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May 30, 2008

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Mr. Jim Martin  
Engineering Geologist  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

FROM MODESTO:  
(209) 577-8200  
(209) 577-4910 FAX

Re: USBR Management Agency Agreement

Dear Mr. Martin:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter "County of San Joaquin" or "County") we submit the following comments to the United States Bureau of Reclamation (Reclamation) draft Management Agency Agreement (MAA) to address salinity in the lower San Joaquin River.

The proposed MAA is inadequate and the Regional Board must do more to require Reclamation to address the salinity problem on the lower San Joaquin River.

The Regional Board's Final Staff Report dated September 10, 2004 which supports the Regional Board's approval of the Amendment to the Water Quality Control Plan incorporating the TMDL for the control of Salt and Boron to the lower San Joaquin River provides that 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 [Lower San Joaquin River] equivalent to [Delta Mendota Canal] salt loads in excess of their allocation." (Page 2, 15.) The draft MAA and Reclamation's referenced "Action Plan" does not address these requirements. The MAA and accompanying Action Plan to a large part relies on perpetuating the "status quo." The status quo is not and does not address the salinity problems of the lower San Joaquin River. Meaningful action to implement "mitigation and/or dilution flows" to address the salinity of the lower San Joaquin River is not occurring.

1. The draft MAA provides Reclamation more delay.

The MAA provides an initial two-year monitoring, reporting and assessment program. This is just more delay. Is more monitoring and reporting needed?

Reclamation must be required to immediately implement measures to address salinity on the lower San Joaquin River. The MAA provides that by January 1, 2009, Reclamation shall submit a "Draft Compliance Monitoring and Evaluation Plan" to the Regional Board and that the Regional Board will approve such Plan by July 1, 2009. Reclamation should not be provided more time to develop a Plan. This Plan should be presented now as part of the MAA.

Reclamation was had plenty of time to prepare the measures to be implemented in the MAA as Reclamation was aware of the required MAA in September 2004 when the Regional Board approved the Basin Plan Amendments. Due to the requirement of State Water Board approval and EPA approval, the Basin Plan Amendments were not effective until February 8, 2007. This provided Reclamation almost 2 1/2 years to contemplate and prepare for this requirement before the Plan was effective. It is unreasonable to provide Reclamation another year of delay to actually submit a Plan that will be implemented. Such Plan should be included within the MAA.

2. Salt load credits are inappropriate.

The MAA provides that Reclamation should receive salt load offset credits for each element of Reclamation's Action Plan. It is unclear to San Joaquin County how and why Reclamation should and would receive salt load credits for mitigating for the salt effects of the DMC and meeting Reclamation's salinity obligations.

3. Action Plan Components are Inadequate.

Reclamation's Action Plan which is embraced by the MAA provides that Reclamation's salinity management plan focuses on three major groups of actions: (1) Providing flows to the system; (2) reducing salt load to the river; and (3) facilitating mitigation. These basic management actions are appropriate; however, the Action Plan is inadequate due to the details and the actual proposed actions to implement these actions. These shortcomings are discussed below.

4. Water Acquisitions from Sources Other Than New Melones Must Occur.

The Action Plan identifies as flow actions dilution flows from New Melones Operation and Water Acquisitions, including acquisitions pursuant to the Environmental Water Account. These described actions are not adequate and merely perpetuate the status quo. First, Reclamation has not implemented any water acquisitions, and merely relies on New Melones water flows to dilute the salinity of the River at Vernalis. The MAA must require meaningful acquisition of water by Reclamation from sources other than New Melones.

5. Reliance on Dilution Flow From New Melones is Inadequate

The Regional Board staff report that supported the approval of the Basin Plan Amendments which required the MAA by Reclamation indicates that State Board Decision 1641 "conditioned the USBR's water rights on attainment of salinity water quality objectives at the Airport Way Bridge near Vernalis" and that "despite conditions contained in D 1641, salinity remains a long-term water quality problem in

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the LSJR." (p. 107.) The staff report further indicated that "to date, this responsibility has been met through USBR water released from New Melones Reservoir to dilute salt concentrations at Vernalis"; however, it is noted that with the current New Melones releases the "Vernalis salinity water quality objectives will, however, continue to be exceeded even if these water quality releases are continued." (p.71.) It is further noted that water quality exceedances will occur even if New Melones was operated with no water release restrictions. (p.72.) Staff recognized in 2004 that dilution flows from New Melones are not adequate to meet the Vernalis objectives and other measures must also be implemented. However, the Bureau continues to rely on implementing measures to meet the water quality objectives by solely providing releases from New Melones.

6. Reliance on New Melones Water Deprives San Joaquin County Area of Origin Water

Reclamation's reliance on dilution flows from New Melones deprives San Joaquin County water interests to the prior right to water from New Melones consistent with their contracts with Reclamation and in violation of the Watershed Protection Statute (Wat. Code § 11460). Reclamation relies on New Melones for dilution flows and thus there is little water in New Melones for Reclamation's only CVP contractors, which are two San Joaquin County water districts. These districts are (1) Stockton East Water District, which supplies agricultural water to eastern San Joaquin County and municipal water to the City of Stockton; and (2) Central San Joaquin Water Conservation District, which supplies agricultural water to portions of eastern San Joaquin County. It is important to note that this deprives San Joaquin County of surface water which it greatly needs to mitigate its critically overdrafted groundwater basin as identified by the Department of Water Resources in Bulletin 118-80.

7. The Valley Drain Must be Part of the Plan.

The Action Plan's identified actions for salt load reduction fails to identify or address the most meaningful action to resolve the salt load problem on the lower San Joaquin River --- the out of valley drain. The Bureau must be required by the Regional Board to do more and meaningfully address the salt problem on the lower San Joaquin River--- including meaningful progress on an out of valley drain.

In 1961 the County sought and obtained the passage of the San Joaquin River Protection Act (Wat. Code §§ 22000 et seq.) which "declared that a serious problem of water quality exists in the San Joaquin River between the junction of the San Joaquin River and the Merced River and the junction of the San Joaquin River and Middle River." Wat. Code § 12230. The serious problem of water quality was recognized by the State as early as 1961.

In 1960 when the United States Congress authorized construction of the San Luis Unit of Central Valley Project (Act of June 3, 1960, Public Law 86-188, 74 STAT. 156) it provided that the construction of the San Luis Unit shall not be commenced until there were assurances for the drainage system for the San Luis unit. This was the out of valley drain, which has never been constructed. The Regional Board has identified the valley-wide drain as the only feasible long-term solution to the

drainage problem. D- 1641 p. 85. In *Firebaugh Canal Co., et al. v. United States of America, et al.*, (9th Cir. 2000) 203 F.3d 568, the Ninth Circuit Court of Appeals required the Bureau to provide drainage service. Despite court orders, the Bureau continues to delay making meaningful progress on the out of valley drain. The MAA continues to allow such delay.

The Action Plan indicates that "Potential Future Actions" include studies that are underway, but the potential outcome of these studies and projects will not be known for some time." (p. 1.) These potential projects include recirculation and the "San Luis Unit Drainage Features Re-Evaluation." The MAA provides that the MAA may be amended in the future when these items are implemented. The Regional Board must require Reclamation to do more now; not perpetuate the salinity problem with more delay. The Bureau should no longer be allowed to control the timetable; the Regional Board must take charge. Based on the over 40 years of history, the Bureau will not address the salinity problems facing the San Joaquin River until the Bureau is forced to do so by the Regional and State Boards. The Regional Board must require the Bureau to address these problems immediately.

8. The Regional Board must move forward on establishing a salinity objective upstream of Vernalis.

In order for meaningful progress and improvement of the water quality to protect beneficial uses, salinity objectives must be set at additional locations on the San Joaquin River upstream of Vernalis in addition to a plan of implementation to meet the salinity objectives.

For many years the Regional Board has been working on a Basin Plan Amendment to establish salinity objectives on the San Joaquin River upstream of Vernalis. In 1999 the State Board directed the Regional Board in Decision 1641 to "**promptly develop and adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis.**" (Emphasis added.) The Regional Board is subject to the direction of the State Board and it is impossible to interpret the Decision 1641 other than meaning that the upstream standards should have been set.

In 2006, the Regional Board staff presented a schedule for adopting the salinity standards above Vernalis. This schedule provided that the draft Basin Plan would be released by the Regional Board by April of 2006 with approval by the Regional Board in September of 2006 and approval by the State Water Board by December of 2006. The State Water Board's Resolution 2005-0087 which approved the Basin Plan Amendments implementing the salt and boron TMDL for Vernalis dated November 16, 2005, resolved that the Regional Board shall adopt such water quality objectives for salinity and boron from Mendota Dam to Vernalis by September 2006. This has not occurred. The draft Basin Plan Amendments and TMDL has never been released by the Regional Board nor acted upon. The Regional Board must follow the direction of the State Water Board and act to establish salinity objectives above Vernalis. This action would provide meaningful progress on addressing the salinity of the lower San Joaquin River.

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The sad and harmful condition of the lower San Joaquin River, serving as the needed Valley Drain, essentially as a sewer, has been tolerated too long by those who have the ability to correct the problem. It should not be allowed to continue further by the agency responsible for regulation.

Thank you for providing this opportunity for the County of San Joaquin to submit comments to a program that will have potential significant affects within San Joaquin County.

Very truly yours,



DEEANNE M. GILLICK  
Attorney at Law

cc: Each Member of the Board of Supervisors  
T.R. Flinn, Director of Public Works  
Mel Lytle, Ph.D., Water Resources Coordinator

DMG:dmg