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July 21, 2016

Via U.S. Mail and Email (melinda@northdeltawater.net)

Melinda Terry
Manager
North Delta Water Agency
910 K Street, Suite 310
Sacramento, CA 95814

Re: Delta Wetlands Project Abandonment

Dear Ms. Terry:

My firm represents Delta Wetlands Properties (“DWP”), and this letter serves to notify the North Delta Water Agency that DWP sold its interests in Bacon Island, Bouldin Island, Webb Tract, Holland Tract, and Chipps Island, all of which DWP planned to use as part of the Delta Wetlands Project (“Project”). Prior to the closing of the transaction, which occurred on July 18, 2016, DWP canceled the Project related water right applications (numbered 29062, 29066, 30268 and 30270) that were pending before the State Water Resources Control Board (“SWRCB”) and abandoned the Project. Please find enclosed a copy of the July 18, 2016 SWRCB order cancelling the Project related water rights applications. Upon cancellation of the Project water rights applications, the Water Quality Assurance Agreement Between Delta Wetlands and North Delta Water Agency (a copy of which is enclosed) became null and void insofar as the subject matter of the agreement, the Project, can no longer move forward.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Peter J. Kiel

Enclosures

cc: Kevin O'Brien (via email)
Rick Stephens, Delta Wetlands Properties (via email)

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Water Right Applications (1) 29062, (2) 29066, (3) 30268, and (4) 30270

Delta Wetlands Properties

ORDER CANCELING WATER RIGHT APPLICATION

SOURCES: (1) False River and Fishermans Cut
(2) Middle River, Old River, Santa Fe Dredge Cut, Connection Slough, and Rock Slough
(3) San Joaquin River, False River, and Old River
(4) Old River, Connection Slough, Middle River, and Santa Fe Dredge Cut

COUNTIES: San Joaquin and Contra Costa

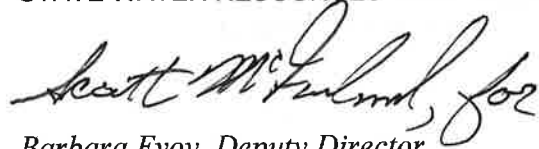
WHEREAS:

1. Delta Wetlands Properties (Applicant) filed water right Application 29062 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on July 9, 1987, requesting the right to divert 106,900 acre-feet annually from False River and Fishermans Cut.
2. The Applicant filed water right Application 29066 with the State Water Board, Division, on July 9, 1987, requesting the right to divert 110,570 acre-feet annually from Middle River, Old River, Santa Fe Dredge Cut, Connection Slough, and Rock Slough.
3. The Applicant filed water right Application 30268 with the State Water Board, Division, on July 16, 1993, requesting the right to divert 417,000 acre-feet annually from San Joaquin River, False River, and Old River.
4. The Applicant filed water right Application 30270 with the State Water Board, Division, on July 16, 1993, requesting the right to divert 405,000 acre-feet annually from Old River, Connection Slough, Middle River, and Santa Fe Dredge Cut.
5. On July 18, 2016, the Division received notice from the Applicant requesting cancellation of Applications 29062, 29066, 30268, and 30270.
6. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights (Deputy Director) to cancel applications. (Resolution No. 2012-0029, section 4.5.2.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT APPLICATIONS 29062, 29066, 30268, AND 30270 ARE HEREBY CANCELED.

The Applicant shall document any diversions made under claim of right independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in cursive script, appearing to read "Barbara Evoy, for".

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **JUL 18 2016**

WATER QUALITY ASSURANCE AGREEMENT
BETWEEN
DELTA WETLANDS AND NORTH DELTA WATER AGENCY

This Agreement is entered into and effective this 4th day of June, 1997 by and between Delta Wetlands and the North Delta Water Agency (the "Agency").

Recitals

- A. On January 28, 1981, the North Delta Water Agency (the "Agency") entered into an agreement with the State of California, Department of Water Resources ("DWR") that established certain minimum water quality standards at specified locations within the Sacramento/San Joaquin River Delta (the "Delta");
- B. On July 21, 1993, Delta Wetlands filed Water Right Application Nos. 30267-70, which presently contemplate the construction of reservoirs on two islands in the Delta and the creation of wildlife habitat on two other islands;
- C. The Agency has filed a Protest to Application Nos. 30267-70, alleging that the grant of these Applications by the State Water Resources Control Board would impair the quality of water assured to the Agency under its 1981 agreement with DWR;
- D. The State Water Resources Control Board has scheduled a water right hearing on Application Nos. 30267-70 to commence on July 8, 1997.
- E. Delta Wetlands and the Agency wish to resolve the Agency's Protest on mutually agreeable terms without need for the Agency to participate in the water right hearing on Application Nos. 30267-70.

Agreements

- 1. *Withdrawal of Protest.*

North Delta Water Agency will, within 7 days of the effective date of this Agreement, withdraw its Protest to Application Nos. 30267-70 in writing.

2. *Inclusion of Water Quality Assurance Language in Permit/License.*

Delta Wetlands will, within 7 days of the effective date of this Agreement, request in writing that the State Water Resources Control Board include the following water quality assurance language in any permit or license issued by the State Water Resources Control Board for Application Nos. 30267-70:

Delta Wetlands agrees that it will not operate the Delta Wetlands Project reservoir islands if the water quality criteria for salinity in effect pursuant to the "Contract Between State of California Department of Water Resources and North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality" dated January 28, 1981, as amended, are not being met until Delta Wetlands can demonstrate, to the reasonable satisfaction of North Delta Water Agency, that Project reservoir operations are not adversely affecting salinity levels at any of the monitoring locations established by that Contract.

3. *Treatment of Water Quality Assurance Agreement at Water Rights Hearing.*

At the water right hearing on Application Nos. 30267-70, Delta Wetlands will offer this Agreement into evidence as part of its submission to the State Water Resources Control Board.

4. *Operation of Delta Wetlands Project to Assure Suitable Water Quality.*

Whether or not the State Water Resources Control Board includes the water quality assurance language set forth in paragraph 2 above in any permit or license granted for the Delta Wetlands Project, Delta Wetlands will operate the Delta Wetlands Project so as to comply with the water quality assurance language contained in paragraph 2.

5. *Inspection and Retention of Records.*

Each party hereto shall have access to and the right to examine any of the other party's pertinent books, documents, papers, or other records (including records retained on electronic media) related to this Agreement, and each party shall retain such records for a period of 4 years.

6. *Successors in Interest.*

This Agreement shall be binding on, and inure to the benefit of, each party's successors in interest.

7. *General Terms*

a. *Headings.*

The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

b. *Severability.*

If any provision, including any election or option, in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in force without being impaired or invalidated in any way. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision. If any election or option reserved to either party is declared to be invalid, then such parties shall be entitled to make any other election not affected by such declaration or to pursue any remedy otherwise provided by law.

c. *Attorneys' Fees and Costs.*

The prevailing party in any arbitration or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief.

d. *Entire Agreement.*

This Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, either oral or written, relating to the subject matter hereof which are not fully expressed herein.

e. *Force Majeure.*

Neither party to this Agreement shall be considered to be in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, that is beyond the reasonable control of the affected party. In the event that either party claims that performance of some or all of its obligations was prevented or delayed by any such cause, that party shall promptly notify the other party of that fact in writing within ten (10) days of such event and shall describe the circumstances preventing or delaying performance. The party whose performance is delayed shall attempt, to the extent reasonable, to remove any obstacles that have precluded or delayed performance.

f. *Effective Waiver.*

The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that term, condition or covenant, nor shall any waiver or relinquishment of any right or power at any time be deemed a waiver or relinquishment of that right or power for any or all other times.

g. *Opinions and Determinations.*

Where the terms of this Agreement provide for actions to be to the reasonable satisfaction of either party to this Agreement, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties expressly reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious or unreasonable opinion or determination.

h. *Choice of Laws.*

Any action brought by and among the parties shall be brought in California, and the laws of that State shall apply.

i. *Amendment.*

All changes or modifications to this Agreement shall be in writing and signed by both parties.

j. *Notices.*

All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

To the Agency: Robert Clark
 Manager
 910 K Street, Suite 310
 Sacramento, California 95814
 Telephone: (916) 446-0197
 Facsimile: (916) 446-2404

With a copy to: Kevin M. O'Brien
 Downey, Brand, Seymour & Rohwer
 555 Capitol Mall, 10th Floor
 Sacramento, California 95814
 Telephone: (916) 441-0131
 Facsimile: (916) 441-4021

To Delta Wetlands: John Winther
 Delta Wetlands
 3697 Mount Diablo Blvd., #120
 Lafayette, California 94549
 Telephone: (510) 283-4216
 Facsimile: (510) 283-4028

With a copy to: Anne J. Schneider
 Ellison & Schneider
 2015 H Street
 Sacramento, California 95814
 Telephone: (916) 447-2166
 Facsimile: (916) 447-3512

Either party may change such address for notification purposes by sending written notice thereof to the other party consistent with the terms of this paragraph.


k. *Signature Clause.*

The signatories hereto represent that they are authorized to enter into this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, the parties have executed this Agreement.

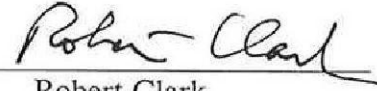
NORTH DELTA WATER AGENCY

By:


W.R. Darsie
President

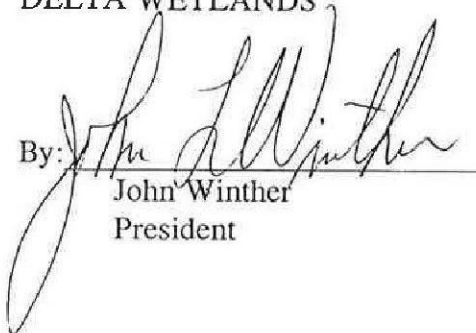
Attest:

By:


Robert Clark
Secretary

DELTA WETLANDS

By:


John Winther
President