

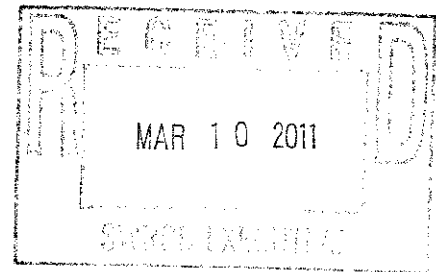
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ATTORNEYS

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March 10, 2011

VIA ELECTRONIC MAIL

Mr. Charles R. Hoppin  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000



Re: Stockton East Water District/DMC Recirculation

Dear Mr. Hoppin:

Stockton East Water District (Stockton East) provides the following comments on the findings and conclusions contained in the Bureau of Reclamation Delta-Mendota Canal (DMC) Recirculation Feasibility Study Plan Formulation Report (PFR).

At the outset, it is important that the State Water Resources Control Board (State Water Board) understand the back drop for this report. In part, it was prepared to satisfy the requirements imposed by the State Water Board pursuant to Decision 1641 to investigate implementation of recirculation to meet the Bay-Delta salinity water quality objectives and flow requirements on the San Joaquin River. But also, it was authorized as part of the federal CALFED legislation in an effort to cure the disparate impact that the CVP Contractors on the Stanislaus River, including Stockton East, have suffered due to Reclamation's exclusive use of New Melones Reservoir to meet the San Joaquin river salinity and flow objectives.

Stockton East was successful in obtaining provisions in Public Law 108-361 directing Reclamation to incorporate into the Program to Meet Standards a "recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and **reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives...**" The PFR clearly articulates the goals and objectives of the legislation and demonstrates that recirculation is in fact possible and will accomplish the goals of reducing releases from New Melones Reservoir for salinity and flow while continuing to meet the salinity and flow objectives. After establishing

that it is possible and the adverse effects are not substantial to conduct recirculation, Reclamation dismisses the clear benefits shown in the report on the basis that the "net NED<sup>1</sup> benefits for all six alternatives plans are negative, indicating none of the plans provides a positive contribution to the economy...therefore the project is not feasible." PFR page 6-11.

The State Water Board should reject Reclamation's premature finding that recirculation is infeasible, for various reasons:

1. At this time it is pre-mature to reach this conclusion. Many areas of the report are difficult to interpret because the PFR relies on "average annual" numbers which are meaningless. Reclamation's conclusion that the plans do not provide a contribution to the economy based upon "average annual" numbers is not helpful when other variations of alternatives could do so. Reclamation should be tasked to develop a range of alternatives based on the modeling that will maximize or optimize recirculation as a tool to achieve the San Joaquin river salinity and flow objectives. The State Water Board should direct Reclamation to prepare a detailed evaluation of how and when recirculation can be used in each of the five year types (critically dry/dry/below normal/above normal/wet). If such information is presented, the State Water Board can implement a plan for maximizing the use of recirculation, and increase its feasibility.
2. Reclamation's conclusion that "none of the plans provides a positive contribution to the economy" is not the appropriate determination of whether or not recirculation is feasible. There are other important factors under state and federal law that must be considered before the determination of feasibility is made, including:
  - a. Implementing some form of recirculation would comply with the Congressional directive in Public Law 108-361 to incorporate into the Program to Meet Standards a "recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and **reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives...**"
  - b. A recirculation program could meet the flow contribution that should have been imposed upon and be contributed from Friant Reservoir. It is important to note that D1641 imposed the obligation solely on New Melones Reservoir to meet the San Joaquin River flow objectives, even though, Reclamation has other facilities on the San Joaquin River, namely Friant Reservoir which is an out of basin export contractor.

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<sup>1</sup> NED – National economic development (account).

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Reclamation must mitigate for the exportation of that water out of the San Joaquin basin, and recirculation can accomplish this and must not be summarily dismissed. The State Water Board must demand more of Reclamation, especially in light of the disproportionate impact suffered by Stockton East, an entity protected by the Area of Origin statutes.

We appreciate the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Karna E. Harrigfeld' with a stylized flourish at the end.

KARNA E. HARRIGFELD  
Attorney-at-Law

KEH:lac

cc: Mr. Kevin Kauffman, Stockton East Water District