



**SENT VIA EMAIL**

August 15, 2014

Framework Document, MOU, and MAA Comments  
Central Valley Regional Water Quality Control Board  
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Re: **Comments on the Framework Document, Memorandum of Understanding, and Management Agency Agreement, Regarding the Real Time Management Program for Meeting the Objectives of the Salt and Boron Total Maximum Daily Load for the Lower San Joaquin River**

Members of the Central Valley Regional Water Quality Control Board:

The San Joaquin Tributaries Authority ("SJTA") provides the following comments on the draft versions of the "Memorandum of Understanding for Participation in Real Time Management Program for Meeting the Objectives of the Salt and Boron Total Maximum Daily Load for the Lower San Joaquin River" ("MOU"), the "Management Agency Agreement Between the Central Valley Regional Water Quality Control Board and the United States Bureau of Reclamation" ("MAA"), and the "Salinity Real-Time Management Program Framework" (the "Framework Document"). The SJTA is generally satisfied with the draft versions of the MOU, MAA, and Framework Document, but has some concerns over the commitment of Reclamation to meeting the Vernalis salinity objective and the amount of information provided as to how Reclamation will comply. Thank you for taking the time to consider the comments made by the SJTA, below.

**Framework Document**

Page 5 of the Framework Document states: "*Water quality monitoring data collected by the Regional Board and other governmental agencies including the United States Geological Survey (USGS), Department of Water Resources (DWR), and Reclamation indicates that water quality objectives for salinity and boron are frequently exceeded during certain times of the year and under certain flow regimes. Consequently, the river no longer supports all of its designated beneficial uses.*" Figure 3 of the framework document shows that the salinity objective has been continually met at Vernalis since 1995 when the salinity objective was put into place by the State Water Resources Control Board. In addition, there is no boron objective at Vernalis and there is no monitoring data in the Framework Document that shows the levels being found. Therefore, it is unclear what is "frequently" being "exceeded" at Vernalis.

Page 6 of the Framework Document states: “*Operate under a waiver of waste discharge by participating in a*”. This is clearly incomplete and it is unclear what was meant.

Page 6 of the Framework Document states: “*The implementation of the Control Program also recognized the impact of salt loads from imported CVP deliveries and required that the Reclamation either enter into a Management Agency Agreement with the Central Valley Water Board clarifying how it would mitigate imported salt loads or also adhere to load allocations specified in WDRs*”. This appears to say that the MAA only deals with imported salts and not salt brought in previously or generated by the irrigation of higher salinity lands. This needs to be clarified.

Page 7 of the Framework Document states: “*The Vernalis objectives are currently set as a 30-day running average concentration: 700  $\mu$ S/cm from April 1 – August 31 and 1,000  $\mu$ S/cm from Sept 1 – March 31. Figure 3 shows the 30-day running average EC at Vernalis from 1985 through 2012. Since there are two seasons for the Vernalis objective, the first data point for the 30-day average starts 30 days after the beginning of the season.*” What is not said here, or shown in Figure 3, is that the salinity objective did not go into effect until 1995 and has been continually met since that time. This needs to be clarified.

Page 8 of the Framework Document states: “*The salinity objective at Vernalis has been met since 1994, in part through additional releases of fresh water by Reclamation from New Melones Reservoir into the Stanislaus River upstream of the Vernalis compliance point as well as through decreased discharges such as the GBP and the Irrigated Lands Regulatory Program.*” It is unclear whether these releases were made directly for salinity control or for other programs such as fishery releases and were jointly used for salinity control as well; this needs to be clarified.

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the first sentence is missing a word.

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the first paragraph states: “*The MOU is expected to be executed by July 28, 2014.*” Why are we being asked to comment on the document when the Board intends to execute the MOU prior to the expiration of the public comment period?

Page 10 of the Framework Document under section 3.1 (RTMP Framework MOU), the final paragraph states: “*Reclamation is continuing to participate and support the effort and has developed a draft Management Agency Agreement (MAA) with the Central Valley Water Board documenting their future activities.* It is unclear what the meaning of the phrase “continuing to participate and support the effort” means. The responsibility for salinity management on the San Joaquin River is the responsibility of Reclamation as defined in State Water Resources Control Board WR Order 1641 (“D-1641”). Responsibility does not mean “*continuing to participate and support the effort*”; it means finding a solution and implementing it.

Sections 3 and 4 of the Framework Document are exactly what the title describes--a framework. It is not a workplan and no workplan is presented or proposed for setting priorities or taking any action in the next year. The MAA adoption should be delayed until it is accompanied by a workplan for the first

year. It is unclear what Reclamation is planning for next year other than to “coordinate, support and participate”. None of these terms are clear or well defined. This is carried over into the language in the draft MAA. For example in section 2.1(a) and 2.1(b) of the draft MAA, which again emphasizes that Reclamation will “participate”, not lead or take responsibility. This is in contrast to sections 1.8 and 1.9 of the draft MAA which describes the previous MAA where Reclamation agreed “*to lead the effort to develop a real-time water quality management program (hereinafter “RTMP”) and promote the program in an attempt to create stakeholder interest in RTMP. This included monitoring and modeling efforts to determine the assimilative capacity of the LSJR and encouraging stakeholders subject to salt and boron load allocations to participate in the RTMP.*” Why is Reclamation adopting this less involved role, and how may it do so, considering its responsibilities under D-1641?

#### Management Agency Agreement (MAA)

The MAA is focused on meeting the Vernalis salinity objective. It must be recognized however that there is also a salinity problem upstream of Vernalis. The MAA must include that issue, as Reclamation and the CVP is primarily responsible for the upstream issue as well.

Section 1.15 of the Draft MAA should read “1994” or “1995” to be consistent with Figure 3 and the first sentence on page 8 of the Framework Document.

Section 1.15 of the Draft MAA states: “*The Vernalis objectives have been met since 2008*”. Reclamation is required to meet multiple water quality objectives at Vernalis. While it is true that Reclamation has continuously met the Vernalis salinity objective, it is false that Reclamation has met the Vernalis flow objective. This sentence should be rewritten to make clear it references only the Vernalis salinity objective (e.g. “The Vernalis salinity objective has been met since 1995”).

Section 2.3(d) of the Draft MAA defines the new reporting schedule that is being put into place. It is unclear whether the new reporting schedule is in line with the federal appropriations to ensure that next year’s workplan will reflect immediate needs.

Section 2.3(e) of the Draft MAA describes the “continuing Reclamation salinity management program” elements. It fails, however, to describe how Reclamation will deal with the increasing salinity load that is expected in the Lower San Joaquin River from the San Joaquin River Restoration Program efforts to mitigate for high water tables created along a major stretch of the Lower San Joaquin River. This needs to be included in the MAA.

Section 2.3(e) of the Draft MAA should have a space between “3” and “of” in the first bulleted paragraph.

Section 2.3(i) of the Draft MAA states: “*if either party terminates this agreement, the Central Valley Water Board may pursue traditional regulatory means of implementing provisions of the Basin plan, including those against Reclamation, to the extent they apply*”. Many of Reclamations permits to divert water are conditioned upon the satisfaction of the Vernalis salinity objective under D-1641. This section should be amended to state that Reclamation must cease diverting water under these permits if it is not meeting the Vernalis salinity objective.

Memorandum of Understanding

Section 7 of the Draft MOU requires “*the written consent of all other Regulated Parties*” before a new party to the MOU may be admitted. Other parties, including SJTA members will be regulated under the TMDL in the future, but are not members under the current MOU. The bar for entry should be lowered, so that other parties may more readily take part in the RTMP when they become the subject of regulation. This should have little negative effect on the existing parties to the MOU, as an entering party will simply be contributing to the RTMP group in an effort meet the requirements of the TMDL.

Very truly yours,  
**O’LAUGHLIN & PARIS LLP**

  
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JON A. CLANCY

cc: San Joaquin Tributaries Authority