

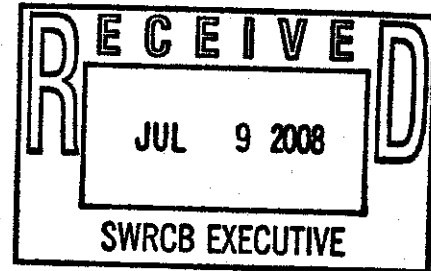
HERUM CRABTREE BROWN  
Attorneys At Law

Karna E. Harrigfeld  
kharrigfeld@herumcrabtree.com

July 8, 2008

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

Ms. Diane Riddle  
Division of Water Rights  
State Water Resources Control Board  
Cal/EPA Headquarters  
1001 "I" Street  
2<sup>nd</sup> Floor Mailroom  
Sacramento, California 95814



Re: Bay-Delta Strategic Workplan

Dear Diane:

The following comments are submitted on behalf of Stockton East Water District (Stockton East) to the State Water Resources Control Board (State Water Board) June 2008 Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Strategic Workplan).

**Introduction**

Page 8, Paragraph 1, second to last sentence: This sentence states that the workplan activities "are responsive to the priorities identified by the Governor and Delta Vision, and touch on a wide range of flow and water quality actions to fix and better protect the Bay-Delta and the public trust, while still protecting diverse public interests." It is unclear who is covered by "diverse public interests," it is paramount that work undertaken by the State Water Board ensure protection of existing water right holders and water users that rely on water flowing in the Bay-Delta. This Bay-Delta Strategic Plan must clarify that any actions must not only protect diverse public interests, but also must comply with California law regarding water rights, water right priorities, and protections for watersheds and counties of origin. Much of this Bay-Delta Strategic Plan focus is on review of "In-Delta" diversions; however, equally important is a review of CVP operations to ensure that they are complying with the prior water rights. **The water districts and other water right holders in the Delta who hold senior water rights to the CVP must be ensured that sufficient water is available for their respective diversions.**

### **Criteria for Determining High Priority Activities**

The section sets forth the criteria for determining high priority activities to be implemented. Any activity must protect all beneficial uses including, municipal, irrigation and domestic uses of water. In considering placing water to full and reasonable use, any activity must factor in that those entities/persons that are responsible for causing the pollution should be responsible for mitigating the pollution. Mitigation should not be transferred to third parties that have no role causing the water quality degradation, shifting of responsibilities should not be allowed.

### **Ensuring Success**

The first paragraph states that the Water Boards will continue to monitor the BDCP process, CALFED, DRMS and other processes to assure that the Water Boards are pursuing the proper set of activities in the correct timeframe." Why would these other process dictate State Water Board and Regional Board action? The Water Boards have legal responsibility to implement water quality laws, and should not rely on other processes to implement state mandated requirements.

### **Water Development in the Bay-Delta**

This section fails to mention the water needs in the eastern Delta, namely, the lands in San Joaquin County that lie east of the Delta, including Stockton East, North San Joaquin Water Conservation District and Central San Joaquin Water Conservation District. These highly productive agricultural lands encompass over 300,000 acres and produce nearly a billion dollars in agricultural commodities, including grapes, almonds, walnuts, cherry, tomatoes and the like. These areas rely on surface water tributary to the Delta and on groundwater supplies.

This section also states that "many other diversions (perhaps thousands) also exist...operating illegally." What is your authority for this statement? If this is true, significant emphasis should be focused on these illegal diversions, instead of burdening those entities and persons who have gone through the lengthy process of obtaining the required water right.

### **Contaminants in the Bay-Delta**

The second paragraph notes that "agricultural beneficial uses also are impacted by water quality degraded with high salinity," however, low flows caused by the exportation of water by the CVP and SWP in the Delta also impact agricultural beneficial uses and should be noted.

## WORKPLAN ELEMENTS

### Water Quality and Contaminants Control – Total Maximum Daily Loads

This section must be revised to include specific directives to the Central Valley Regional Board on timing of implementation of the identified TMDLs. History has shown us that the Central Valley Regional Board will delay and delay if established deadlines by the State Water Board are not given the Regional Boards.

San Joaquin River Salinity and Boron: This section contains a statement that “this activity will coordinate with the Salinity Management Plan for the Central Valley (CV-SALTS) activity.” What does that mean? At present the State Water Board has an enforceable TMDL. This activity must proceed as described in the TMDL and does not need to be “coordinated” with any other activity; it stands alone and must proceed as required by law.

This State Water Board should be made aware that the USBR is once again failing to comply as required by the TMDL. The USBR was given two years to develop a salinity management plan and develop a Management Agency Agreement with the Central Valley Regional Board. This salinity plan and MAA are woefully deficient and should not be adopted by the Regional Board at its upcoming meeting. Stockton East comments on the plan are attached for your consideration. [Attachment 1]

San Joaquin River Salinity and Boron Upstream of Vernalis: The section incorrectly states the Central Valley Regional Board’s history on development of salinity objective upstream of Vernalis. The following is the history of the requirement for development of the San Joaquin River salinity objectives upstream of Vernalis:

*Background on San Joaquin River impairment.* The serious degradation of the San Joaquin River was originally recognized in the 1975 Basin Plan and hundreds of reports have been produced over the years on the water quality problems plaguing the San Joaquin River. One of these reports includes a lengthy report entitled *Regulation of Agricultural Drainage to the San Joaquin River*, August 1987. The Final Report and its 10-volume Appendix was the product of the State Water Board Order WQ 85-1 adopted in February 1985. In Order WQ 85-1, the State Water Board expressed its concerns related to the discharge of agricultural drainage water into the San Joaquin River. The State Water Board directed the formation of the San Joaquin River Basin Technical Committee to investigate water quality concerns in the San Joaquin River Basin related to agricultural drainage and to report back to the State Water Board on proposed water quality objectives for the San Joaquin River Basin, proposed effluent limitations for agricultural drainage discharges in the Basin to achieve these objectives and a proposal to regulate discharges.

While the Draft Executive Summary released in May of 1987 set an implementation date of October 1993 for establishment of water quality objectives for salinity from Lander Avenue downstream on the San Joaquin River, the Final Report produced on the subject recommended adoption with an implementation date to be determined.

When it adopted the 1995 Bay Delta Water Quality Control Plan, the State Water Board once again directed the Central Valley Regional Board to implement a plan to reduce the annual salt load discharged into the San Joaquin River by at least 10% and to adjust the timing of salt discharges from low flow to high flow periods. In fact, in April of 1995, the State Water Board sent a letter directing the Regional Board to timely incorporate salinity control measures into the Basin Plan.

*State Water Board's 1998 CWA Section 303(d) List of Impaired Surface Waters includes the Lower San Joaquin River.*

The history associated with establishing standards along the San Joaquin River and the actions of the Regional Board in this regard establish a pattern of delay and inaction. In 1998 the Regional Board should have adopted salinity standards along the San Joaquin, as directed by the State Water Board in 1995. Instead, in May of 1998 the State Water Board, following the recommendation of the Regional Board, included 130 miles of the San Joaquin River on the adopted statewide list of impaired surface waters pursuant to the Federal Clean Water Act (CWA), Section 303(d).

Water quality standards have three parts: (1) the designated use of the water; (2) the water quality criteria that protect those uses; and (3) an anti-degradation requirement. Because the Regional Board has never adopted water quality criteria for the San Joaquin River upstream of Vernalis, California does not have the second component of that legally required water quality standard. We questioned how 130 miles of the San Joaquin River could be designated as a water quality limited segment and placed on the 303(d) list when there are no water quality standards for salinity on those 130 miles of the River.

As a result of this listing, the state is required to set water quality standards and Total Maximum Daily Loads (TMDL) which are then approved by the Administrator of the Federal Environmental Protection Agency. The 1998 recommendation from the Regional Board to the State Water Board elevated the priority for the San Joaquin River to "high." The Regional Board staff report at this time indicated that the priority for this work on the San Joaquin River had been elevated to high because of the water quality impacts, the Regional Board and their staff's commitment to comply with the 1995 Bay/Delta Water Quality Control Plan and the increased stakeholder interest in salinity control due to the serious water quality impacts experienced. It is important to note, however, that the TMDL process does not replace the establishment of water quality standards on the San Joaquin River.

*1998 Regional Board Basin Plan Triennial Review sets December 1999 for proposed Basin Plan Amendment to include water quality objectives and an implementation plan for salinity and boron.*

In April of 1999 the Regional Board considered a resolution regarding the 1998 Triennial Basin Plan Review of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins. The Triennial Review Report by the Regional Board states the following:

Recognizing the importance of controlling salts in the San Joaquin River and restoring beneficial uses, the Board instructed staff to develop a program to control salts in the San Joaquin River. A work plan for developing a salinity and boron control strategy was presented by staff to the Board in June 1997. Staff is scheduled to propose a Basin Plan amendment, which includes water quality objectives and an implementation plan for salinity and boron by December 1999." (Triennial Review, Summary of High and Medium Priority Issues, p. i.)

The Triennial Review Report also states: "The lower San Joaquin River, namely that part of the River from the Mendota Pool to the Delta, along with its tributaries Mud Slough (north) and Salt Slough have been listed in the Section 303(d) list as impaired due to boron and salts. The Clean Water Act requires that states establish total maximum daily load limits (TMDL) for all Section 303(d) listed water bodies." Again the statement is made that "Staff is scheduled to propose a Basin Plan amendment, which includes water quality objectives and an implementation plan for salinity and boron by December 1999." (Triennial Review, p. 2-3.)

*D-1641 directs the Regional Board to promptly adopt salinity objectives for the San Joaquin River upstream of Vernalis.*

On December 29, 1999, the State Water Board adopted Water Right Decision 1641 (D-1641) implementing the 1995 Water Quality Control Plan, including the Southern Delta Salinity Objectives. This order was revised by Order WR 2000-02 on March 15, 2000. In D-1641 the State Water Board addressed actions to meet the Vernalis salinity objective in section 10.2.2. These actions include specific direction to the Regional Board:

Several parties argued that the Central Valley RWQCB should adopt water quality objectives for salinity for the San Joaquin River at locations upstream of Vernalis. In SWRCB Order WQ 85-1, the SWRCB directed the Central Valley RWQCB to initiate a process to develop specific water quality objectives for the San Joaquin River basin that will result in the adoption of appropriate basin plan amendments by the Regional Board and the development of a program to regulate agricultural drainage discharges. (SWRCB 5(1), p. 34.) The Central Valley RWQCB is currently in the process of setting salinity objectives for the San Joaquin River. (R.T. p. 4847.) **The Central Valley RWQCB is hereby directed promptly to develop and adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis.** As part of its implementation plan for salinity objectives, the Central Valley RWQCB should evaluate a program to regulate the timing of agricultural discharges to the San Joaquin River. (Emphasis added.)

In D-1641 the State Water Board again, as it had over the past 14 years, since, 1985, specifically directs the Regional Board to take action and to **promptly** develop and adopt salinity objectives upstream of Vernalis.

*Regional Board Basin Plan Amendment Progress in 2000 – Release of portions of Draft Basin Plan Amendment.*

On April 28, 2000, the Regional Board's Agenda item number 9 included a status report on the Development of a Basin Plan Amendment Addressing Salinity and Boron in the Lower San Joaquin River. The Staff Report to the Regional Board stated that staff was preparing the proposed Basin Plan amendments addressing salinity and boron in the Lower San Joaquin River, a 130 mile reach of the river from Mendota Dam to Vernalis. The proposed amendments were expected to include new water quality objectives for both salt and boron and an implementation plan for meeting the objectives by identifying numerical water quality objectives that will protect the identified beneficial uses and describe the actions the Board will take to achieve compliance with these objectives.

This April report to the Regional Board was encouraging. Some progress continued as in June through August of 2000 various workshops were held regarding the salinity and boron in the Lower San Joaquin River. The workshops included the release of draft chapters of the Basin Plan dated June 20, 2000, which were circulated and commented upon by interested parties. The draft material included Chapter V Water Quality Objectives and Chapter VI Program of Implementation.

The first page of Chapter V of the draft chapters dated June 20, 2000 correctly states the following: "The State Water Resources Control Board (State Water Board) directed this Regional Board to set numerical objectives for salinity in the San Joaquin River upstream of Vernalis." In addition, Page 9 of Chapter V of the draft chapters correctly states the following: ". . . **the State Water Board has directed the Regional Board to promptly adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis (Water Rights Decision 1641).**" (Emphasis added.) Since these workshops in the summer of 2000, no further action by the Regional Board has occurred.

*Further Delay - Regional Board defers establishment of objectives.*

At the March 1, 2001 Regional Board Staff Workshop regarding establishing TMDLs in the Lower San Joaquin River the Basin Plan Amendment was briefly discussed. It was at this workshop that Regional Board staff indicated that progress on the Basin Plan Amendment and establishing salinity standards upstream of Vernalis has been halted. Regional Board staff had delayed their work on preparing and developing the Basin Plan amendment and thus was delaying their work on establishing salinity objectives upstream of Vernalis.

During the Workshop, a representative of Stockton East asked staff how this delay could be justified given the State Water Board's mandate to the Regional Board in D-1641. The Regional Board staff responded that staff's action was consistent with D-1641. We strongly disagree. A review of the actions of the State Water Board and the Regional Board clearly indicate that the Regional Board must immediately adopt salinity objectives upstream of Vernalis. The Regional Board's action directly violates the consistent and clear directives of the State Water Board in 1995, 1999 and 2000 that the Regional Board must promptly adopt salinity objectives and a program of implementation of the main stem of the San Joaquin River upstream of Vernalis.

*Current Status – State Water Board demanded September 2006*

The Regional Board's last schedule for establishment of objectives upstream of Vernalis had a Regional Workshop on the Draft Basin Plan amendment and TMDL scheduled for October 2005, Final Basin Plan and TMDL hearing by Regional Board in March 2006 and State Water Board review in May 2006. At the State Water Board hearing in November 2005, after hearing the Regional Board would once again miss this deadline for adoption and implementation of the upstream TMDL, the State Water Board was adamant that the Regional Board complete the salinity objectives upstream of Vernalis by September 2006. Once again the Central Valley Regional Board has failed. The Central Valley Regional Board website currently provides no new information and simply states that the Basin Plan Draft Staff is "**currently under development.**" This is unacceptable. This Bay-Delta Strategic Plan must mandate a deadline for the Central Valley Regional Board to establish objectives upstream of Vernalis immediately and not permit additional delay. The State Water Board must provide the Regional Board with the required resources to ensure that the Regional Board meets this deadline for adopting upstream objectives for salinity above Vernalis. Adoption of these salinity objectives and an implementation plan will finally place the burden of solving the problem on those creating the pollution in the lower San Joaquin River, not re-directed to others not causing the pollution.

Old and Middle River Dissolved Oxygen: This Bay-Delta Strategic Plan suggests that the Central Valley Regional Board should prioritize this TMDL. This should not be listed as a priority. First, no protected species reside in Old and Middle River in the summer as temperatures in these rivers are lethal at this time. Increased dissolved oxygen in the summer months is primarily caused by low flows and high temperatures. Since there are many other high priority TMDLs in need of adoption and implementation, this one should be placed as a low priority by in the Strategic Plan.

**Southern Delta Salinity and San Joaquin River Flow Objectives**

On page 64, second full paragraph, last sentence: It states that "State Water Board staff are working with DWR modelers to analyze water supplies needed to meet the current objectives with dilution flows." What are the sources of dilution flows? All available sources, including releases from Friant Dam, recirculation of water utilizing DMC, water released from San Luis Reservoir (including water allocated to SWP as their permits are

required to meet the Interior Delta salinity objectives) water supply mitigation from wetlands and other available sources must be considered as dilution flows.

We have repeatedly made the State Water Board aware that 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 USBR, 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 objectives **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.** USBR currently exclusively relies on New Melones Reservoir to meet the Vernalis objective. This must stop. Further, increased releases to meet the Interior Delta salinity objectives would be in direct violation of this Congressional directive and should not be included in any modeling on compliance with the Interior salinity objectives.

Page 67, third bullet – August 2007 – Fourth Quarter of 2008: This bullet discusses the currently modeling and states that DWR has provided the documentation to the State Water Board on the initial modeling analysis related to the San Joaquin River at Brandt Bridge. Stockton East hereby requests that this documentation be made available immediately to all of the parties in the Bay-Delta proceeding, as it is incumbent that **ALL POTENTIAL ALTERNATIVES FOR DILUTION FLOWS** be considered. Review of this in timely fashion will enable additional model runs if necessary.

Page 67, fourth bullet – September 2008: The State Water Board must provide adequate time for all interested parties to review the revised DFG San Joaquin River salmon escapement model as the previous version was peer reviewed and found to be completely flawed and effectively un-useable. Any new DFG model must be peer reviewed prior to use just as any other model relied on by the State Water Board, for example, CALSIM II went under a rigorous peer review process.

## **OTHER ACTIVITIES**

### **Screening Diversion in the Delta and Tributaries**

This section should be amended to reflect the existing law that imposes the obligation upon DFG to install, at its expense, fish screens, bypasses or other devices, on all diversion less than 250 cfs. [See F&G Code Section 6021] If a diversion is greater than 250 cfs then any fish screen determined to be required shall be installed and the cost of such screen is shared 50/50 by the owner of the diversion structure and DFG. [See F&G Code Section 5983]



Ms. Diane Riddle  
July 9, 2008  
Page 9

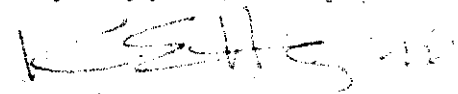
### Minimum In-Stream Flow Standards

This section should be deleted from the Bay-Delta Strategic Workplan. Development of "one" in-stream flow standard for a tributary to the Delta or Suisun Marsh will have little impact on the major issues facing the Bay-Delta Estuary. This Bay-Delta Strategic Workplan notes that selection of any activities is based on a qualitative assessment of the activity against a list of criteria including "sufficient information exists to support taking or initiating the action." [See page 10]

The process of developing an in-stream flow standard involves development of studies evaluating many issues on what a fishery needs to be maintained in "good condition" including, but not limited to, evaluating salmonid habitat preferences, evaluating spawning and rearing habitat, evaluating spatial and temporal distribution and growth rates of juvenile salmon in relation to streamflow and habitat, defining timing and magnitude of downstream migration, determination of annual spawning escapements, evaluate spawning habitat suitability and improvement needs, and evaluation of temperature needs and modeling of existing temperatures, at a minimum. Sufficient information does not exist today or even within a five year time frame to support this activity. The focus of the State Water Boards efforts should be placed in other higher priority items.

We appreciate the opportunity to comment to on the Bay-Delta Strategic Workplan and look forward to working with the State Water Board and Central Valley Regional Board on implementation of the plan.

Very truly yours,



KARNA E. HARRIGFELD  
Attorney-at-Law

KEH:md

Enclosure

cc: Mr. Kevin Kauffman, Stockton East Water District

# ATTACHMENT 1



Karna E. Harrigfeld  
kharrigfeld@herumcrabtree.com

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 - 4<sup>th</sup> 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

Mr. Rudy Schnagl  
Mr. Lee Mao  
May 30, 2008  
Page 2 of 5

- (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.

Mr. Rudy Schnagl  
Mr. Lee Mao  
May 30, 2008  
Page 3 of 5

#### 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:

Mr. Rudy Schnagl  
Mr. Lee Mao  
May 30, 2008  
Page 4 of 5

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

C:\Documents and Settings\KHARRIGFELD.HCDZT\Local Settings\Temp\tmp28C\78752.TMP

Mr. Rudy Schnagl  
Mr. Lee Mao  
May 30, 2008  
Page 5 of 5

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