United States Department of the Interior

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

IN REPLY
REFER TO:

MP-170
PRJ-1.00

MAR 27 2010

Mr. Reggie N. Hill
Secretary-Manager
Lower San Joaquin Levee District
11704 West Henry Miller Avenue
Dos Palos, CA 93620

Subject: Lower San Joaquin Levee District Concerns Related to Water Year 2010 Interim Flows and Use of the Eastside and Mariposa Bypasses to Convey Such Flows

Dear Mr. Hill:

This letter is in response to Tom Keene's letter dated February 26, 2010, regarding the Lower San Joaquin Levee District's (Levee District) concerns related to the use of the Eastside and Mariposa bypasses to convey Water Year 2010 Interim Flows. I understand the issues presented in Mr. Keene's letter and would encourage the Levee District to work closely with the Bureau of Reclamation in conjunction with the United States Army Corps of Engineers (Corps), the California Department of Water Resources (DWR), and the Central Valley Flood Protection Board (CVFPB) to resolve the issues.

Mr. Keene's letter reiterated that the Levee District has concerns with Reclamation's position that existing easements are applicable for the conveyance of Interim Flows through the Eastside and Mariposa Bypasses. We continue to maintain this position for reasons stated in our February 4, 2010, letter.

In Mr. Keene's letter, he states that the channel capacity in Reach 4B1 was never 1,500 cubic feet per second (cfs) and that the Lower San Joaquin River Flood Control Project (Flood Control Project) was inadequately designed by DWR, as approved by the Corps. While Reclamation takes no position on the adequacy of the design of the Flood Control Project, this issue should be brought to the attention of the Corps and the CVFPB to rectify any design inadequacies. The channel capacities of the Flood Control Project and whether or not those capacities will be maintained should be defined prior to any significant alterations that may be required as part of the Stipulation of Settlement in *NRDC, et al. v. Kirk Rodgers, et al.* (Settlement). As stated in Mr. Keene's letter, the Settlement requires improvement of the channel capacity in Reach 4B1 to convey at least 475 cfs. This is less than the capacity that is called for in the design of the Flood Control Project. Currently, Reclamation's understanding is that, due to the way in which the Flood Control Project is operated and maintained, any flows from Friant Dam that make it

downstream to Reach 4B1 must be diverted into the Eastside Bypass. Reclamation would prefer the flows to remain in the natural river channel if possible.

In his letter, Mr. Keene also states that he believes, that without the San Joaquin River Restoration Program (SJRRP), the Levee District would not be sued over the condition of Reach 4B1, and with the SJRRP the Levee District will be sued. We would like to discuss with you further why you feel that the Levee District would be sued solely because of the SJRRP. The loss of 1,500 cfs of flood conveyance capacity in Reach 4B1 over the past 40 years, which has likely increased the magnitude and frequency of flooding in the bypasses, took place long before the SJRRP was initiated. Mr. Keene also states that Reclamation has resisted indemnification of the Levee District in the agreements that we are currently working on related to Interim Flows. There is no mechanism for Reclamation to provide such indemnification as this would be in violation of the Anti-Deficiency Act (31 U.S.C. § 1341). Reclamation is committed to collaborating with the Levee District to address issues and concerns, but must do so in a manner that complies with Federal law.

We remain committed to working closely with you in the planning, design, and implementation of the Settlement and Public Law 111-11, including finding reasonable solutions to these issues. Solutions to the issues will require a better understanding of the responsibilities of each of our agencies mandated under law or contract. Reclamation has initiated discussions with DWR, the CVFPB, the Corps, and the Levee District to discuss these issues and reach agreement on these matters. I am hopeful that these discussions will be productive and will address the concerns you have presented. In addition to those copied on your letter to me, I have also copied Mr. Benjamin Carter of the CVFPB and Colonel Thomas C. Chapman of the Corps. If you have any questions, please contact me or Mr. Jason Phillips at 916-978-5456 or jphillips@usbr.gov.

Sincerely,

Donald R. Glaser
Regional Director

cc: Honorable Dianne Feinstein
United States Senate
Washington, DC 20515

Honorable Barbara Boxer
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Honorable George Radanovich
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March 10, 2010

Division of Water Rights
State Water Resources Control Board
Attn: Ms. Victoria Whitney
1001 "I" Street, 14th Floor
Sacramento, California 95812-2000

Re: Order WR 2009-0058-DWR

Dear Ms Whitney:

As you know, this office is general counsel to the Lower San Joaquin Levee District which operates and maintains the flood protection system between Gravelly Ford and the confluence of the San Joaquin River and the Merced River. Condition 6 of the above-referenced Water Rights Order provides as follows:

> Addition of San Slough Control Structure as a point of rediversion for conveyance through the East Side Bypass and the introduction of flow into the East Side Bypass and Mariposa Bypass, as well as the addition of points of rediversion further downstream are conditioned upon the following: (a) execution of any necessary agreement with the Central Valley Flood Protection Board to release transferred water into the East Side Canal, and (b) execution of any necessary agreement with the Lower San Joaquin Levee District for the operation, inspection, and maintenance of flood control facilities.

On Friday, March 5, the water released from Friant Dam pursuant to this Water Rights order reached the Sand Slough Control Structure. It is now in the Eastside Bypass. In spite of diligent efforts on the part of the Lower San Joaquin Levee District, there is no agreement between the Levee District and the Bureau of Reclamation with regard to the operation, inspection or maintenance of the flood control facilities. The reason for this lack of an agreement is the refusal of the Bureau of Reclamation either to enter into an agreement with the property owners along the Eastside and Mariposa Bypasses or to agree to indemnify the District from liability to those landowners for the passage of water released by this project. Furthermore, it is our understanding that the Bureau of Reclamation is of the opinion that no such agreement is

required because allowing the water to go into the Eastside Bypass is not a "rediversion". The Levee District disagrees.

The Levee District hereby asks that the Division of Water Rights enforce its order and direct the Bureau of Reclamation to either cease and desist until it has an agreement with the Lower San Joaquin Levee District or face the termination of its permit. If further action by the Levee District is necessary to invoke the enforcement of the order, please advise me as soon as possible of what those steps are.

Very truly yours,

Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene

Thomas J. Keene

cc: Reggie Hill, Lower San Joaquin Levee District
Donald R. Glaser, Regional Director, Bureau of Reclamation
Jason Phillips, Bureau of Reclamation
Honorable Diane Feinstein, United States Senate
Honorable Barbara Boxer, United States Senate
Honorable Dennis Cardoza, House of Representatives
Honorable George Radanovich, House of Representatives
Honorable Jim Costa, House of Representatives
John Engbring, U. S. Fish & Wildlife Services
Rhonda Reed, National Marine Fisheries Service
Jeffrey R. Single, California Department of Fish & Game
Paula Landis, California Department of Water Resources
Kathy Mrowka State Water Resources Control Board
Monty Schmidt, National Resources Defense Council
Ronald Jacobsma, Friant water Users Authority
Steve Chedester, San Joaquin River Exchange Contractors