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November 7, 2022

Via email and U.S. Mail

John Leahigh, Water Ops. Exec. Mngr.
State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
John.Leahigh@water.ca.gov

Re: Recent Exceedances of Water Quality Criteria Under the 1981 Contract Between State of California Department of Water Resources and North Delta Water Agency

Dear Mr. Leahigh:

I am writing on behalf of the North Delta Water Agency (NDWA/Agency) to convey its significant concerns regarding the Department of Water Resources' (DWR/Department) response to recent salinity level exceedances under the 1981 Contract between DWR and NDWA. In order to assist North Delta landowners impacted by these exceedances, the Agency proposes that DWR agree to extend the special contract claims procedures that were most recently established under the 1981 Contract's Article 4(b) Emergency Drought provision.

The 1981 Contract, currently in full force and effect, requires among other things, that the Department "operate the SWP [State Water Project] to provide water qualities at least equal to the better of: (1) the standards adopted by the [State Water Resources Control Board] as they may be established from time to time; or (2) the criteria established in this contract as identified on the graphs included as Attachment A" (1981 Contract, Article 2(a)(i)). Irrigation of crops within NDWA is continuing and it is essential that the year-round water quality criteria of the 1981 Contract be met. Therefore, the importance of DWR's compliance with the 1981 Contract's water quality standards cannot be overstated. The degree of that importance is probably best expressed by the 1981 Contract's remedies provisions. Set forth in Article 12, these include specific performance of the 1981 Contract. Article 12(a) allows NDWA to require that DWR "cease all diversions to storage in SWP reservoirs or release stored water from SWP reservoirs or cease all export by the SWP from Delta channels, or any combination of these" to further DWR's compliance with the 1981 Contract water quality standards.

Beginning on September 25, 2022, the 14-day average electrical conductivity (EC) measured at the Three Mile Slough monitoring location exceeded the 1981 Contract criteria of 2.55 mS/cm—including a peak daily average of 3.69 mS/cm on October 22nd—and persisted for a total of 41 days before falling back to compliance levels on November 5th. Throughout this period, DWR

staff and MBK Engineers met regularly to discuss water quality in the North Delta, including the Contract exceedances and SWP operations. You and I have also spoken directly about this compliance issue recently. Exceedances of the salinity requirement at Three Mile Slough have caused reverberating impacts for farmers and water users across the North Delta, including areas upstream of the compliance point.

The Agency respectfully reminds DWR that the 1981 Contract does not relieve the State in critically dry years of its obligation to operate the SWP to meet the water quality criteria specified in Article 2 or to implement remedies pursuant to Article 12 when water quality falls below the specified salinity criteria except where all three of the components in the Article 4(b)(i) Emergency Drought provision are met. Currently, only subsections (b)(i)(1) and (3) of this provision are in effect, so providing either an alternative water supply of comparable quality or compensation through a special claims procedure are not options, unless the Department and NDWA execute an agreement authorizing implementation of the Emergency Drought provision due to the inability of DWR to comply with requirements in Articles 2 and 12 of the 1981 Contract.

Pursuant to its statutory mandate to assure that lands within the North Delta have a dependable supply of water of suitable quality sufficient to meet present and future needs and in accordance with the 1981 Contract, the Agency requests that DWR extend the special claims procedure process established earlier this year to assist landowners within NDWA who have been and will continue to be adversely affected by the last 41 days of Contract exceedances.

Given the operational constraints of the SWP due to current reservoir storage levels, the Agency is committed to working cooperatively with DWR to achieve the contractual assurances provided to water users within NDWA under the 1981 Contract. The Agency requests that DWR provide a written response by November 21, 2022 with a detailed description of DWR's ability to maintain contractual water quality compliance and indicate its willingness to extend the special claims procedure to address any impacts from the recent exceedances. If we do not receive a written response by that date, the NDWA Board of Directors reserves all legal rights, claims, and defenses, including the remedies recognized under the 1981 Contract. The Agency remains hopeful that it will be able to reach an agreement with DWR to extend the special claims procedure. NDWA representatives are available to meet with you and your staff to discuss the terms and conditions of such a procedure. Please call if you have any questions.

Sincerely,



Melinda Terry,
Manager

Cc: Board of Directors, North Delta Water Agency
Kevin O'Brien (kobrien@downeybrand.com)
Austin Cho (acho@downeybrand.com)