage control project, the USBR refuses to perform. However, the federal government has spent hundreds of millions of dollars conducting studies and writing reports. The Regional Board must consider this pattern of conduct before they accept another series of reports as a substitute for actual drainage control.

The MAA itself is concrete evidence that the USBR has not changed its ways. The MAA states that the USBR does not believe that the State of California can regulate and enforce water quality standards against the USBR. The federal government seems to take the position that they can degrade the waters of the State of California without any consequences. This attitude does not signal a willingness to solve problems regarding this issue. Additionally, the MAA is, at most, a plan to create a plan to draft a report. One of the only requirements in the MAA is that the USBR create a plan that within two years will result in the development of a Compliance Monitoring and Evaluation Report. Yet another USBR report will not help resolve salinity issues on the San Joaquin River. The USBR must be compelled to act and implement real projects.

THE PROPOSED MAA DOES NOT COMPLY WITH THE BASIN PLAN:

The Proposed MAA does not comply with the specific requirements of the Basin Plan. The Basin Plan states,

"...The MAA shall include provisions requiring the U.S. Bureau of Reclamation to:

- (a) Meet DMC load allocations; or
- (b) Provide mitigation and/or dilution flows to create additional assimilative capacity for salt in the LSJR equivalent to DMC salt loads in excess of their allocation." (Emphasis added)

The Draft MAA only requires the USBR to accomplish two things: (1) to implement its Action Plan, and (2) to submit reports to the Regional Board. As detailed below, neither the "Action

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Plan” nor the reports require the USBR to meet load allocations or provide mitigation or dilution flows. However, on page 2, section 2, of the MAA, the Regional Water Board agrees that implementation of the “Action Plan” and drafting the reports constitutes the USBR's achievement of DMC load allocations in the Basin Plan.

THE “ACTION PLAN” IS DEVOID OF ACTION:

The “Action Plan” does not require action and is simply a continuation of the USBR’s longstanding plan to stall and delay. The core of the “Action Plan” is a recitation of all the projects within the San Joaquin River that may (or may not) address salinity. The USBR has limited, if any, involvement in many of these projects. However, the Bureau seems to be attempting to take credit for every project in the watershed regardless of the degree of their involvement. The Salt Load reduction section of the “Action Plan” carefully avoids any language that requires the USBR to do anything. The plan does not require the USBR to reduce salinity loads by even a single pound. The only commitment made by the USBR in the “Action Plan” is to help develop a real time salinity management program.

USBR’S Real Time Management Plan is Insufficient:

The Exchange Contractors support the development of a real time management program and believe that real time discharges can provide an opportunity to remove salt from the valley without impacting beneficial uses. However, if the USBR is to receive credit toward mitigating CVP salinity impacts, the Bureau must do substantially more than they have committed to in this “Action Plan.”

The USBR’s commitment in the “Action Plan” is limited to leading a stakeholder effort to initiate the development of a real time management program. Specifically, they agree to help develop a real time monitoring network and a forecasting model based upon the real time data input. This modeling is necessary in order to develop a viable real time program; however it is not nearly sufficient to implement real time management. Real time management will require the construction of the physical infrastructure necessary to hold and release drainage flow based upon the forecasting model. These projects will be very expensive, and the USBR is not committing to help fund these projects. In reality, the USBR has only committed to help others develop one small part of a real time management program. As the largest discharger of salt in the Lower San Joaquin River Watershed, the USBR must be required to play a more significant role in the salinity control program for the San Joaquin Basin.

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USBR's Reports Required by the MAA are too Little too Late:

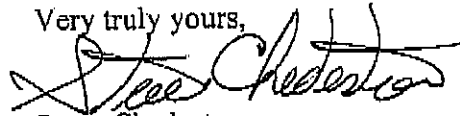
Besides the offer to help organize a real time program, the only other specific action that USBR has committed to in the draft MAA is to develop a series of reports. The heart of the reporting obligations seems to be the Compliance Monitoring and Evaluation Report. The MAA gives the USBR two years to complete the final report that will include the data and quantification methods used to evaluate the salt loads from DMC operations and salinity offset credits to be applied. The gist of the report requirement seems to be that the USBR has committed to do, in the next two years, what it should have done over that last two years.

In the Basin Plan the USBR was given two years to develop a MAA to address salt imports from the Delta Mendota Canal (DMC). The report outlined in the draft MAA would have been a logical first step in developing an effective MAA. Instead of focusing its efforts on meeting its obligation to address salinity in the basin, the USBR decided to do nothing until the last moment and now it is attempting to substitute another report in place of real drainage control projects.

CONCLUSION:

Any acceptable MAA must include USBR's acknowledgement of their legal responsibility to provide a drainage solution and therefore improve water quality in the San Joaquin River. The MAA must also include provisions requiring USBR to implement effective San Joaquin River drainage management projects. The USBR has proven by its lack of action over the last forty plus years that it will not implement drainage control projects until it is compelled to do so. The choice is clear. The Board can continue to allow the USBR to ignore state regulatory requirements and allowing them to simply generate more reports or the Board can require action. The United States Congress, the State Water Resources Control Board, the Regional Water Quality Control Board and the federal courts have all determined that USBR has a legal duty to implement drainage projects to the region.. However, to date, no one has held the Bureau accountable and required them build projects. Hopefully this trend will end. If not, we will likely never see meaningful water quality improvement on the San Joaquin River.

Very truly yours,



Steve Chedester,
Executive Director

cc: San Joaquin River Exchange Contractors Water Authority Board Members
Mr. Allen Short, SJRGA