

NORTH DELTA WATER AGENCY

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January 6, 2015

Mr. Mark Cowin, Director
CA Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: CVP and SWP 2015 Drought Contingency Plan

Dear Director Cowin:

The North Delta Water Agency (NDWA/Agency) has reviewed the “*CVP and SWP Drought Contingency Plan October 15, 2014 through January 15, 2015*” (October 15 Plan). The October 15 Plan does not mention the 1981 Contract Between the State of California and the North Delta Water Agency (NDWA Contract) or the Department of Water Resources’ (DWR’s) ongoing negotiations with the Agency on an agreement for the Delta Contingency Barriers Project. The Agency requests that DWR incorporate the State’s obligation to operate the State Water Project (SWP) to meet the binding obligations contained in the NDWA Contract into the “*CVP and DWR 2015 Drought Contingency Plan*” (2015 Drought Plan) scheduled for submission to the State Water Resources Control Board (SWRCB) on January 15th. Specific comments to the October 15 Plan are provided below, along with further considerations to appropriately reflect the State’s obligations to the NDWA in the 2015 Drought Plan.

Comments to the October 15 Plan

- No mention is made of the NDWA Contract in the October 15 Plan. The forecast models used to “represent system responses to the overlay of these very specific operating criteria on a generic set of hydrologic scenarios” referenced in *Section III Project Hydrology* of the October 15 Plan should incorporate the NDWA Contract criteria along with the “USACE flood control manuals, D-1641, and the Biological Opinions.”
- *Section IV Other Forecast Assumptions* in the October 15, 2014 Plan describes two water supply factors that must be considered when calculating future CVP/SWP operations, but does not mention the requirement to operate the SWP to meet the NDWA Contract’s

salinity criteria and assure water availability to all water users and channels in the northern Delta.

- The October 15 Plan included a statement claiming “there are no exceedances of the water quality requirements within the control of the Projects.” As you are aware, DWR exceeded the salinity criteria of the NDWA Contract for 15 days in October 2014; therefore, this statement is no longer true.

Considerations for the 2015 Drought Plan

The NDWA fully recognizes that the State of California is facing the potential of an extraordinary water supply situation in 2015. NDWA also recognizes the challenges associated with accurately forecasting future SWP/CVP project operations this early in the water year. However, the purpose of a drought contingency plan is to develop a realistic strategy and feasible options to consider implementing if future operational conditions, constraints, and potential conflicts affect the State’s ability to meet all of its contractual and environmental obligations in a protracted drought in 2015. To do so, the 2015 Drought Plan must also provide the SWRCB, other State and Federal agencies, and the public a complete picture of existing operational requirements of the SWP including the year-round water quality obligations pursuant to the NDWA Contract.

Therefore, the 2015 Drought Plan should describe how DWR intends to meet the contractual assurances provided to water users within NDWA if drought conditions persist in 2015. In particular NDWA requests an explanation of anticipated actions necessary to comply with CA Water Code statutes requiring a first priority to provide salinity control and an adequate water supply in the Delta while also upholding the SWRCB’s requirement to avoid injury to any other lawful user of water when modifying SWP/CVP operations. Such an explanation should at a minimum address: SWP/CVP export water deliveries; ESA fishery protections; and the SWP/CVP’s ability to comply with Delta water quality standards established to protect reasonable and beneficial uses of water. If the forecast modeling indicates SWP/CVP water operations for 2015 may result in a reduction in water quality within the NDWA, the 2015 Drought Plan should explain how the State intends to continue to meet its obligations and assurances under the NDWA Contract. To the extent that DWR’s operations of the SWP in 2015 may result in violations of the NDWA Contract, such violations would constitute “injury” under Water Code Section 1435(b)(2) and should be fully disclosed and addressed in the 2015 Drought Plan so the water users within the Agency may better understand DWR’s intentions and suite of options for complying with the NDWA Contract.

The NDWA Contract provides a fundamental guarantee by the State to ensure that water of suitable quality will be made available year-round within the Agency for agriculture and other beneficial uses, making it particularly relevant to implementation of a 2015 Drought Plan. While the NDWA Contract includes an “Emergency Provisions” section which addresses drought conditions (Article 4 (b)), the threshold to meet the established drought emergency definition is high. This is evidenced by the fact the three specific conditions in this provision did not occur in 2014 or in any prior drought year since the execution of the Contract in 1981. Because the

Emergency Provisions may not be applicable this year either, the 2015 Drought Plan should describe SWP operations both with and without the NDWA Contract's drought emergency provisions being invoked.

As you know, the proposed installation of temporary drought barriers on Sutter Slough and Steamboat Slough will have a significant effect on water levels, flows, and possibly the water quality downstream of the barriers. These impacts were observed in 1976 when a single barrier was installed on Sutter Slough. In recognition of the impacts of the barriers within NDWA, the Agency and DWR have initiated negotiations of terms and conditions for an agreement to mitigate for any impacts relative to the NDWA Contract. These negotiations and the requirement for an agreement with NDWA also warrant mention in the 2015 Drought Plan.

For the reasons stated above, the Agency requests the 2015 Drought Plan include: 1) DWR's existing requirements for maintaining specific water quality criteria year-round at the seven monitoring locations established in the NDWA Contract; and 2) methods for maintaining compliance with DWR's obligations under the NDWA Contract (i.e., water quality, water surface elevation, flow direction, etc.) if temporary barriers are installed, including the identification of a suite of mitigation measures that may be employed as part of the project. These sections should further explain how DWR will fulfill its contractual obligations relative to the drought emergency provision (Article 4 (b)) of the NDWA Contract, including the actions and mitigation measures that will take place if the drought emergency provision is triggered.

In closing, the Agency fully supports the "plan for the worst and hope for the best" plan of action under development, but requests the 2015 Drought Plan include a description of specific methodologies for complying with the NDWA Contract provisions and how these provisions will be met if drought barriers are installed in Sutter and Steamboat Sloughs.

Thank you for your consideration of the Agency's requests which are intended to ensure the 2015 Drought Plan is as comprehensive, transparent, and feasible as possible. Please contact me if you have any questions regarding the modifications requested in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with the first name "Melinda" written in a larger, more prominent script than the last name "Terry".

Melinda Terry, Manager

cc: (via email)
Thomas Howard, SWRCB
James Mizell, DWR
Amy Aufdemberge, USBR Regional Solicitor