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May 28, 2008

Central Valley Regional Water Quality Control Board
Attn: Rudy Schnagl
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114

**Re: Management Agency Agreement Between the Central Valley
Regional Water Quality Control Board and the United States
Bureau of Reclamation**

Dear Mr. Schnagl:

The Central Valley Regional Water Quality Control Board ("CVRWQCB") has requested comments on its draft Management Agency Agreement ("MAA") with the United State Bureau of Reclamation ("USBR") to implementing relevant provisions of the Regional Water Board's *Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins – 4th Edition* ("Basin Plan"). On behalf of the San Joaquin River Group Authority, we have reviewed the draft MAA and offer the following comments.

The Management Agency Agreement

The MAA, under Whereas number 6, states that "[s]alt and boron objectives prescribed in the Basin Plan for the San Joaquin River near at the Airport Way Bridge near Vernalis should be achieved through the actions of Reclamation under this agreement and through the actions of *other responsible parties.*" (emphasis added). Please specify who other "responsible parties" are.

The State Water Resources ("State Board") has already allocated responsibility. In D-1641, the State Board concluded, based on a quasi-judicial process where it gathered evidence and witness were under oath and subject to cross-examination, that the USBR was responsible for non-compliance with the salinity objective for the San Joaquin River at the Airport Way Bridge near Vernalis ("Vernalis Salinity Objective"). The State Board therefore amended all of the water right permits for the Central Valley Project to require compliance with the Vernalis Salinity Objective by any method available. The State Board considered other upstream diverters, but concluded that the methods of diversion and use were both reasonable and beneficial. No other permits were amended to require compliance with the Vernalis Salinity Objective, because no other water right holders were deemed responsible.

Post Office Box 9259
Chico, California 95927-9259
www.olaughlinandparis.com

530.899.9755 tel
530.899.1367 fax

The Regional Board participated in the D-1641 hearings. Its staff testified under oath and was cross-examined. Whatever testimony and other evidence the Regional Board or others offered to suggest other parties should be responsible was dismissed by the State Board.

Within the Delta, the Department of Water Resources has surveyed many discharges in the Delta itself. At River Mile 63.4, immediately downstream from Vernalis, the New Jerusalem Drain discharges tile drainage in excess of 25 cfs throughout most of the year, with electrical conductivity typically exceeding 2,000 $\mu\text{S}/\text{cm}$ and often exceeding 2,500 $\mu\text{S}/\text{cm}$. Another discharger, the Pescadero Reclamation District (RD #2058), discharges agricultural drainage with electrical conductivity of 2,600 $\mu\text{S}/\text{cm}$ on average and as high as 4,500 $\mu\text{S}/\text{cm}$! Municipal and industrial discharges are even larger and routinely exceed the salinity objectives. Only the City of Manteca has a permit limiting the electrical conductivity of its discharge and, even then, its permitted discharge may exceed the Interior South Delta salinity objectives. Meanwhile, the City of Tracy discharges 1,700 $\mu\text{S}/\text{cm}$ at up to 14 cfs! Despite the constant refrain that the "Delta is broken," no salinity TMDL for the Delta waterways is scheduled until 2019.

Then, Whereas number 11 calls on the USBR to lead the effort in developing stakeholder interest in real-time water quality management. The Real Time Program would involve, among other things, USBR modeling efforts to determine real time loading capacity. The USBR official planning model for salinity conditions at Vernalis is CALISM II. However, when the State Board considered approving the Salt & Boron TMDL in November 2005, the Regional Board commented that "[u]se of the revised CALSIM II model to prescribe alternative flow or water quality objectives at this time [was]... premature," because "the model had not undergone thorough peer review." CALSIM II has since undergone peer review. Given that the USBR will surely use CALSIM II for some significant modeling, the Regional Board must now believe CALSIM II is sufficiently developed for planning functions such as prescribing alternative flow and water quality objectives. If so, then the CVRWQCB should affirm CALSIM II by either endorsing the model or withdrawing its previous comments.

Whereas number 11 also requires "Stakeholders along the San Joaquin that are subject to salt and boron load allocations in the Basin Plan must participate in the Real Time Program to qualify for conditional waivers of waste discharge requirements." First, the parties to the MAA, and the only parties who would be bound by its terms, are the Regional Board and the USBR. It cannot bind other parties. Under the Basin Plan, as amended by Resolution No. R5-2004-0108, the Lower San Joaquin River Salt & Boron TMDL, parties subject to load allocations. Furthermore, the Basin Plan, as modified by the Salt & Boron TMDL (Regional Board Resolution No. R5-2004-0108) only requires participation in real-time management programs approved by the Regional Board. It does not limit participation to a real-time management program organized by the USBR. In order to be consistent with the Basin Plan, the MAA must be amended to merely allow, and not require, participation in a USBR-organized real-time management plan.

The Management Agency Agreement Draft Plan

First, the MAA Draft Plan notes the involvement of various CALFED programs in current actions such as the Water Use Efficiency Program and Environmental Water Account. Legislation sponsored by Senator Mike Machado that would eliminate CALFED has, however, passed the Senate and is now heading to the Assembly. In discussing the effectiveness of CALFED programs, the MAA Draft Plan should address the possibility of CALFED's demise.

The MAA Draft Plan also notes that:

Since 1995, the year the water quality objective for salinity was adopted into the Water Quality Control Plan, the water quality objective never exceeded numeric targets at the Vernalis compliance point on the Lower San Joaquin River. Over ten years of monitoring data indicates that all beneficial uses in the river are supported and protected. From 1995 to the present, the San Joaquin River Basin has experienced the full range of water year types, and the water quality objective continues to be met...

(MAA Draft Plan, p. 12.)

Throughout the development of the Salt & Boron TMDL, and again in the periodic review of the 1995 Bay-Delta Plan, the SJRGA and others commented, repeatedly, that due to operating requirements imposed on New Melones and the CVP as a result of D-1641, the Vernalis Salinity Objective would be met at all times and under all conditions. The SJRGA later submitted CALSIM II modeling demonstrating that, with management actions occurring at the time, all of which are described in the MAA Draft Plan, the Vernalis Salinity Objective would be met at all times and under all conditions. Throughout both proceedings, the Regional Board and State Board maintained that, although the Vernalis Salinity Objective had been met since 1995, but the period since then did not represent the full range of basin conditions. Since compliance had occurred through dilution flows from New Melones, the Regional Board and State Board feared that a return to drier conditions could result in exceedances. We appreciate that, by singing on to the MAA, the Regional Board's acknowledges that the San Joaquin River Basin has experienced the full range of water year types and the Vernalis Salinity Objective nonetheless continues to be met.

Very truly yours,
O'LAUGHLIN & PARIS LLP

By: 
KENNETH PETRUZZELLI