

## **NDWA Manager's Report - April 2018**

### **Administrative Issues**

#### ***Updated NDWA-CCVFCA Service Agreement***

Downey Brand prepared a Restated Service Agreement to reflect updates discussed by chairman of both NDWA and CCVFCA boards of how to cost-share office and administrative expenses. The two biggest changes are commitments for CCVFCA to pay 20% of ACWA dues for providing staff health benefits and expresses intent to true-up the monthly payments at the end of the year. The CCVFCA board of directors approved the Restated Service Agreement on March 21, 2018. Once the NDWA board of directors approves the new Agreement, then the new terms will become effective on July 1, 2018.

#### ***Legal Policies***

*Administrative Policies* - I have met with Downey Brand attorney, Dale Stern, on preparing administrative policies to provide the Agency legal guidance regarding topics such as conflict of interest and harassment. The intent is to develop various governance policies for the board to consider adopting later in the year.

*Assessment Policies* - Staff is working with Downey Brand attorney, Sam Bivens, on updating the procedures for collecting delinquent assessments.

#### ***NDWA Correspondence***

Scoping comment letter submitted by NDWA on U.S. Bureau of Reclamation project to modify Fremont Weir and Yolo Bypass necessary to comply with Biological Opinions governing operation of the CVP and SWP. The letter raises concerns that EIS fails to analyze or mitigate ability to comply with 1981 Contract salinity criteria or the water supply impacts to in-Delta water users from lowered surface elevations if 6,000 cfs is diverted from the Sacramento River as proposed.

### **Delta Legal and Policy Issues**

#### ***Recent WaterFix Actions***

In early February, a Sacramento judge denied motion requesting a temporary restraining order to stay (delay) the water rights hearing by the State Water Resources Control Board on the WaterFix project petition to install new diversion intakes on the Sacramento River. The judge believes a stay of the hearing is unnecessary because there is still an opportunity for the water board to remedy any potential illegal ex parte communications during the hearing process.

Over the past several weeks, Petitioners DWR and Reclamation have presented three panels of expert witnesses to testify during Part 2 of the WaterFix change petition hearing at the State Water Board. Although DWR witness acknowledged the project does not propose to increase the release of upstream storage to meet outflow criteria, neither she nor any of the subsequent witnesses were willing to commit to never doing so. The modeling of the spring outflow criteria in the Final EIR and as presented in the Part 2 hearing is different than the criteria imposed by the Incidental Take Permit (ITP) issued by the CA Dept. of Fish and Wildlife (CDFW). DWR's witnesses could not really justify or quantify the difference, but instead relied on a "clarification memo" sent from CDFW to DWR after issuance of the ITP. In that memo, CDFW acknowledges that DWR may not be able to meet the spring outflow criteria identified in the ITP, but that DWR will only be required to reduce exports to 1,500 cfs in order to remain in compliance with the permit. The witnesses consistently avoided questions about other measures that DWR might take to meet the spring outflow criteria.

The Preferred Alternative, CWF H3+, includes less restrictive OMR flow requirements in October and November consistent with the Biological Opinions issued for WaterFix. This allows for higher exports in those months, and in turn degraded water quality in the Delta, resulting in an additional 200 violations of the NDWA Contract criteria. DWR witnesses again testified that real-time operations will be used to address such impacts, but failed to conduct any analysis of the effect of those real-time operations on legal water users in the Delta.

Other parties, including potential project beneficiaries like Westlands Water District and entities protesting the petition, will be presenting their cases-in-chief over the next several weeks. Downey Brand is working with MBK on preparing rebuttal testimony that addresses the issues covered in DWR and USBR witness testimony.

### ***Watermaster Water Use Activities***

***SB 88 Measurement Devices*** - The Delta Watermaster's office is seeking assistance in verifying their records on those Delta diverters that have not yet "opted-in" to water measurement experiments being conducted by entities involved in Delta Measurement Experimentation Consortium (Consortium) or confirmed to have measuring devices installed. The Watermaster's office will begin spot-checking diverters on the list to see if water measurement devices have been installed.

***Water Rights Reporting*** - In 2015, during the height of the drought, the SWRCB issued an order to obtain water rights information from individual diverters that claim pre-1914 appropriative and/or riparian water rights within the Delta watershed. The intent is to create a more reliable summary of actual demands on the water system and their hierarchy so as to improve the transparency and predictability of the water board's water right administration in periods of shortage. Watermaster encourages respondents to review staff's preliminary summary and bring to their attending any discrepancies, errors, or omission in this summary. To access the Excel spreadsheet summarizing water rights information log on website at <https://ftp.waterboards.ca.gov>, Username: IORR-FTP, Password: AccessIORR, then click on the "Documents" folder, and then double click on "Statement Analysis Master" to download the spreadsheet. Water Board is expected to begin enforcement actions against water diverters that failed to submit water use reports.

***Comparative Use Study*** - Watermaster welcomes comments on Comparative Study for Crop Evapotranspiration. The Team also provided a tech memo (provided in April board packet) in response to the peer review of the study. This study is outside my area of expertise, therefore NDWA board members and MBK will need to identify any issues that the Agency should comment on.

### ***Long Term Water Transfer Proposal Required to Improve Impact Analysis***

In February, the federal district court in Fresno issued mixed ruling, including conclusion that both the FEIR/S and BiOp for 10-yr Water Transfer through the Delta are in part [unlawful](#), and ordered government sponsors to reevaluate some of the environmental impacts. [Findings](#) included: inadequate CEQA analysis of cumulative impacts to Delta flows because the thresholds utilized did not take into account existing conditions in the Delta; NEPA violation because the EIS does not contain any evaluation of the effectiveness of groundwater mitigation measure GW-1; and reliance on environmental impacts relating to evaluation of impacts on Giant Garter Snake violates CEQA.

### ***Appointment to Delta Stewardship Council Announced***

On March 16<sup>th</sup>, the Senate Pro Tempore announced the [appointment](#) by the Senate Rules Committee of the chief financial officer of an infrastructure development [firm](#), [Maria Mehranian](#), to serve on the Delta Stewardship Council. She previously served from 2008-2016 as gubernatorial appointee on the Los Angeles Water Quality Control Board. In addition, the Governor [re-appointed](#) Frank Damrell and Susan Tatayon to the Council.