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May 30, 2008

VIA ELECTRONIC MAIL AND FACSIMILE

Mr. Rudy Schnagl
Regional Water Quality Control Board - Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670-6114

Mr. Lee Mao
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825-1898

Re: Draft Management Agency Agreement and U.S. Bureau of Reclamation Salinity Management Plan

Dear Mr. Schnagl and Mr. Mao:

The following comments are provided on behalf of Stockton East Water District (District) to the Draft Management Agency Agreement between the Central Valley Regional Water Quality Control Board (Regional Water Board) and the United States Bureau of Reclamation (Reclamation) and to Reclamation's Salinity Management Plan dated April 30, 2008.

Management Agency Agreement (MAA)

The Regional Water Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins – 4th Edition (Basin Plan) contemplates the Regional Water Board will enter into a MAA:

to address salt imports from the DMC to the LSJR watershed. The MAA **shall** include provisions requiring the U.S. Bureau of Reclamation to:

(a) Meet DMC load allocation; or

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- (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.

The Regional Water Board shall request a report of waste discharge from U.S. Bureau of Reclamation to address DMC discharges if a MAA is not established by 28 July 2008. [See Page IV-32.01, Section 8]

Unfortunately, the draft MAA fails miserably at the stated requirements in the Basin Plan. There is nothing in Reclamation's Salinity Management Plan that attempts to meet the DMC salt loads. There is nothing in the Salinity Management Plan that provides mitigation for the salt imported by Reclamation through the DMC; and there are no dilution flow provided other than the status quo (releases of water from New Melones Reservoir).

The MAA essentially provides Reclamation with another two years for "monitoring, reporting and assessment" but does not require Reclamation to undertake any action to reduce salt loading in the river. Reclamation should not be able to claim offset credits as contemplated in the agreement for action in the Salinity Management Plan that they are not responsible for implementing.

Finally, adoption of the MAA misses the Regional Water Board's own deadline of July 28, 2008, albeit by a few days, but still it does not comport with the legal requirements of the Basin Plan. The Regional Water Board should reject this plan and proceed with requesting a report of waste discharge from Reclamation.

Reclamation's Salinity Management Plan

The District is extremely disappointed and frustrated with Reclamation's Salinity Management Plan. Quite frankly, the title is a misnomer. This plan provides NOTHING in the way of actions for salinity management, instead it 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. There is NO commitment by Reclamation to do anything except attempt to develop a real time management plan. While we acknowledge that development of a real time management plan may assist with meeting the Vernalis salinity objective, however, it does little more than utilize excess assimilative capacity. What is the Bureau going to do to manage salts and reduce its salt load to the San Joaquin River?

This plan is merely a restatement of what has been occurring and offers no new actions. It notes that there MAY be POTENTIAL future actions, but commits to NOTHING. Reclamation sole mitigation measure is real time management.

Current Actions/Providing Flows to the System

Reclamation asserts that it provides flows to the San Joaquin River through water acquisitions. Stockton East hereby requests Reclamation provide a summary of all water acquired from willing sellers over the past 10 years for the purpose of dilution or to reduce salt load into the San Joaquin River. If such acquisitions have taken place, the District would like a summary of the months in which the water was released. Additionally, the District requests Reclamation provide all information regarding Reclamation's request for appropriations for upcoming federal budgets for the water acquisition program for water quality and/or dilution flows in the San Joaquin River.

Similarly, the District requests that Reclamation provide a summary of all water acquired from willing sellers over the past 10 years pursuant to the Environmental Water Account for the purpose of dilution or salt load reduction in the San Joaquin River. We would appreciate a summary of the months in which the water was released. Is Reclamation contemplating providing funding for additional EWA acquisitions, if so, please detail all future requests for appropriations?

Current Actions/Salt Load Reductions

Reclamation takes credit for a number of activities noted as "Salt Load Reductions" that have been occurring in the San Joaquin River basin for the past 10 years. While Reclamation has been tangentially involved, that is, they have allowed the Grasslands Bypass group to utilize the former San Luis Drain, they have not spearheaded actions to reduce salt load. Reclamation should neither be allowed to take credit for these actions nor be provided offsets against their salt load for these actions as they are not their actions.

Flow Actions/New Melones Operations – Dilution Flows

Reclamation misstates the purpose for which New Melones Reservoir was constructed, namely they assert that one of the purposes for construction is water quality. Congress did not authorize New Melones for water quality purposes. Rather, Congress directed the Army Corps of Engineers (Army Corps) to consider the "advisability of including storage for regulation of stream flow for the purpose of downstream water quality control," which it did. In 1965, the Army Corps concluded that no more than 48,500 acre feet annually would ever be required to control salinity at Vernalis. Relying on that conclusion, the Regional Director of Reclamation concluded that provision of limited water quality benefits "will not affect the project's yield," and that the New Melones Project "should not be considered as a complete solution to this problem." Based upon these and other findings, the Regional Director conditionally recommended including water quality as an authorized purpose of New Melones as follows:

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Accordingly, I recommend that the . . . water quality objectives be incorporated into the New Melones Unit with the stipulation that, during its 50 year repayment period, these objectives will not require releases exceeding 70,000 acre feet in one year.

Based on the recommendation with this stipulation, the Army Corps recommended inclusion of water quality as one of the authorized purposes for New Melones. The project proceeded to be built on that assumption and conclusion, and Congress took no further action. Further supporting this conclusion, in 1969 the Bureau entered into an agreement with this Regional Water Board committing to provide water for water quality purposes “but not in excess of 70,000 acre-feet in any one year.” In many years since New Melones Reservoir was filled, releases have far exceeded the 70,000 acre-foot limitation. This misstatement should be corrected.

Most importantly, this Salinity Management Plan is completely silent on the new Congressional directive to Reclamation regarding releases from New Melones Reservoir. On October 25, 2004, President Bush signed into law HR 2828 (Public Law 108-361), which contains important direction for the Secretary of the Interior and Reclamation regarding operation of New Melones Reservoir. Public Law 108-361 directs the Bureau, with the assistance of the State, to initiate and implement actions to achieve the Bay-Delta water quality objectives while reducing the demand on water from New Melones Reservoir for meeting these objectives. The fundamental purpose for this legislation is to provide Reclamation with greater flexibility in meeting the existing standards **so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to CVP contractors from the New Melones project.** Continuing to rely on releases from New Melones Reservoir as is contemplated in the Salinity Management Plan directly contradicts the Congressional authorization.

Flow Actions/Water Acquisitions Program

This section describes the Water Acquisitions program contemplated in the Central Valley Project Improvement Act (CVPIA). The purpose as set forth in CVPIA regarding the Water Acquisition Program requires “acquisition of water for protecting, restoring, and enhancing fish and wildlife populations,” it says nothing about acquiring water for water quality or the dilution of salts. Reliance on a water acquisitions program that was never intended to address salinity management is misplaced.

Moreover, one of the listed plan elements “acquire firm annual water supplies for delivery to valley refuges and the Grasslands Resources Conservation District to meet the habitat needs of migratory waterfowl, shorebirds and other wetland-dependent wildlife” actually exacerbates the water quality problem in the early spring (January –March) as the wildlife refuges draw down the fields, discharging highly saline water into the San Joaquin river when it otherwise would not be there which triggers additional releases from New Melones Reservoir. These acquisitions do not increase assimilative capacity, but have a dramatic negative impact on

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water quality in the river. Instead of supplying 100% of the water acquired to the refuges, a portion of that water should be held back and released at the time the refuges discharge into the San Joaquin River, thereby mitigating the impact directly.

Mitigation

The District supports the development of a real time salinity management program as described in the Salinity Management Plan, however, real time management alone is not enough.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:md

cc: Kevin Kauffman, Stockton East Water District