



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:

APR 12 2018

MP-100
WTR-4.10

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: New Melones Reservoir Operations 2018

Dear Ms. Sobeck:

The purpose of this letter is to inform the State Water Resources Control Board (Board) that the Bureau of Reclamation has determined that prudent operations at New Melones reservoir in 2018 will be as set forth in our letter to the Board on November 22, 2016. In that letter, we stated as follows:

“In the future and until the updates to the Bay-Delta Plan are completed and implemented, Reclamation anticipates that flow releases to the Stanislaus River will be consistent with the provisions of the NMFS Biological Opinion and the actions under its Reasonable and Prudent Alternatives. Flows will follow the Appendix 2E schedule as modified through the Stanislaus Operations Group and Reclamation will continue to meet the D-1641 salinity objective at Vernalis.”

In addition, Reclamation will also work with the Federal fishery agencies and the California Department of Fish and Wildlife to coordinate the Stanislaus River flows with the flows on the Merced and Tuolumne rivers. We will also continue to work with Oakdale Irrigation District and South San Joaquin Irrigation District (the Districts), or others, for contributions to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta WQCP) Table 3 flows, provided such contributions can be made without harm to the Central Valley Project (CVP).

Following our meeting earlier this year, we remain concerned that Board staff continues to insist that Reclamation is solely responsible for full implementation of the Bay-Delta WQCP Table 3 San Joaquin River flows, and specifically, the Vernalis spring pulse flow, following the expiration of the San Joaquin River Agreement (SJRA). We do not agree.

Under D-1641, Reclamation was required to meet the spring pulse flows under the SJRA. The SJRA was an agreement among the parties listed below.¹ Under this agreement, Reclamation

Subject: New Melones Reservoir Operations 2018

agreed to pay water users on the other tributaries to make water available for the purpose of meeting the SJRA Vernalis spring pulse flow during the term of the SJRA. The purpose of the SJRA was to give the Board time (at least 12 years, the full-term of the SJRA) to permanently assign responsibility to other diverters (who are also responsible for deficits to instream flows at Vernalis), through a water right action. Following the water right action, other diverters would then contribute to the Vernalis flows without the need for Reclamation to use federal dollars for the contributions. However, despite extensions to the full term of the SJRA and additional agreements through 2014, the Board took no such action, and continues to take no such action. During the term of the SJRA, and subsequent extensions and additional agreements, Reclamation spent in excess of \$80 million for other diverters to contribute to the SJRA Vernalis spring pulse flows. It has now been 18 years since the Board issued D-1641. The Board, therefore, has had 18 years with which it could have taken action to implement the Bay-Delta WQCP Table 3 flows.

D-1641 does not address responsibility for the Bay-Delta WQCP Table 3 flows following the full-term and expiration of the SJRA. Paragraph 3 on page 162 of D-1641 states:

“If the [SJRA] is dissolved by the signatory parties before it expires, then Permittee shall meet the San Joaquin River flow objectives set forth in Table 3 until the Board establishes alternative implementation of the San Joaquin River flow objective.”

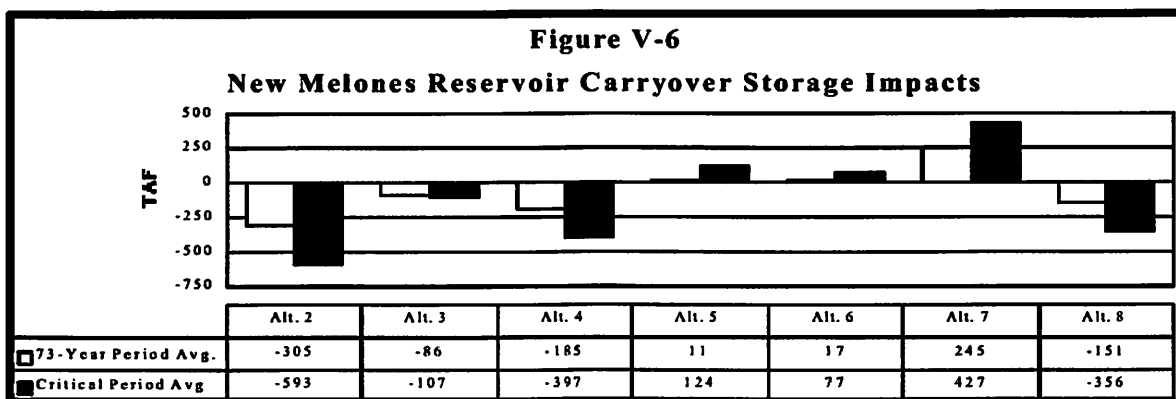
The SJRA was not dissolved prematurely. Reclamation met its full obligations under the SJRA, throughout the entire term of the SJRA, including two extensions, and subsequent agreements to purchase contributions from the Merced Irrigation District. Yet, the Board did not make any efforts to permanently assign responsibility to the other diverters in the basin. This does not mean that the Board can now take the position that it has implemented Bay-Delta WQCP Table 3 flows through the use of water from New Melones Reservoir, alone.

Reclamation has clearly articulated our concerns with this view to the Board on numerous occasions, since at least 2012. A copy of Reclamation’s letters are enclosed. We will not go through them in detail other than to reiterate what we said in 2012, that the Board evaluated the effects of various alternatives to meeting San Joaquin River flow standards in *The final EIR for the Implementation of the 1995 Water Quality Control Plan*, dated November 1999. “Flow Alternative 2 assigns responsibility for meeting the 1995 Bay/Delta Plan flow objectives solely to the SWP and the CVP. Vernalis flow objectives are met by releases from New Melones

¹ Reclamation, the US Fish and Wildlife Service, California Department of Water Resources, California Department of Fish and Wildlife, State Water Contractors, Kern County Water Agency, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, San Luis-Delta Mendota Water Authority, Westlands Water District, Metropolitan Water District of Southern California, Natural Heritage Institute, and the San Joaquin River Group Authority (Modesto Irrigation District, Turlock Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, San Joaquin River Exchange Contractors Authority [Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company], Friant Water Authority on behalf of its member agencies, and the City and County of San Francisco).

Subject: New Melones Reservoir Operations 2018

Reservoir, and are the exclusive responsibility of the CVP.” Chapter V of this document evaluates the impacts of the flow alternatives. The following graph is found on page V-7:



This graph clearly demonstrates significant negative impacts on New Melones end-of-September storage for Flow Alternative 2, which is equivalent to the Board’s current assertion that Reclamation is solely responsible for meeting Table 3 Vernalis spring pulse flows. This is not a rationally based implementation of the Vernalis flow objectives, and represents a significant depletion of storage that will not be replenished in almost all year types. We note that actual average annual end-of-September storage for 1980-1999, is approximately 400,000 acre-feet lower than shown in the Board’s modeled results, above.

Reclamation is concerned that not only are actual results lower than the Board’s modeled results from 1999, but also that the operating conditions at New Melones have changed significantly since 1999. Specifically, the Bay-Delta WQCP Table 3 flows pre-date the National Marine Fisheries Service 2009 Biological Opinion on the Long-term Operations of the Central Valley Project and State Water Project (NMFS 2009 BiOp). Appendix 2E contains a flow schedule for New Melones, and Action III.1.2. contains temperature actions for New Melones. Implementation of the Bay-Delta WQCP Table 3 flows through New Melones, alone, threatens the long-term viability of New Melones storage. In fact, year over year operations to meet Table 3 flows solely from New Melones would threaten the CVP’s ability to meet its other regulatory requirements on the Stanislaus under the NMFS 2009 BiOp.

The Board has admitted that Reclamation is not capable of solely meeting Bay-Delta WQCP Table 3 flows, and has expressed to us that we should meet each year and agree on annual operations for New Melones. Reclamation has grown concerned that we fundamentally view this issue differently. Prudent New Melones operations cannot be based on single, sequential annual perspectives. Under Congressional directives for New Melones, Reclamation must operate and maintain the reservoir as an integral part of the CVP, pursuant to the Federal reclamation laws, and in conformity with other federal law, including Endangered Species Act obligations. As the above graph clearly indicates, the operation rejected by the Board when it issued D-1641, and now being advanced by the Board, not only lacks a rational basis, but conflicts with Reclamation’s long-term obligations under federal law.

Though Reclamation maintains the position outlined above, that the Board has not taken action to implement the Bay-Delta WQCP Table 3 flows, we note that the recent late-winter storms have brought a period of elevated flow on the San Joaquin River. This flow consists of a combination of direct runoff from the storms, as well as releases from other reservoirs on the San

Subject: New Melones Reservoir Operations 2018

Joaquin tributaries for flood control purposes, which is currently adding to the releases being made by Reclamation to meet the Appendix 2E schedule as modified by the Stanislaus Operations Group. The resultant flow at Vernalis has been well in excess of the Bay-Delta WQCP Table 3 pulse flow value since March 25th, and is currently projected to continue to exceed that value for at least the next week. It is uncertain as to whether these elevated flows will remain above the Table 3 value for the duration of the April 15 to May 15 timeframe. However, we note that footnote 18 to Table 3 of the Bay-Delta WQCP allows for the time period of the pulse to be varied.

Should you have any questions or wish to discuss these matters further, please contact Mr. Jeff Rieker at 916-979-2197 or via email jrieker@usbr.gov.

Sincerely,



David G. Murillo
Regional Director

Enclosures – 6

cc: Mr. Erik Ekdahl
Deputy Director
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812-0100

Diane Riddle
Assistant Deputy Director Bay-Delta and Hearings Branch
State Water Resources Control Board
Division of Water Rights
1001 I Street
Sacramento, CA 95814-2828

Michael George
Delta Watermaster
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Enclosure List

- 1 – January 11, 2012 Letter on 2012 and 2013 Operations
- 2 – May 4, 2012 Letter on Water Rights Division Order
- 3 – August 8, 2012 Letter on Notice of Violation
- 4 – April 29, 2014 Letter on Response to Protest
- 5 – November 22, 2016 Letter on San Joaquin Flow Objectives in Future Years
- 6 – February 15, 2017 Letter on San Joaquin Flow Objectives in Future Years

Enclosure 1



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898



IN REPLY REFER TO:

JAN 11 2012

MP-460
WTR-4.10

Ms. Barbara Evoy
Deputy Director for Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Subject: Proposed 2012 and 2013 Operations the Bureau of Reclamation to Meet the 31-day Spring Pulse Flow Target at Vernalis

Dear Ms.Evoy:

Two of Reclamation's water rights permits for the New Melones Dam and Reservoir (Permits 16597 and 16600; Applications 14858A and 19304) are conditioned through Water Rights Decision 1641 (D-1641) to meet a 31-day Spring Pulse Flow Target in the Lower San Joaquin River at Vernalis. For the past twelve years, this operation has been conducted in accordance with the San Joaquin River Agreement, which expired December 31, 2011. To date, Reclamation has expended approximately \$78 million to the San Joaquin River Group Authority for the assurance that water will be made available to meet Vernalis flow requirements (including over \$45 million for the assurance of spring flows).

While Reclamation was unsuccessful in negotiating a temporary agreement to extend the San Joaquin River Agreement with its original partners, Reclamation is entering into an agreement to access a maximum of 90,000 acre-feet of water from the Merced Irrigation District (MID Agreement) in order to continue to provide a 31-day spring pulse flow similar to historic spring pulse flow operations in 2012 and 2013 at a minimum cost of \$2.5 million per year. In anticipation of implementing this agreement, MID filed petitions with the State Board on December 16, 2011 for long-term transfer and in-stream flow dedication for water right License 2685 (Application 1224). The State Board noticed this petition on December 23, 2011.

With the MID Agreement, Reclamation is proposing to substantially operate to the flow targets established under the San Joaquin River Agreement. Because this is a two year agreement and involves fewer water rights holders, it was not possible to obtain the water needed to perform a "double step" operation, which would most likely be triggered in 2012. In 2012 and 2013, Reclamation will operate New Melones Reservoir to meet the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's Biological Opinion on the long-term operations of the Central Valley Project and State Water Project (NMFS 2009 Biological Opinion) criteria on the Stanislaus River, while coordinating operations with Merced Irrigation District to

Subject: Proposed 2012 and 2013 Operations of the 31-day Spring Pulse Flow Target at Vernalis

make releases from Lake McClure to collectively provide flows to meet the Spring Pulse Flow Target.

Attached is a copy of the draft MID Agreement. As noted on page 643 of the NMFS 2009 Biological Opinion, "Reclamation has limited discretion to require additional flows from the Tuolumne and Merced rivers that are necessary in the long run to meet the needs of outmigrating juvenile steelhead. Modeling for our analysis of the East Side Division show that relying on New Melones Reservoir to provide the flows at Vernalis cannot be sustained, and attempting to do so would likely have additional adverse effects on CV steelhead." The water provided under this agreement will avoid the adverse affects on CV steelhead caused by relying on New Melones alone to meet the Vernalis flow targets, and make it possible for Reclamation to substantially comply with the requirements of D-1641.

Reclamation is in the process of finalizing the Draft Environmental Assessment/Initial Study for implementation of the MID Agreement, and will provide the Board a copy of this document and any associated FONSI and/or Negative Declaration. Reclamation has also been coordinating and communicating with the U.S. Fish and Wildlife Service and NMFS, who have indicated that the proposed action is consistent with the existing biological opinions for the operations of the Central Valley Project. Reclamation will seek to have written confirmation forwarded to the State Board from these agencies.

Reclamation's point of contact for this action is Ray Sahlberg, Mid-Pacific Region Water Rights Officer; he may be contacted at 916-978-5249 or via e-mail at rsahlberg@usbr.gov.

Sincerely,

/s/ RICHARD J. WOODLEY

Richard J. Woodley
Regional Resources Manager

Enclosure

bc: Regional Solicitor, Pacific Southwest Region

Attention: MP-1150 (AAufdemberge)

MP-100 (PArroyave), MP-400(RStevenson), MP-460(LHolm, RSahlberg),

MP-700 (MJohannis)

CVOO-400 (RMilligan, PFujitani)

CCAO-100 (MFinnegan)

WBR:RSahlberg:scooper:1/04/2012:916-978-5149

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Surnames: MP-460, MP-700(MJohannis), SOL-1150(AAufdemberge), MP-400(RWoodley)

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3
4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7 Central Valley Project, California
8

9 AGREEMENT FOR THE AVAILABILITY AND/OR ACQUISITION OF WATER BY THE
10 UNITED STATES FROM
11 MERCED IRRIGATION DISTRICT
12
13
14

15
16 INTRODUCTION

17
18 This Agreement by and between the U.S. Department of the Interior, Bureau of Reclamation
19 (Reclamation) and the Merced Irrigation District (MID), collectively, the Parties, is for the
20 availability or purchase and use of MID water to assist in meeting San Joaquin River (SJR)
21 spring pulse flow targets, as set forth in this Agreement, at Vernalis, for calendar years 2012 and
22 2013. This Agreement does not include monitoring requirements or export restrictions.

WITNESSETH, That:

25 RECITALS

26 WHEREAS, in 1995, the State Water Resources Control Board (SWRCB) adopted a Water
27 Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (WQCP).
28 The 1995 WQCP established a 31-day spring pulse flow objective on the lower San Joaquin
29 River at Vernalis.

30
31 WHEREAS, in the late 1990's, the SWRCB conducted water rights proceedings to condition
32 water rights in order to implement the 1995 WQCP. As part of those proceedings, Reclamation
33 negotiated a 12 year settlement agreement, the San Joaquin River Agreement (SJRA) with the
34 San Joaquin River Group Authority (SJRGA), and others, to implement, among other things, a
35 31-day spring pulse flow on the lower San Joaquin River at Vernalis.

36
37 WHEREAS, the SJRA established a set of targeted flow rates for the 31-day spring pulse flow on
38 the lower San Joaquin River at Vernalis based on hydrologic conditions, as well as other Delta
39 operational objectives and biological experiments (known as the Vernalis Adaptive Management
40 Program, or VAMP).
41

42 WHEREAS, in 2000, the SWRCB adopted the SJRA in Water Rights Decision 1641 (D-1641) as
43 a temporary, phased implementation of the WQCP flow objectives for the lower San Joaquin
44 River at Vernalis. The SWRCB adopted the SJRA temporarily to allow additional time to assign
45 permanent responsibility to water right holders in the San Joaquin River basin. D-1641 terms
46 and conditions in support of the SJRA expire December 31, 2011.

47
48 WHEREAS, the SJRA was fully implemented from 2000 to 2011.

49
50 WHEREAS, the SWRCB is currently reviewing the flow objectives for the lower San Joaquin
51 River at Vernalis. The SWRCB expects to have a revised WQCP adopted in 2012 or 2013.

52
53 WHEREAS, This Agreement will provide a mechanism to maintain the implementation of the
54 Vernalis spring pulse flow targets in the SJRA (without the double-step requirement under
55 paragraph 5.6 of the SJRA) ("Vernalis Spring Flow Target"), despite the termination of the
56 SJRA, and the expiration of the terms and conditions in D-1641 in support of the SJRA.

57
58 WHEREAS, the Parties to this Agreement intend to seek SWRCB approval to extend
59 implementation of the SJRA flow targets (without the double-step requirement) for two years
60 during the term of this Agreement.

61
62 THEREFORE, Reclamation and MID are entering into this voluntary two-year agreement to
63 provide flows from the Merced River to support the continued implementation of the Vernalis
64 Spring Flow Target.

65 66 67 **1.0 SPRING FLOW**

- 68
69 a) Reclamation shall pay MID \$2.5 million each year for the availability and ability to use
70 up to 25,000 acre feet (AF) of Supplemental Water per year to help meet the Vernalis
71 Spring Flow Target, said payment to be non-refundable. MID agrees to release
72 Supplemental Water requested under this subdivision subject to the provisions of Article
73 6.4.
- 74 b) If Supplemental Water in excess of 25,000 AF is needed to meet the Vernalis Spring
75 Flow Target, Reclamation may request to purchase additional flows of Supplemental
76 Water, up to 25,000 AF per year from MID at \$85 per AF; however MID is not obligated
77 under this Agreement to sell Reclamation this additional increment of water if the Base
78 Flow in the Lower SJR is equal or above 7,000 cfs or as described in Article 4.2, below.
- 79 c) If Supplemental Water in excess of 50,000 AF is needed to meet the Vernalis Spring
80 Flow Target for a given year, Reclamation may request to purchase additional
81 Supplemental Water, not to exceed 40,000 AF per year, from MID at an agreed upon
82 price; however MID is not obligated under this Agreement to sell Reclamation any
83 additional such flows or any increment thereof.

84 85 86 **2.0 AUTHORITY**

87
88 Reclamation enters into this Agreement under the authority of Section 3406(b)(3) of the Central
89 Valley Project Improvement Act (102 Pub. L. 575, October 1992). MID enters into this
90 Agreement pursuant to applicable provisions of the California Water Code.

91
92
93 **3.0 DEFINITIONS**
94

95 **3.1 Pulse Flow Period.** The Pulse Flow Period is the 31 consecutive day period during
96 the months of April and May (as agreed upon by the Parties in coordination with U.S. Fish and
97 Wildlife Service (FWS), the California Department of Fish and Game (DFG) and the National
98 Marine Fisheries Service (NMFS)) when Supplemental Water from MID as per this Agreement
99 may be provided to assist in meeting the Vernalis Spring Flow Target. Generally, the Pulse Flow
100 Period starts around April 15 and ends around May 15.
101

102 **3.2 Existing Flow in the Merced River.** Existing Flow is the average flow in the
103 Merced River that would exist absent this Agreement at the Shaffer Bridge gage or Cressey gage
104 during the Pulse Flow Period (See Article 4.3, below).
105

106 **3.3 Supplemental Water.** Supplemental Water is all water needed from MID pursuant to
107 this Agreement during the Pulse Flow Period, over and above the Existing Flow in the Merced
108 River, to satisfy any Deficiencies in Flows to meet the Vernalis Spring Flow Target.
109

110 **3.4 Deficiencies in Flows to meet the Vernalis Spring Flow Target.** For purposes of
111 this Agreement, Deficiency, or Deficiencies in Flows shall mean and be calculated to be the
112 difference between the sum of the forecasted Base Flows in the Lower San Joaquin River at
113 Vernalis during the Pulse Flow Period and the incremental releases from New Melones Reservoir
114 to satisfy Reasonable and Prudent Alternatives under the Biological Opinion, in effect at the
115 signing of this Agreement, and the Vernalis Spring Flow Target. Forecasted flows are
116 established at the 90% exceedence forecast based on the April 1 forecast, if possible, before the
117 Pulse Flow Period. Reclamation will incorporate estimates of typical accretions and depletions
118 by water year type between the Shaffer Bridge/Cressey gages and the Vernalis flow compliance
119 point in calculating Supplemental Water releases. Reclamation will coordinate with reservoir
120 operators for other tributaries as needed and will provide MID a Daily Flow Schedule of
121 requested Supplemental Water releases, as described in Article 3.6.
122

123 **3.5 Vernalis Spring Flow Target.** The Single-step Target Flow as defined in the SJRA
124 and shown in Table 1 below is the Vernalis Spring Flow Target during the Pulse Flow Period.
125 The target flows will be set as close to steady flows as practical during the entire Pulse Flow
126 Period.
127

Table 1: Vernalis Spring Flow Target	
Base Flow in lower SJR at Vernalis (cfs)	Vernalis Spring Flow Target, minimum average flow rate over 31-day Pulse Flow Period (cfs)
0-1999	2000
2000-3199	3200
3200-4449	4450
4450-5699	5700
5700-6999	7000
7000 or greater	Existing Flow

128 **3.6 Daily Flow Schedule.** The Daily Flow Schedule is the schedule of mean daily flows
129 in the Merced River by which the Supplemental Water will be provided during the Pulse Flow
130

131 Period (See Article 4.3, below).
132

133 **3.7 Base Flow in Lower San Joaquin River at Vernalis.** The Base Flow in the Lower
134 SJR at Vernalis is the estimated flow absent this Agreement, excluding the incremental releases
135 from New Melones Reservoir to satisfy Reasonable and Prudent Alternatives under the
136 Biological Opinion in effect at the signing of this Agreement.
137

138
139 **4.0 AUGMENTATION OF MERCED RIVER'S SPRING FLOW**
140

141 **4.1 Defining the Pulse Flow Period.** The Parties agree that generally the Pulse Flow
142 Period will occur from April 15 to May 15. However, the actual Pulse Flow Period will be
143 defined depending on biological and hydrologic conditions. By mid-March, a tentative Pulse
144 Flow Period will be defined by Reclamation and MID, in coordination with the FWS, DFG and
145 NMFS. This tentative Pulse Flow Period will be used in subsequent planning, and will be
146 modified only as a result of significantly changed circumstances. The Daily Flow Schedule for
147 the 31-day Pulse Flow Period will be developed by Reclamation and MID, in coordination with
148 the FWS, DFG and NMFS. The Daily Flow Schedule may be modified at any time upon
149 agreement of the Parties to this Agreement.
150

151 **4.2 Estimating Need for Supplemental Water.** By March 20th of each year¹,
152 Reclamation will estimate whether there is a need to provide Supplemental Water in order to
153 assist in meeting the Vernalis Spring Flow Target. Reclamation will select the Vernalis Spring
154 Flow Target based on an estimate of Base Flow in the Lower San Joaquin River from the set of
155 targets shown in Table 1. If there is a Deficiency in Flows, Reclamation will calculate the
156 amount of Supplemental Water needed to satisfy the deficiency. MID will review the analysis
157 and either concur with the estimate of Supplemental Water needed, if any, or if MID does not
158 concur, MID and Reclamation shall meet within 10 days to endeavor to resolve the dispute.
159

160 **4.3 Designating the reference gage.** The reference gage for the flows will be the MID
161 gage at Shaffer Bridge when flow is less than 220 cfs or the California Department of Water
162 Resources (CDWR) Cressey gage when flows are greater than 220 cfs. However, if the Parties
163 agree that the Shaffer Bridge gage can be accurately rated above 220 cfs, then that gage may be
164 used for all flows.
165

166 **4.4 Planning and implementing operations.** Monthly operations forecasts will be made
167 starting in early February, depending upon the availability of the February 1st CDWR runoff
168 forecast. The operations forecasts will be updated as the runoff forecasts are updated. The
169 Parties will develop the Daily Flow Schedule by March 20th¹. MID will monitor operations and
170 make adjustments during the Pulse Flow Period using the best available real-time data. MID will
171 provide an accounting of the Supplemental Water after the Pulse Flow Period using provisional
172 mean daily flow data from the appropriate reference gage(s).
173

174 **4.5 Waiver of Supplemental Water Requirement.** When the Existing Flow in the
175 Merced River exceeds 800 cubic feet per second (cfs), MID will have no obligation to release
176 any Supplemental Water under this Agreement. During such years, the Parties nevertheless

¹ The Estimate of Supplemental Water and associated Daily Flow Schedule will be based on the March 1st forecast, but will be adjusted, if necessary, to reflect the April 1st forecast.

177 agree to conduct the joint operations forecasting and coordinated planning and operations
178 scheduling activities called for by this Agreement for the purpose of achieving best use of the
179 Existing Flow in the Merced River to support the objectives of this Agreement.
180

181
182 **5.0 TERM**
183

184 This Agreement shall remain in effect until December 31, 2013, unless terminated earlier in
185 writing by agreement of the Parties, or as provided in Article 8.0.
186

187
188 **6.0 OBLIGATIONS OF PARTIES**
189

190 **6.1 Payment.** Consistent with Article 1.0(a), Reclamation shall pay MID \$2.5 million by
191 March 1 of each year for the Term of this Agreement for the availability and ability to use up to
192 25,000 AF of Supplemental Water to help meet the Vernalis Spring Flow Target. If more than
193 25,000 AF of Supplemental Water is needed to meet any Deficiencies in Flows, Reclamation will
194 negotiate with MID for additional amounts of Supplemental Water in accordance with the
195 provisions of Articles 1.0(b) and 1.0(c) and payment shall be made upon invoicing as provided in
196 Article 6.2.

197
198 (a) MID shall register at the Central Contractor Registration (CCR) Web site
199 at www.ccr.gov prior to execution of this Agreement.

200 (b) All payments by Reclamation under this Agreement shall be made by
201 electronic funds transfer (EFT) using the EFT information contained in the CCR database. MID
202 is responsible during performance and through final payment of this Agreement for the accuracy
203 and completeness of the data within the CCR database, and for any liability resulting from the
204 Government's reliance on inaccurate or incomplete data. To remain registered in the CCR
205 database after the initial registration, MID is required to review and update on an annual basis
206 from the date of initial registration or subsequent updates, its information in the CCR database to
207 ensure it is current, accurate and complete.
208

209 **6.2 Invoicing**

210 (a) On or before January 15 of each year, MID shall submit an invoice for
211 \$2.5 million for Supplemental Water as defined in Article 1.0 (a).
212

213 (b) Subsequent to the last day of each Pulse Flow Period during which
214 Supplemental Water as defined by Articles 1.0 (b) and 1.0 (c) has been provided to
215 Reclamation pursuant to this Agreement, MID shall submit an invoice to Reclamation
216 requesting payment for the total quantity provided.

217 (c) In accordance with the Prompt Payment Act, Reclamation shall pay MID
218 within 30 days upon receipt of a proper invoice that includes the following information
219 for verification and payment processing purposes:

- (1) Name and address of MID;
- (2) Invoice date and number;
- (3) MID's Taxpayer Identification Number;
- (4) Accounting and Appropriation Data "H37 1205 6051 000
- (5) The Agreement Number 11-WC-20-0156;

226 (6) Name and phone number of person to notify in event of
227 defective invoice;

228 (7) Remittance address; and

229 (8) Invoices submitted in accordance with Article 6.2(b) shall
230 include a table identifying the daily quantities and source of water made available to Reclamation
231 pursuant to this Agreement during the Pulse Flow Period, including the reference gages' (Article
232 4.3) meter records, as applicable. This table must show the total quantity of Supplemental Water
233 provided to Reclamation pursuant to this Agreement.
234

235

236 **6.3 Contingent on Appropriations.** The expenditure or advance of any money or the
237 performance of any obligation of Reclamation under this Agreement shall be contingent upon
238 appropriation or allotment of funds. No liability shall accrue to the United States in case funds
239 are not appropriated or allotted. No liability shall accrue to MID, nor shall an obligation arise to
240 release any Supplemental Water contemplated hereunder unless appropriations or allotments
241 have been made to Reclamation for the amount of Supplemental Water requested.
242

243

244 **6.4 Consequence of No Payment.** In any year that Reclamation does not pay MID \$2.5
245 million by March 1 of that year, MID shall have no obligation to supply any Supplemental Water
246 under this Agreement.
247

248

249 **7.0 NO INJURY TO NEW MELONES OPERATIONS**

250

251 MID agrees that the replenishment of stored water in Lake McClure released for the Vernalis
252 Spring Flow Target may impact Reclamation. Reclamation is impacted during periods when
253 Reclamation's releases from New Melones Reservoir, in addition to its releases absent this
254 Agreement, are made to meet the SWRCB Vernalis salinity objective, or when Standard Permit
255 Term 93 is in effect. MID will compensate for the impact by releasing water from Lake McClure
256 at times when releases from New Melones are being made to meet the SWRCB Vernalis salinity
257 objective, or when Standard Permit Term 93 is in effect, on a schedule coordinated with
258 Reclamation per Article 4.2 above. The impact will be set to zero if Reclamation makes a flood
259 release from New Melones prior to or during releases by MID to compensate for an impact.
260

261

262 **8.0 TERMINATION**

263

264 **8.1 Re-negotiation; Termination.** In the event that either Party, or the Parties, discover
265 that the assumptions on which this Agreement is based with respect to water supply, water rights,
266 or other material facts or circumstances, are incorrect or have changed, the Parties shall attempt
267 to re-negotiate the terms of this Agreement, if needed. If after 60 days, attempts to re-negotiate
268 this Agreement are not successful, then any Party may terminate this Agreement. If the SWRCB
269 does not approve the extension of the SJRA flow targets, as requested by the Parties, either MID
270 or Reclamation may terminate this Agreement. The termination date of this Agreement shall be
271 effective immediately upon notice to the other Party.

272

273 **8.2. Termination for Breach.** If Reclamation fails to pay the MID as required by Article
274 1.0(a) and 6.1, then, after a 45-day notice to cure default has been given to Reclamation, then
MID may terminate this Agreement. If MID fails to perform its obligations for any reason under

275 this Agreement, then the Reclamation may terminate this Agreement.
276

277 **8.3. Effect of Termination.** Upon termination of this Agreement, MID is under no
278 obligation to provide any Supplemental Water and will refund any money paid by Reclamation
279 for which no Supplemental Water was provided by MID. Neither Party will seek judicial relief
280 for any reason should this Agreement be terminated pursuant to the terms of this Agreement.
281

282
283 **9.0 REPRESENTATION BY COUNSEL.** This Agreement is entered into freely and
284 voluntarily. The Parties to this Agreement acknowledge their representation by counsel of their
285 own choice, or that they have had the opportunity to consult with counsel of their own choosing,
286 in the negotiations that preceded the execution of this Agreement and in connection with the
287 preparation and execution of this Agreement. Each of the parties hereto executes this Agreement
288 with full knowledge of its significance and with the express intent of affecting its legal
289 consequences.
290

291
292 **10.0 APPLICABLE BY LAW.** This Agreement shall be construed under and shall be deemed
293 to be governed by federal law and the laws of the State of California, to the extent not
294 inconsistent with federal law.
295

296
297 **11.0 MODIFICATION OF AGREEMENT.** No supplement, modification, waiver, or
298 amendment with respect to this Agreement shall be binding unless executed in writing by the
299 Party against whom enforcement of such supplement, modification, waiver or amendment is
300 sought.
301

302
303 **12.0 SIGNATORIES' AUTHORITY.** The signatories to this Agreement on behalf of all of the
304 Parties hereto warrant and represent that they have authority to execute this Agreement and to
305 bind the Parties on whose behalf they execute this Agreement.
306

307
308 **13.0 REASONABLE COOPERATION.** The Parties hereto shall reasonably cooperate with
309 each other, including the execution of all necessary further documents, if any, to carry out the
310 purpose and intent of this Agreement.
311

312
313 **14.0 UNITED STATES AND DISTRICT NOT LIABLE.**
314

315 **14.1** MID shall not assert that the United States, its officers, agents and employees are
316 legally liable for damages of any nature whatsoever arising out of any actions or omissions by
317 MID, its officers, agents and employees related to the performance of this Agreement where such
liability is caused by an act, error or omission of MID, its officers, agents or employees.
318

319
320 **14.2** The United States shall not assert that MID, its officers, agents and employees are
321 legally liable for damages of any nature whatsoever arising out of any actions or omissions by the
322 United States, its officers, agents and employees related to the performance of this Agreement
323 where such liability is caused by an act, error or omission of the United States, its officers, agents

324 or employees.

325

326 14.3 Within thirty (30) days of receipt by either party of any third party claim for liability
327 arising from actions within the scope of this Agreement, the party receiving the claim shall notify
328 the other party of such claim and provide a copy of the claim to the other party, if it is in written
329 form. Nothing in this article shall be construed to limit the right of either party to assert such
330 affirmative defenses and file such cross complaints as may be appropriate in relation to any claim
331 affecting the liability of such party.

332

333

334 **15.0 RIGHTS, BINDING EFFECT, ASSIGNMENTS, OTHER DOCUMENTS.** Nothing in
335 this Agreement affects any legal rights or responsibilities of the Parties, except as expressly
336 stated herein. This Agreement shall be binding on successors and assigns, provided that no
337 assignment shall be effective without the express written consent of the other Party. This
338 Agreement of the Parties is contained within the four corners of this Agreement which represents
339 the full Agreement between the Parties, and no other document is needed to interpret or form the
340 Agreement.

341

342

343 **16.0 EFFECTIVE DATE.** The Parties hereto deem this Agreement to be signed and of binding
344 legal effect as of the date on which the last signatory hereto signs the Agreement.

345

346

347 **17.0 NOTICE TO PARTIES.** All notices required under or regarding this Agreement shall be
348 made in writing and addressed to the signatories below.

349

350

351 Executed at Sacramento, California on the dates hereafter affixed.

352

353

354

355

356 **UNITED STATES BUREAU OF RECLAMATION**

357

358

359 By: _____ Date: _____

360

Donald R. Glaser
Regional Director, MP Region

361

362 Address: 2800 Cottage Way
363 Sacramento, CA 95825-1898
364

365

366

367 **MERCED IRRIGATION DISTRICT (MID)**

368

369

370 By: _____ Date: _____

371

John Sweigard
General Manager

372

Contract Number 11-WC-20-0156

373

374 Address: Merced Irrigation District

375 720 W. 20th Street

376 Post Office Box 2288

377 Merced, CA 95344-0288

378

379

Enclosure 2



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO:

MP-460
WTR-4.00

MAY 04 2012

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Subject: Division of Water Rights (Division) Order Approving the Merced Irrigation District (MID) Transfer to Meet Instream Flow Needs at Vernalis

Dear Mr. Howard,

We are in receipt of the April 2, 2012 Division Order approving the MID transfer of up to 90,000 acre-feet (AF) of water annually to the U.S. Bureau of Reclamation (Reclamation) in order to meet instream flow needs at Vernalis. We appreciate the Division's efforts in approving the MID petition and facilitating implementation of Reclamation's agreement with MID.

However, it has come to our attention that this Order purports to make findings relevant to Reclamation's responsibilities under Water Rights Decision 1641 (D-1641) following expiration of the San Joaquin River Agreement (SJRA). We note that Reclamation's responsibilities under D-1641 were not at issue under MID's petition, Reclamation was not a party to that petition, and any findings made by the Division of Water Rights with respect to those responsibilities in the MID Order are not binding on Reclamation.

Primarily, we are concerned about Division findings, such as the last sentence of Section 1.1 of the Order that states that, "Reclamation is required to meet flows established in Table 3 of the 2006 Bay-Delta Plan." This is not Reclamation's understanding of D-1641.

Under the relevant Order provisions of D-1641, New Melones storage permits are conditioned as follows:

2. Permittee shall, on an interim basis until the Board adopts a decision assigning permanent responsibility for meeting the water quality objectives:
 - a. Ensure that the water quality objective for fish and wildlife beneficial uses for San Joaquin River flow at Airport Way Bridge, Vernalis set forth in Table 3 is met, with the exception that during the April-May pulse flow period while the SJRA is in effect, experimental target flows set forth in (b) below may be provided in lieu of meeting this objective.

- b. During the April-May pulse flow period while the SJRA is in effect, maintain San Joaquin River flows at Airport Way Bridge, Vernalis, as follows, in lieu of meeting said river flow objective:

Existing Flow (cfs)	Target Flow (cfs)
0-1,999	2,000
2,000-3,199	3,200
3,200-4,449	4,450
4,450-5,699	5,700
5,700-6,999	7,000
7,000 or greater	Existing Flow

During years when the sum of the current year's 60-20-20 indicator and the previous year's 60-20-20 indicator is seven (7) or greater, target flows shall be one step higher than those required by the above table. The Permittee is not required to meet the target flow during years when the sum of the current year's 60-20-20 indicator and the previous two years' 60-20-20 indicator is four (4) or less, using the following table.

SJR Basin 60-20-20 Classification	60-20-20 Indicator
Wet	5
Above normal	4
Below normal	3
Dry	2
Critical	1

3. If the San Joaquin River Agreement (SJRA) is dissolved by the signatory parties before it expires, then Permittee shall meet the San Joaquin River flow objective set forth in Table 3 until the Board establishes alternative implementation of the San Joaquin River flow objective.

D-1641, at p. 161-62.

As we read D-1641, the Board has not addressed what happens under the current situation:

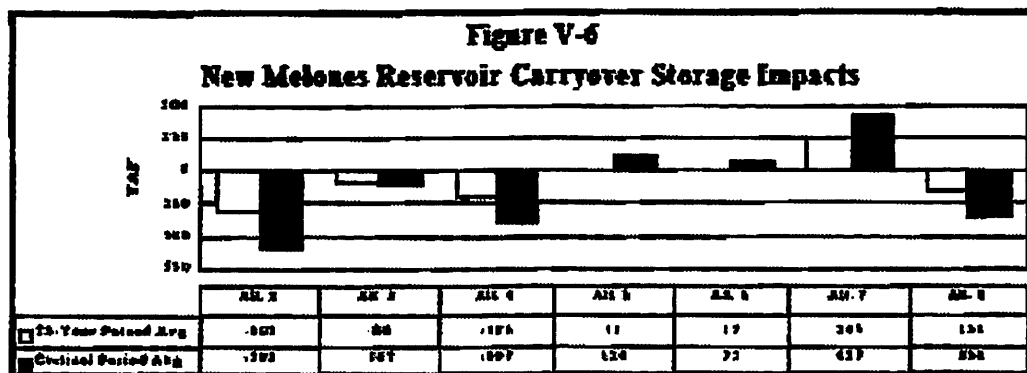
- The SJRA expired on December 31, 2011 after twelve years on its own terms;
- Only two parties to the SJRA (MID and Reclamation) indicated willingness to extend the agreement to make water available for the spring pulse flows; and
- The Board has not yet assigned responsibility to other parties.

As Reclamation views it, the portions of the SJRA which could still be negotiated are still in effect. Paragraph 3 above is the only section in the Order provision of D-1641 which expressly addresses a "fall-back" to Bay-Delta Plan Table 3 objectives. However, this provision only addresses the premature expiration of the SJRA, through voluntary dissolution. This provision was an incentive to keep the SJRA together during the natural life of the agreement. Keeping the SJRA together for

the full twelve years was important to allow the Board additional time to take steps necessary to assign responsibility to other parties. When D-1641 was issued in 2000, no one anticipated that the Board would not have assigned responsibility to other water users in the San Joaquin basin by 2012.

The SJRA was in fact kept together for twelve years as anticipated by D-1641. Reclamation has met the February through June (non-pulse base flows), and salinity objectives, without assistance from, or Board assigned responsibility to, any other party(ies), and continues to do so. However, it has long been understood that Reclamation cannot and should not be required to meet the spring pulse flow requirements, either in the D-1641, or in Table 3, entirely from New Melones storage, without the contributions of other water users in the San Joaquin basin, including its tributaries.

The Board evaluated the effects of various alternatives to meeting San Joaquin River flow standards in *The Final EIR for the Implementation of the 1995 Water Quality Control Plan*, dated November 1999. "Flow Alternative 2 assigns responsibility for meeting the 1995 Bay-Delta Plan flow objectives solely to the SWP and the CVP. Vernalis flow objectives are met by releases from New Melones Reservoir, and are the exclusive responsibility of the CVP." Chapter V of this document evaluates the impacts of the flow alternatives. The following graph is found on page V-7:



This graph clearly demonstrates significant negative impacts on New Melones Reservoir carryover storage for Flow Alternative 2, which is essentially equivalent to the Board's current assertion regarding Reclamation's responsibility for meeting Vernalis flows. Reclamation is concerned that even under the Board's 1999 analysis, the impacts to New Melones Reservoir storage are significant, and that the 1999 analysis does not reflect the current operating conditions for New Melones Reservoir. This impact to New Melones Reservoir carryover storage would greatly impair Reclamation's ability to comply with Action III.1.2. of the National Marine Fisheries Service 2009 Biological Opinion on the Long-term Operations of the Central Valley Project and State Water Project (NMFS 2009 BIOP). Following is the text from that Action:

"Reclamation shall manage the cold water supply within New Melones Reservoir and make cold water releases from New Melones Reservoir to provide suitable temperatures for CV steelhead rearing, spawning, egg incubation smoltification, and adult migration in the Stanislaus River downstream of Goodwin Dam in order to maintain the following temperature compliance schedule:"

Criterion and Temperature Compliance Location	Duration	Steelhead Life Stage Benefit
Temperature below 56°F at Orange Blossom Bridge (OBB)	Oct 1*-Dec 31	Adult migration
Temperature below 52 °F at Knights Ferry and 57°F at OBB	Jan 1-May 31	Smoltification
Temperature Below 55°F at OBB	Jan 1-May 31	Spawning and incubation
Temperature below 65°F at OBB	June 1-Sept 30	Juvenile rearing

*This criterion shall apply as of October 1 or as of initiation date of full pulse flow as agreed to by NMFS.

In addition, the Board lacks any impact analysis of meeting all San Joaquin River basin instream flow needs at Vernalis entirely with New Melones Reservoir storage under current conditions, including meeting the flow requirements of the NMFS 2009 BIOP. We also note that the Division's Order makes the finding that MID's petition "will not unreasonably affect fish, wildlife, or other instream beneficial uses." The environmental analysis supporting the MID petition is predicated on Reclamation's understanding of D-1641 obligations, not the Division's. Therefore, the Division's findings with respect to Table 3 flows are not supported by the record, as the Board has no analysis showing the impact of Reclamation meeting Table 3 spring flows and how that will likely compromise Reclamation's ability to meet future fish and wildlife needs.

Reclamation manages New Melones Reservoir yield over the long-term to meet a multitude of beneficial uses including fish and wildlife and salinity control. Reclamation cannot operate New Melones Reservoir storage based on a simple calculus of carryover storage and annual needs. For example, in Water Rights Decision 1422 (D-1422), it was determined that New Melones Reservoir would have to store 1,100,000 million AF just to meet the annual needs for prior water rights, flood control, fish flows (assumed at that time to be 98,000 AF), and salinity control (assumed at that time to be 70,000 AF). This is due to the extreme variations in hydrology on the Stanislaus River from year to year, and the need to manage yield for drought protection. This finding in D-1422 was prior to additional D-1641 obligations, 2009 BIOP temperature and flow requirements, and consumptive use demands all which further draw on New Melones Reservoir yield.

As was known in 1999, the only way for Reclamation to meet the spring pulse flows under either D-1641/SJRA or Table 3 on its own was to obtain water from other sources in the San Joaquin basin. This water was assumed to be available via purchase, and under the SJRA, Reclamation has contributed nearly \$80 million in Federal dollars out of the CVPIA's Restoration Fund toward compensation for spring and fall pulse flows and monitoring costs. However, this assumption may no longer be valid. Reclamation's recent experience demonstrates that it has only limited ability to achieve contributions from willing sellers. In addition, the availability of Federal dollars to continue this program will be severely constrained after the present agreement with MID expires.

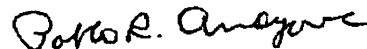
The purpose of the MID agreement is to allow another two years for the Board to continue its obligation to assign permanent responsibility to other parties, while allowing Reclamation to provide the same flows it has provided for the past twelve years under the SJRA. The MID agreement represents an extension of the terms of SJRA which Reclamation could negotiate with willing partners, and a commitment of another \$5 million in Federal dollars towards providing spring pulse flows at Vernalis. Reclamation's January 11, 2012, letter to Ms. Barbara Evoy clearly

sets forth Reclamation's attempts to seek an extension of the SJRA with other SJRA parties, which were unsuccessful. That letter also clearly sets forth Reclamation's intention to continue to implement the flows in D-1641. Following that letter, Reclamation sent to the Board confirmation that NMFS and the Fish and Wildlife Service are aware of Reclamation's intentions and that such did not trigger re-consultation under the Federal ESA, but was instead compliant with the terms of the current Biological Opinions. Reclamation has received no response from the Board to the January 11 letter.

The Board is currently undertaking procedures to review the Vernalis flow objectives and assign responsibility to other parties. In addition, the beginnings of a stakeholder negotiated solution is underway including many interested parties, such as the California's Department of Water Resources, environmental groups, Federal and state fish agencies and water users. Reclamation plans to continue participating in these discussions and sincerely hopes they stay on course.

Until then, Reclamation plans to proceed as we have conveyed to the Board in our January 11, 2012, letter for the next two years, and to continue to participate in the Board's current processes, as well as any stakeholder negotiations. Should you have any questions, please do not hesitate to contact me, Pablo Arroyave, Deputy Regional Director, at 916-978-5013.

Sincerely,



Pablo R. Arroyave
Deputy Regional Director

cc: Chairman Charles Hoppin
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Barbara Evoy
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Diane Riddle
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Office of the Delta Watermaster
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Les Grober
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Erin Mahaney
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Phillip R. McMurray, General Counsel
Merced Irrigation District
744 West 20th Street
Merced, CA 95344-2088

Enclosure 3



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898
AUG 08 2012

IN REPLY REFER TO:

HAND DELIVERY

Craig Wilson, Delta Watermaster
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Notice of Violation (Notice) of State Water Resources Control Board Decision 1641 (D-1641) by United States Bureau of Reclamation (Your Letter dated July 18, 2012)

Dear Mr. Wilson:

Reclamation is in receipt of the subject Notice. This Notice states the following:

- The spring pulse flow requirements for Vernalis contained in Table 3 of the 2006 Bay-Delta Water Quality Control Plan (2006 Plan) were set for 2012 at a minimum monthly average of 3,540 cfs;
- The San Joaquin River Agreement (SJRA) expired in 2011;
- The pulse flow target for 2012 under the SJRA would be a minimum monthly average of 3,200 cfs;
- The flows at Vernalis on the San Joaquin River for the period April 15 – May 15 averaged 3,092 cfs;
- This average flow failed to meet either the Table 3 or SJRA requirement;
- Therefore, Reclamation is in violation of D-1641.

Reclamation has questions and concerns regarding aspects of this Notice. The first issue is procedural - it is unclear under what authority the Delta Watermaster is proceeding by issuing a "Notice of Violation" to Reclamation. Under Water Code § 85230, the Delta Watermaster is delegated the authority to issue proposed cease and desist orders or proposed administrative civil liability complaints.¹ However, we can find no authority for the Delta Watermaster to issue a "Notice of Violation" under Water Code § 1834. There is a crucial distinction between the Delta Watermaster's authority under § 85230, and State Board authority under § 1834 - the distinction

¹ The State Board delegated this authority to the Watermaster in Paragraph 1.5 of the State Board's Resolution No. 2010-0048:

Issue notices of proposed cease and desist orders, and, when a hearing has not been timely requested, issue cease and desist orders in accordance with Water Code section 1831 et seq.

is whether Reclamation is required to request a hearing, in writing, under § 1834(b). The Notice of Violation does not cite any authority under which the Delta Watermaster is proceeding, and is silent with respect to any right or obligation to request a hearing as required by § 1834(a). Under § 1834(b), if the recipient of a Notice of Violation does not request a hearing, in writing, the State Board may issue a cease and desist order without such hearing:

Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

We respectfully request further clarification as to precisely where the “Notice of Violation” fits into the Delta Watermaster’s or the State Board’s statutory enforcement authority, so that Reclamation can clearly understand its substantive and procedural rights and obligations under the law with respect to this Notice. If the State Board or the Delta Watermaster finds that the Notice of Violation does fall under § 1834(b), it would be Reclamation’s view that the 20 day timeframe to request a hearing does not run until Reclamation receives clarification on this point.

In addition to the procedural ambiguity of the Notice of Violation, Reclamation respectfully disagrees with the Delta Watermaster’s assertions with respect to Reclamation’s substantive D-1641 requirements. The State Board’s view that Reclamation is solely responsible for the entire instream flow requirements for the San Joaquin River basin at Vernalis is not supported by any rational basis in the record, nor otherwise. When D-1641 was originally adopted by the State Board, the expectation was that the State Board would permanently assign responsibility to other diverters in the basin by 2012. However, the State Board has yet to do that, and Reclamation’s diversions in the basin are not solely responsible for depletions to flow at Vernalis. Therefore, Reclamation reiterates its position previously set forth in our May 4, 2012 letter to State Board Executive Director Tom Howard.

Second, the Notice states that the requirement contained in Table 3 of the 2006 Plan (3,540 cfs) is the applicable pulse flow requirement. Reclamation maintains its position that the modified SJRA target² as negotiated in our agreement with Merced Irrigation District (MID) is in effect. The SJRA did expire at the end of 2011, and Reclamation entered into discussions with several water districts about extending the spring pulse flow provisions of the SJRA. MID was willing to enter into an agreement to coordinate operations with Reclamation to help meet a SJRA-like spring pulse flow target for 2012 and 2013. As noted in our May 4 letter, it is Reclamation’s position that the San Joaquin River flow provisions of the SJRA are essentially still in effect through the end of 2013 due to the agreement with MID. Therefore, under the terms of D-1641, the applicable flow requirement at Vernalis during the spring pulse flow period of 2012 was the SJRA target of 3,200 cfs.

² The negotiated terms of the Reclamation-MID agreement specify a SJRA spring pulse flow requirement that explicitly excludes the double-step requirement of paragraph 5.6 of the SJRA.

Finally, the Notice states that the flow at Vernalis of 3,092 cfs failed to meet either requirement. As noted above, Reclamation is of the opinion that the applicable standard for 2012 was 3,200 cfs. The Annual Technical Reports submitted to the Board pursuant to the implementation of the SJRA from 2000 through 2010 describe in detail the inherent complexities in meeting an absolute flow objective through the coordinated operation of three upstream reservoirs managed by three different agencies, combined with factors such as accretions and depletions of unpredictable amounts along the San Joaquin River and accuracy of the gage measurements³. Under the SJRA, the real-time coordination of releases to meet the SJRA spring flow target required significant resources throughout the life of the SJRA. For these reasons, the parties coordinating this program (including the State Board, the Fish and Wildlife Service, National Marine Fisheries Service (NMFS), and Department of Fish and Game) have long considered compliance with these flow targets in the SJRA to be within $\pm 7\%$ of the target. Furthermore, with Reclamation operating New Melones Reservoir releases to meet the requirements of the NMFS Biological Opinion, only Lake McClure was available in 2012 to adjust releases to meet this target. Despite the inability to schedule releases from a third reservoir, a 30 day average minimum monthly flow of 3,092 cfs⁴ was achieved during April 15 – May 15 (96.6% of the SJRA target for 2012).

Our May 4 letter describes some of the challenges faced by Reclamation in meeting spring pulse flow requirements at Vernalis – unfortunately, it is not a simple matter of making releases from reservoirs until the target flow is met. All reservoir operators face significant operational constraints that make meeting these objectives challenging.

In summary, we are however committed to improving coordination of release of flows in 2013 to the extent possible. We believe that a meeting with you to discuss all the complexities involved in meeting these standards will be beneficial to both of us in understanding these issues, and in determining a common path forward.

³ The U.S. Geological Survey's *Policy Statement on Stage Accuracy* (available at <http://water.usgs.gov/admin/memo/SW/sw93.07.html>) states that "Accuracies of discharge records for individual days commonly are about 5 to 10 percent." *Policy Statement*, at p. 1. The Survey warns that "Data users are cautioned to consider carefully the provisional nature of the information before using it for decisions that concern personal or public safety or the conduct of business that involves substantial monetary or operational consequences." *USGS Frequently Asked Questions - Real-Time Streamflow Data* – "Why might USGS streamflow data reports not be accurate?" Retrieved from <http://md.water.usgs.gov/faq/realtime.html#A2>.

⁴ This figure is preliminary estimate; the final figure will be determined upon completion of the customary USGS review of hydrological data.

If you are amenable to such a meeting, please contact Mary Johannis at 916-978-5082 with your availability. We look forward to meeting with you soon. In the interim, please feel free to contact me at 916-978-5013 if you have any questions.

Sincerely,



Pablo R. Arroyave
Deputy Regional Director

cc: Allen Short
General Manager
1231 Eleventh Street
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Phillip R. McMurray
General Counsel
Merced Irrigation District
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Erin Mahaney
State Water Resources Control Board
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Sacramento, CA 95812-2000

Enclosure 4



United States Department of the Interior

BUREAU OF RECLAMATION
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

IN REPLY
REFER TO:

CVO-100
WTR 4.10

APR 29 2014

Mr. Thomas Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Mr. Howard,

Subject: Response to the San Joaquin River Tributaries Authority (SJTA) Protest, Filed April 21, 2014

The purpose of this letter is to respond to the SJTA protest, filed April 21, 2014, to the Board's April 11, 2014 Order approving the U.S. Bureau of Reclamation (Reclamation) request for modifications to the 2014 San Joaquin instream flow requirements at Vernalis. At the outset, it should be known that Reclamation has been working collaboratively with Oakdale and South San Joaquin Irrigation Districts (OID/SSJID), two member districts of the SJTA, for a number of years on a Revised Plan of Operations (RPO). However, this has been a difficult process given that, over the long-term, there are more demands for Stanislaus River water than supplies. The New Melones operations asserted by SJTA in its protest would result in great risk to the short and long-term viability of New Melones Project water supplies, especially if the drought continues, and appear to be inconsistent with the more thoughtful analyses put forth by OID/SSJID in the RPO process.

Specifically, Reclamation refutes the SJTA allegations that there is sufficient water in New Melones to meet the 2014 Vernalis Objectives, and other water quality objectives for the next four years, even if it receives no inflow during that time, and that the requested modifications will yield only 42,000 acre feet (af) of water.

The SJTA's analysis focuses on the current New Melones Index (currently 1.29 million af, and compares it to the requested modifications (which it claims yields only 42,000 af). The inference is that 42,000 af is not meaningful to New Melones at about 1 million af storage and a forecasted March through September Inflow of about 290 thousand acre-feet. The SJTA goes on to state that there is sufficient water in New Melones to meet instream flows and water quality objectives for four years, even assuming no inflow, or gain in storage during that time. Under the 1988 New Melones Stipulation Agreement between Reclamation and OID/SSJID, OID/SSJID would receive 1/3 of the difference between the inflow and 600,000 af.

If there is no inflow in four years, then OID/SSJID would receive 200,000 af per year, for four years, or 800,000 af. That would leave approximately only 500,000 af for project purposes for four years, including power generation (minimum power pool = 300,000 af), so approximately 200,000 af for water needed to satisfy future instream flow and salinity dilution requirements, for four years.

The focus on storage capacity is an oversimplification of New Melones water supply that is often used to create the perception of ample supplies at New Melones, when, in fact, while New Melones has a large capacity, it has a relatively small amount of reliable Project Water available on an annual basis. This is due to the hydrology of the Stanislaus River Basin which is variable and prone to multi-year droughts. Essentially, the available inflow to New Melones, especially after satisfaction of senior water rights, can be very small. Reclamation's studies from the 1980's show that it can take as long as 17 years to fill New Melones to full capacity from the minimum power pool level (300,000 af). Therefore, notwithstanding the other flaws in SJTA's analysis, a planning horizon of four years would be woefully inadequate for sustainable New Melones operations.

Reclamation has provided the Board an analysis of water availability at New Melones in its March 29, 2013 Comments to the Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. The information in that submittal further refutes the allegations made by SJTA in its protest. For example, actual gains in carryover storage at New Melones occurs only 39% of the time. This means that given the demands of the senior water right holders, state and federal environmental requirements and CVP contracts, 61% of the time New Melones loses storage from one water year to another. Therefore, even with inflow, New Melones struggles to maintain reliable supplies over the long-term.

The SJTA also claims that the modification of Vernalis flows yields merely 42,000 af. Our calculations are that, without any modification, the objectives between April and June could require up to 140,000 af depending on Delta conditions and inflows from tributaries and the main stem of the San Joaquin River above Vernalis. Reclamation can most assuredly use this volume of water to shape a meaningful spring pulse flow, in consultation with fish agencies as currently proposed or, use that water for fall pulse flows, subsequent year instream flows, salinity releases, and improved temperature conditions.

The SJTA acknowledges that the inability of New Melones to meet D-1641's Table 3 Vernalis flow requirements, by itself, is well documented. Reclamation agrees. Reclamation's view on this point was set forth in its letter to Craig Wilson, Delta Water Master, dated August 8, 2012.


Following the expiration of the full term, and two extensions, of the San Joaquin River Agreement, the Board has not yet implemented a reasonable plan for D-1641's Table 3 flows at Vernalis, especially in sequential dry years. The notion that the full burden falls on New Melones Project Supplies does not constitute a viable implementation plan for the Vernalis flow objectives in D-1641 as documented in the Board's own 1999 Final Environmental Impact Report for Implementation of the 1995 Water Quality Control Plan. In addition, implementation

of the objectives in a way that depends primarily upon contributions from others by purchase is problematic for two reasons:

- Reclamation questions whether an implementation plan that relies upon purchases ultimately makes sense under a substantive due process analysis
- And there is no, or very minimal, water available for purchase in sequential critical dry years

If you have any questions or would like to discuss further, please contact Mr. Paul Fujitani at 916-979-2197.

Sincerely,

A handwritten signature in black ink that reads "Ronald Milligan". The signature is written in a cursive, flowing style.

Ronald Milligan
Manager, Operations

Enclosure 5



IN REPLY
REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

NOV 22 2016

CVO-100
PRJ-23.00

VIA ELECTRONIC MAIL

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: April 19, 2016, Temporary Urgency Change Order – Meeting D-1641 San Joaquin River Flow Objectives in Future Years

Dear Mr. Howard:

On April 1, 2016, Reclamation filed a Temporary Urgency Change Petition (TUCP) to temporarily modify requirements in its water right permits for the New Melones Project. The resulting April 19, 2016, Temporary Urgency Change Order (TUCO) from the State Water Resources Control Board (SWRCB) requires Reclamation to:

“...submit a proposal to the Executive Director by November 1, 2016, identifying how it plans to address its difficulty meeting D-1641 San Joaquin river flow requirements until such time as the State Water Board updates and implements the San Joaquin River flow objectives.”

Reclamation has had difficulty meeting D-1641 San Joaquin River flow requirements since the San Joaquin River Agreement (SJRA) expired in 2011, which expired on its own terms (i.e, it was not prematurely withdrawn from by any party). The expiration of the SJRA has significant implications to whether the spring pulse flow requirements are supported with currently available water supplies. In addition, even prior to the expiration of the SJRA, Reclamation had difficulty meeting the February through June base flows contained in Table 3 of D-1641 TUCPs were submitted in 2003, 2004, 2005, 2009, 2015, and 2016) due to concerns about the base and pulse flow impacts to New Melones Reservoir storage.

Reclamation has not operated to the D-1641 April-May pulse flows for the San Joaquin River at Vernalis contained in Table 3. Modified spring pulse flows were implemented on an interim basis through the SJRA. The SWRCB record is clear that instream flows for the San Joaquin River cannot consistently be met with such heavy reliance on New Melones yield, a reservoir situated on a single tributary to the San Joaquin River. This situation is further complicated due

to the senior water right obligations at New Melones, and the potential for slow refill of New Melones given the variable hydrology of the Stanislaus River.

When the SJRA ended on December 31, 2011, after twelve years, Reclamation was unsuccessful in negotiating a temporary agreement to extend the SJRA with the original partners. Reclamation was able to negotiate an additional 2-year agreement with Merced Irrigation District in order to continue to provide a 31-day spring pulse flow similar to SJRA spring pulse flow operations.

However, the advent of the drought in 2013, and the sequential critically dry years in the San Joaquin Basin, has severely limited any available water for purchase for Vernalis pulse flows. The past five years have also demonstrated the futility of relying solely on New Melones Reservoir to meet Delta water quality and flow requirements, and the lack of a durable implementation plan to provide for these flows, especially during prolonged droughts.

Oakdale Irrigation District and South San Joaquin Irrigation District (Districts) have provided some additional volumes of water post-SJRA for the purpose of fish and wildlife preservation and enhancement in the Stanislaus and San Joaquin Rivers. A spring 2013 release of 80,000 acre-feet augmented the 2009 National Marine Fisheries Service (NMFS) Biological Opinion Appendix 2E schedule for a pulse flow in the April-May pulse period. In 2015, due to the lack of Central Valley Project water in the extremely low storage in New Melones Reservoir, the Districts made available about 23,000 acre-feet of water during the October-November time period for the fall pulse flow. This water was provided by the Districts using water they conserved over the summer of 2015 through water conservation efforts. In April-May 2016 the Districts contributed 75,000 acre-feet of water for the spring pulse flow in addition to the Appendix 2E flow volume and the October-November fall pulse flow (Appendix 2E volume of 23,200 acre-feet) was supplemented by an additional 16,000 acre-feet of the Districts' water.

After four years of extended drought, 2016 hydrologic conditions improved somewhat, however, in spite of average to slightly above average precipitation, runoff was significantly below average due to replenishment of depleted soil moisture, increased uptake by vegetation and less precipitation falling as snow. Conditions at New Melones Reservoir at the end of Water Year 2016, have improved slightly in comparison with the end of Water Year 2015 (end of September storage in 2016 is approximately 260 thousand acre-feet higher than in 2015), however, overall storage is currently only 22% of total capacity and 39% of the historical average to date. In comparison, New Don Pedro Reservoir storage is presently at 65% of total capacity and 98% of the historical average and Lake McClure (New Exchequer) is at 36% of total capacity and 80% of the historical average. The entire San Joaquin basin remains in a depleted hydrologic state and may face continuing drought conditions in the months ahead.

Condition 3 of the TUCO required Reclamation to provide an analysis of water rights for water stored in New Melones Reservoir from October 15, 2015, through September 30, 2016. The result of that analysis showed that Reclamation does not have adequate carryover water available in New Melones Reservoir to meet all future water rights terms and conditions and other regulatory requirements if drought conditions persist. The potential carryover volume into water

year 2017, was only about 71,000 acre-feet. Very little storage has been built up over the past years of drought, leaving the Project heavily dependent on future inflow. It may be as long as a decade before New Melones Reservoir storage recovers with only average inflows.

In the future and until the updates to the Bay-Delta Plan are completed and implemented, Reclamation anticipates that flow releases to the Stanislaus River will be consistent with the provisions of the NMFS Biological Opinion and the actions under its Reasonable and Prudent Alternatives. Flows will follow the Appendix 2E schedule as modified through the Stanislaus Operations Group and Reclamation will continue to meet the D-1641 salinity objective at Vernalis. Reclamation will continue to work closely with the Districts to facilitate the release of any water they are able to provide to help meet flows additional to the Appendix 2E flows and including the fall attraction flows. Any future release of the Districts' water will likely involve the participation of other parties willing to pay for the release and will be contingent on that water contributing to improved water supplies in other areas of the State. Such agreements are often dependent on the hydrologic conditions at the time and are difficult to evaluate well in advance of the action given the complex hydrodynamics and fishery concerns involved. Such coordinated actions require close involvement with the Federal and State fishery agencies on a case-by-case basis.

In addition, Reclamation will also work closely with the Federal fishery agencies and the California Department of Fish and Wildlife to coordinate the Stanislaus River flows with the Federal Energy Regulatory Commission flows on the Merced and Tuolumne rivers.

If you have any questions or would like further discussion, please contact Elizabeth Kiteck at 916-979-2684.

Sincerely,



Ronald Milligan
Operations Manager

cc: Ms. Maria Rea
Assistant Regional Administrator
California Central Valley Area Office
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Mr. Chuck Bonham
Director
California Dept. of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

Continued on next page.

**Mr. Mark Cowin
Director
California Dept. of Water Resources
1416 Ninth Street
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**Ms. Kaylee Allen
Field Supervisor
Bay Delta Fish and Wildlife Office
U.S. Fish and Wildlife Service
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**Mr. John Leahigh
Operations Control Office
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**Mr. Paul Souza
Regional Director
Pacific Southwest Region
U. S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95825**

**Mr. David Murillo
Regional Director
Mid-Pacific Region
Bureau of Reclamation
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**Ms. Michelle Banonis
Area Manager
Bay-Delta Office
Bureau of Reclamation
801 I Street, Suite 140
Sacramento, CA 95814**

Enclosure 6



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO

MP-440
WTR- 4.10

FEB 15 2017

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Proposal For Meeting San Joaquin River Flow Objectives in Future Years (Your Letter Dated January 19, 2017)

Dear Mr. Howard:

Reclamation is in receipt of the above-mentioned letter, which responds to Reclamation's November 22, 2016 letter submitting its proposal to contribute to San Joaquin River flow objectives pursuant to your April 19, 2016 approval of Reclamation's Temporary Urgency Change Petition (TUCP). Your letter states that it is in response to Reclamation's "plans to address its continuing difficulties with meeting its responsibilities under State Water Resources Control Board (State Water Board or Board) Decision 1641 (D-1641) for implementing the San Joaquin river flow objectives included in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary."

Statement of the issue in this manner makes it clear that the conflicting views of Reclamation and the State Board could lead to impasse. Reclamation has neither the legal authority, nor the legal obligation to implement the State Board's Water Quality Control Plan. Instead, California's Porter-Cologne Water Quality Control Act places that responsibility with the State Board. Cal. Water Code § 13242. In addition, the Water Quality Control Plan does not apply organically to the permits of the Central Valley Project (CVP). Instead, if the Board uses its authority over water rights to implement flow objectives in a water quality control plan, it is the Board's obligation to assign responsibility to water right holders, after a hearing, and to follow the law with respect to regulation of property interests, including federal property interests. In that regard, Reclamation does not believe that the Board's post-San Joaquin River Agreement (SJRA) interpretation of D-1641 is supported by sufficient procedural or substantive due process, and raises serious concerns for viable, sustainable operations of New Melones, and, therefore, could also conflict with clear Congressional directives for the CVP.

As you know, for the first twelve or more years following the Board's issuance of D-1641 in 2000, Reclamation paid water users on the Stanislaus River and the other tributaries under the San Joaquin River Agreement (SJRA) to make water available for contributions to the instream

spring pulse flows on the mainstem of the lower San Joaquin at Vernalis.¹ The SJRA was entered into in lieu of the Board holding a protracted adjudication process, and assisted the Board with its initial implementation of the instream flows in the lower San Joaquin. During the term of the SJRA, the Board was supposed to take actions necessary to permanently assign responsibility for the flow standards among other diverters. The Board did not do so. Since the expiration of the SJRA, the Board has taken the untenable position that the sole responsibility for the April/May San Joaquin river flows in the Water Quality Control Plan is on Reclamation's New Melones Reservoir, not on an "interim" basis, but until such time as it sees fit to establish an alternative implementation plan, now 17 years since the Board adopted D-1641. Reclamation, on the other hand, is willing to work with the Board to fashion a reasonable contribution to instream flow objectives for Reclamation in light of the circumstances, and is committed to continuing to meeting flows required by Appendix 2E of the National Marine Fisheries Service 2009 Biological Opinion (2009 NMFS BO).

The Board is well aware that New Melones is a multi-year facility with a re-fill period ranging anywhere from 2 to 17 years, depending on the hydrology of the Stanislaus River. When Reclamation first applied to the Board for water rights for New Melones, it estimated that the amount of water available for appropriation, after subtracting prior rights and using 1923-1953 hydrology, would range from 335,000 acre-feet to 1,198,000 acre-feet, with zero water available in nine years of this period. At that time, the fishery flow and water quality demands were capped at approximately 170,000 acre-feet per year.² Since that time, Reclamation has estimated that the amount of water needed for salinity control has been anywhere from two to three times the original 70,000 acre-feet requirement in D-1422. When the Board issued D-1641, modeling results in the Board's November 1999 Final Environmental Impact Report showed that even with the SJRA in place, carryover storage in New Melones would be reduced by an annual average of 151,000 acre-feet, including reductions of 356,000 acre-feet in critical drought periods. Those same modeling results show that if Reclamation were to be solely responsible for the instream flows on the mainstem San Joaquin contained in Table 3 of D-1641, using its available supplies on the Stanislaus, the reduction in carryover would be an average of 305,000 acre-feet, with a reduction of 593,000 acre-feet in critical drought periods. Operation of New Melones in this manner is unsustainable, drastically increasing the potential number of years that zero water will be available for storage, and does not result in durable instream flows on the mainstem. Reclamation believes that the 1999 modeling is flawed and underestimates the true impact of operating New Melones to these flow requirements. Such operations have not been vetted through a due process hearing, and threaten the ability of New Melones to store and deliver water to its federal contractors in all but the wettest years.

While we understand the Board's desire to manage and balance beneficial uses at New Melones on a monthly basis, Reclamation does not agree that simple management to an annual carryover target will result in durable contributions to the instream flows from New Melones, given the demands of prior rights, salinity control, dissolved oxygen, and other requirements. In addition,

¹ Reclamation paid approximately \$75 million to make water available for instream flow purposes during this period.

² See D-1422, pp. 10-11.

given the Board's view that it is Reclamation's sole responsibility to implement the San Joaquin river flows, this places a disparate impact of the flow requirements on our contractors. As usual, we would be happy to work with the Board on a reasonable contribution to the instream flows, especially the April/May pulse flow objectives for the San Joaquin, for various year-types, until the Board can complete its current basin planning and water rights process. However, we believe that such contribution should not disproportionately result in federal contractors shouldering the entire burden of the flows in many years when other similarly situated diverters in the San Joaquin River basin, who also impact river flows, experience no shortages.

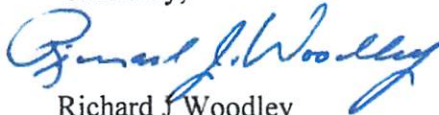
With respect to 2017, your January 19 letter states 1) Reclamation's proposal "does not adequately address the requirements of condition 4 (of the TUCP approval) or Reclamation's water right requirements under D-1641"; 2) Reclamation "should strive to meet all of the requirements of its water right permits" and "should operate New Melones Reservoir in a manner that achieves a more reasonable balance between competing water right permit requirements. Further, Reclamation should meet all of its permit requirements before delivering any water under its own water rights."; 3) "Reclamation shall submit a revised proposal for the coming year by February 15, 2017, with monthly updates due by the first of each month for the following month. Prior to each monthly submittal, Reclamation shall consult with State Water Board staff regarding its proposal. Reclamation shall provide monthly updates on its plans to the State Water Board during its monthly drought updates at the Board's regularly scheduled Board meetings."; 4) "Reclamation shall prepare and submit a simple and clearly labeled monthly accounting on the first of each month starting on February 1, 2017, of diversions to New Melones Reservoir and releases from the reservoir from October 1, 2016 on. Specifically, the accounting should specify the amount of water in New Melones Reservoir that is stored under Reclamation's water rights and the amount that is stored under other water rights, all releases and losses from New Melones, the reason or purpose for those releases, and the water right under which they were made."

The abundant precipitation for Water Year 2016-17 is a welcome respite from the very dry conditions prevailing since 2012, and has allowed New Melones Reservoir to recover some storage. However, it would be a mistake to presume that this year's precipitation signals a return to "normal" weather patterns, and assume there will be sufficient precipitation in future years to support increased releases from New Melones Reservoir. Therefore, Reclamation's proposal for meeting San Joaquin flow objectives pursuant to condition 4 of the April 19 2016 approval remains the same as the proposal contained in its letter of November 22, 2016. In summary, Reclamation intends to make releases from New Melones Reservoir consistent with the provisions of Appendix 2E of the 2009 NMFS BO. Reclamation will work with Oakdale and South San Joaquin Irrigation Districts to make available flows in addition to those required by Appendix 2E (including fall attraction flows). In addition, Reclamation will continue to meet D-1641 salinity objectives at Vernalis.

Reclamation agrees to provide monthly updates on this proposal to State Board staff and as part of the monthly drought updates at regularly scheduled Board meetings. Reclamation will also provide the monthly accounting requested in your January 19 letter.

Reclamation looks forward to working with the State Board on this matter. Please contact me at (916) 978-5201, or via email at rwoodley@usbr.gov, if you have any questions.

Sincerely,



Richard J Woodley
Regional Resources Manager