



SENT VIA EMAIL/FIRST-CLASS MAIL

May 3, 2012

State Water Resources Control Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812-2815
Attn: Mark Gowdy, Caren Trgovcich & Les Grober

Re: New Melones-Reliability Study

Dear State Water Board Staff,

In follow-up to our meeting of April 24, 2012, the Department of Water Resources' ("DWR") reliability study is severely flawed in its depiction of the Stanislaus River and New Melones operations.

1. The Bureau of Reclamation is required to meet Table 2E, period. It is the law under the Endangered Species Act. Table 2E does not have an additional dry year schedule. Such use of an additional dry year in the model radically skews the results and shows reservoir storage end-of-month September higher than it would normally be and provides deliveries with water that does not exist.
2. We know of no limitations on the amount of water the CVP Contractors can take in any given year as modeled in the reliability study. The CVP Contractors' contracts call for 155,000 af, not the limited 90,000 af.
3. There is no dissolved oxygen relaxation in dry years. The dissolved oxygen standard is prescribed by the State Water Board as a term and condition of the Bureau's permit.
4. Under Judge Wanger's decision in the OCAP-BO case, neither Reclamation nor NMFS has the ability to reduce the Districts' diversion. This reduction must be deleted from the

model. Leaving it in skews the results and overestimates storage end-of-month September and provides water for other uses which does not exist.¹

5. The reliability study includes obligations under the San Joaquin River Agreement for the operation of New Melones and the Districts. The Agreement has expired (including VAMP) and the operation should be adjusted accordingly, including a requirement for the Bureau of Reclamation to comply with D-1641.
6. The Districts' transfer agreement with SEWD no longer exists and should be removed from the modeling.

Given these changes to the DWR's reliability study, please provide us with an updated model run that will serve as your baseline operation for the Stanislaus River. We believe the DWR's reliability study does not work. We believe your analysis will have to have "magic" water to complete the hydrologic period of record. If the project baseline does not work, then how can the State Water Board analyze project impacts from a base case where "magic" water from somewhere is added to make the model work?

Very truly yours,

O'LAUGHLIN & PARIS LLP



TIM O'LAUGHLIN

TO/tb

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¹ The model does not account for the Districts' water in their New Melones conservation account.