



Manzo, Mario <mmanzo@usbr.gov>

Fwd: 2018 Spring Pulse Releases

1 message

David Mooney <dmmooney@usbr.gov>
To: Mario Manzo <mmanzo@usbr.gov>

Thu, Apr 19, 2018 at 5:36 PM

----- Forwarded message -----

From: Mooney, David <dmmooney@usbr.gov>
Date: Mon, Apr 16, 2018 at 5:56 PM
Subject: Fwd: 2018 Spring Pulse Releases
To: Armin Halston <ahalston@usbr.gov>, Oliver (Townes) Burgess <oburgess@usbr.gov>

FYI

David Mooney, Ph.D., P.E.
Bay-Delta Office Area Manager
Mid-Pacific Region, U.S. Bureau of Reclamation
801 I Street, Suite 140 (BDO-100)
Sacramento, CA 95814
dmmooney@usbr.gov
(916) 414-2401 (Office, Please note that my number has changed.)
(916) 200-9214 (Mobile)

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From: **Rieker, Jeffrey** <jrieker@usbr.gov>
Date: Mon, Apr 16, 2018 at 5:51 PM
Subject: Fwd: 2018 Spring Pulse Releases
To: David Mooney <dmmooney@usbr.gov>
Cc: "BARAJAS, FEDERICO" <fbarajas@usbr.gov>

Dave,

FYI (see attached) - we should plan to touch base tomorrow on where things are at with the WIIN act elements of the Districts proposal.

Thanks,
Jeff

Jeffrey Rieker
Operations Manager
Bureau of Reclamation; Central Valley Operations Office
Office: 916-979-2197; Mobile: 916-214-7555
jrieker@usbr.gov

----- Forwarded message -----

From: **Morales, Francia** <fmorales@usbr.gov>
Date: Mon, Apr 16, 2018 at 5:05 PM
Subject: 2018 Spring Pulse Releases
To: Tim O'Laughlin <towater@olaughlinparis.com>
Cc: Steve Knell <srknell@oakdaleirrigation.com>, prietkerk@ssjid.com

Mr. O'Laughlin:


Please see the attached. Hard copy to follow via U.S. mail.

Thanks,
Francia

Francia S. Morales
Executive Assistant to the
Deputy Regional Director
Bureau of Reclamation
2800 Cottage Way, Suite E1604
Sacramento, CA 95825
Office: 916 - 978-5010
Mobile: 916 - 202-7135

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United States Department of the Interior

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

APR 16 2018

IN REPLY
REFER TO:

MP-100
1.3.11

Mr. Tim O'Laughlin
Attorneys at Law
O'Laughlin & Paris LLP
2617 K Street, Suite 100
Sacramento, CA 95816

Subject: 2018 Spring Pulse Releases

Dear Mr. O'Laughlin:

Thank you for informing us of your plan to make up to 100,000 acre-feet of Oakdale Irrigation District and South San Joaquin Irrigation District (the Districts) water available for stream augmentation on the Stanislaus and San Joaquin Rivers for the purposes of contributing to the spring pulse flow objectives in Table 3 of the 2006 Water Quality Control Plan for the Bay-Delta, during spring 2018.

We are aware of other releases that occurred in 2009, 2013, 2015 and 2016. Please be aware that the Bureau of Reclamation believes that the water involved in the Districts' stream augmentations exceed the water to which they are entitled under their water rights, including their State court adjudicated, pre-1914, rights for irrigation use.

For the past several years, the Districts have asserted a right to use the maximum entitlement of 600,000 acre feet of water, each and every year, under the 1988 Agreement and Stipulation (1988 Agreement). The 1988 Agreement is an agreement among the Districts and Reclamation to accommodate the District's senior water rights and inundated infrastructure following Federal construction of New Melones reservoir. Under paragraph 5 of the 1988 Agreement, the amount of water specified in the Agreement is in, "equitable satisfaction of all Districts' consumptive water rights affected by the operation of New Melones Dam and Reservoir ...". The maximum entitlement under the 1988 Agreement is 600,000 acre feet.

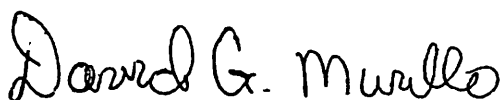
The Districts claim they have a right to use the maximum negotiated quantity of 600,000 acre-feet, irrespective of the amount of water the Districts have actually used in the past, and how much they actually need for irrigation. This is not how irrigation rights in California work. Rather, the extent of an irrigation right is based on the pattern of initial need and the historical and beneficial use. In the Districts' case, the 600,000 acre feet maximum is neither needed, nor used by the Districts, in every year for irrigation. Water in excess of an annual irrigation demand, but below an annual maximum quantity, is commonly referred to as "paper" water.

The Districts assert a right to change the purpose of use of a portion of its maximum entitlement of 600,000 acre feet of irrigation water (100,000 acre-feet from irrigation to fish and wildlife use), while also using the balance of its maximum for irrigation. Such an arrangement is subject to the "no injury" rule that applies to senior appropriators under California Water Code § 1706. Reclamation is undertaking a review of the original yield studies for New Melones Reservoir, and other documents and data, to determine the historical range of water use by the Districts, including when Reclamation determined that New Melones was a feasible project under federal Reclamation law. Our initial conclusions are that New Melones was not predicated on irrigation use by the Districts which equated to the maximum irrigation entitlement of 600,000 acre-feet each and every year. Rather, there was likely a wide range of use, with 600,000 acre feet being used only rarely. As the Districts become more firm in their position that they are entitled to the full maximum of 600,000 acre-feet in each and every year, Reclamation believes that such a position is resulting in harm to CVP supplies at New Melones Reservoir and will be reviewing these issues in further detail. Therefore, Reclamation does not waive, nor acquiesce, in any way, to the concept that the Districts have an entitlement to use 600,000 acre-feet each and every year, nor that such use would be consistent with the Districts' historical use and demand for irrigation water. Future proposals for such releases by the Districts will not be abided by Reclamation unless the Districts can show that the change in purpose of use is not enlarging the water the Districts would be entitled to for irrigation use, and that there will be no injury to New Melones CVP supplies.

To the extent that the Districts plan to proceed with their proposed plan in 2018, please coordinate with Reclamation's Central Valley Operations Office, fisheries agencies, and other affected parties, as necessary.

Should you have questions or wish to discuss this matter further, please contact me at dmurillo@usbr.gov or 916-978-5000.

Sincerely,



David G. Murillo
Regional Director

cc: Mr. Steve Knell
General Manager
Oakdale Irrigation District
1205 East F Street
Oakdale, CA 95361

Mr. Peter Rietkerk
General Manager
South San Joaquin Irrigation District
11011 E. Highway 120
Manteca, CA 95336