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<i>Director</i>	Justin van Loben Sels
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<i>Manager</i>	Melinda Terry

January 7, 2022

VIA E-MAIL:
BAY-DELTA@WATERBOARDS.CA.GOV

Board Members
California State Water Resources Control Board
PO Box 2000
Sacramento, California 95812-2000

Re: Comments and Objections regarding Temporary Urgency Change Petition for Changes in License and Permit Terms of the SWP and CVP in Response to Drought Conditions dated December 1, 2021

Dear Members of the Board:

In accordance with California Water Code section 1438(d), the North Delta Water Agency (NDWA) respectfully submits these comments and objections to the above-referenced Temporary Urgency Change Petition (TUCP) seeking to change certain water right license and permit terms of the State Water Project (SWP) and Central Valley Project (CVP) that were imposed by Water Rights Decision 1641 (D-1641).

NDWA fully recognizes that the past two years have been extraordinarily dry and the State of California may face further supply shortages in 2022. It is not the intent of NDWA in submitting these comments to focus on its own water supply needs to the exclusion of the legitimate needs of other water users. Rather, the intent is to ensure that the State Water Resources Control Board (Board) discharges its legal responsibilities in a manner that is consistent with statutory law and California's existing contractual commitments. In this regard, the Board should undertake a comprehensive review of available water supplies and develop a plan moving forward to apportion those limited water supplies in accordance with existing contracts and applicable law. Such a review will be particularly important if drought conditions persist in 2022.

NDWA and the California Department of Water Resources (DWR) are parties to a 1981 Contract for the Assurance of a Dependable Water Supply of Suitable Quality (“1981 Contract”), a copy of which is attached as Exhibit 1. The crux of the 1981 Contract is a guarantee by the State of California that, on an ongoing basis, it will ensure that water of suitable quality will be available in the northern Delta for agriculture and other beneficial uses. The 1981 Contract requires DWR to operate the SWP to meet specified salinity criteria while providing enough water to satisfy all reasonable and beneficial uses of water within NDWA’s boundaries. (1981 Contract, Art. 2) In return, NDWA consents to the State’s export of water from the Delta and makes an annual payment to DWR. (*Id.* Art. 10). The 1981 Contract remains in full force and effect.

Under Water Code section 1435(b)(2), a temporary urgency change order may be issued only if the Board finds that “[t]he proposed change may be made without injury to any other lawful user of water.” It is simply unclear, at this time, how DWR intends to operate the SWP during 2022 under the TUCP and whether DWR intends to comply with its contractual obligations to NDWA and the water users in the North Delta. To the extent that DWR’s operations of the SWP under the TUCP would result in violations of the 1981 Contract, such violations would constitute “injury” within the ambit of Water Code section 1435(b)(2). Accordingly, NDWA submits these comments and objections out of an abundance of caution to ensure that its rights under the 1981 Contract are fully protected.

NDWA is generally supportive of DWR and the Bureau of Reclamation’s aim to use the TUCP maximize upstream storage conservation through winter and spring months so that they can more reliably meet water demands if precipitation falls in 2022. However, project operations in the fall and winter of 2021 under the current TUCP, coupled with high tides and low-pressure systems, have already caused exceedances of the 1981 Contract water quality criteria. Similarly, the opening of the Delta Cross Channel (DCC) gates in late 2021 resulted in higher salinity in the Sacramento River at 1981 Contract monitoring stations downstream. NDWA is concerned that under similar environmental conditions, the minimum Delta outflow requirements and DCC flexibility requested in the TUCP could result in additional exceedances of the 1981 Contract water quality criteria, to the injury of legal users of water in the North Delta. NDWA therefore requests an evidentiary hearing in accordance with Water Code section 1438(e) so that it may better understand DWR’s plans regarding SWP operations in 2022, and DWR’s intentions to

meet its obligations under the 1981 Contract. In the alternative, and without waiving its request for an evidentiary hearing, NDWA is willing to participate in an alternative dispute resolution process under the authority and direction of the Board, to reach a resolution that ensures protection of NDWA's rights under the 1981 Contract.

Thank you for your consideration of these comments.

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: James Mizell, DWR
Amy Aufdemberge, Reclamation
Kristin White, Reclamation