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MEMORANDUM

DATE: December 4, 2023
TO: North Delta Water Agency
FROM: Anne Williams
SUBJECT: Lands within North Delta Water Agency's Jurisdiction

The purpose of this memorandum is to provide documentation and support for the land area within the North Delta Water Agency (NDWA or Agency) which is used for calculating Contract payment reductions pursuant to the January 21, 1997 Agreement between NDWA and the Department of Water Resources (DWR or Department).

The January 21, 1997, Agreement between NDWA and DWR (1997 Agreement) Article 6 states the following:

“State agrees that NDWA may permanently reduce its annual payments due under Article 10 of the 1981 Contract by a percentage equal to the percentage of acreage of land owned or hereafter acquired by the Department of Water Resources within NDWA's jurisdiction compared to all lands within NDWA's jurisdiction. NDWA agrees to not assess or assert any right to assess DWR-owned lands. In all other respects, payment obligations imposed by the 1981 Contract shall remain the same.”

On December 15, 2020, representatives of NDWA including myself and Gary Kienlen of MBK Engineers, met with representatives of DWR relative to a November 17, 2020 letter from Brian (BG) Heiland, regarding calculations of the annual payments and adjustments to the payments for the 1981 Contract pursuant to the 1997 Agreement. As a follow-up to that meeting, MBK was tasked to provide documentation and additional clarification on acreage within the Agency's boundary as it relates to “all lands within NDWA's jurisdiction”, for the purposes of calculating the Contract payment reduction for acreage of land owned by DWR. The following was provided to Bill Voss and BG Heiland of DWR via email on December 17, 2020:

The total acres within the Agency's boundary is 301,906 acres, as referred to in Melinda Terry's July 10, 2012 letter and the “approximately 302,000 acres” identified in the 2010 Engineer's Report. This acreage includes both land and surface water areas. As referred

to in the November 17, 2020 letter, the 1997 Agreement between NDWA and DWR states that the Agency’s annual payment may be reduced based on the percentage of land owned or acquired by the Department “*compared to all lands within NDWA’s jurisdiction.*” (emphasis added)

A letter from the Department dated February 27, 1997 signed by David Kennedy identifies a credit for DWR owned lands would be applied to the NDWA’s annual payment based on a total “land area” within NDWA of 277,662 acres. This same acreage (277,662 acres) is later identified in a May 22, 2007 letter from the Department to the Agency. As we discussed, at this time we have not been able to determine a source beyond these letters for the 277,662 “land” acres. Pursuant to our conversation to identify the acreage of “land area” that can be supported by county records, we have reviewed the information from the County Assessor’s rolls obtained from Sacramento, San Joaquin, Solano, and Yolo Counties pertaining to lands within the Agency for the 2011 election pursuant to Proposition 218. The following identifies the total acreage for parcels within each county based on the tax roll obtained in 2010:

County	Total Acres
Sacramento	96,714
San Joaquin	21,711
Solano	80,212
Yolo	89,090
Total	287,727

The acreages identified in the tax rolls include tax exempt parcels and other lands that have been determined to be exempt from the NDWA assessments. The acreages exclude major waterways within the Agency; however, the total for Yolo County does include approximately 3,475 acres associated with the Port of Sacramento and the Deep Water Ship Channel [1], which the Agency has classified as “waterway” for the purposes of the NDWA assessments and are therefore not assessed. For these reasons, NDWA considers the tax roll acreages to be a reasonable representation of “all lands within NDWA’s jurisdiction”. Therefore, we believe the approximately 288,000 acres identified in Melinda Terry[’s] July 10, 2012 letter is based on the 287,727 acres identified from the 2010 tax rolls.

In reviewing the tax rolls obtained from the Counties subsequent to 2010, we observe that the total acreage has varied somewhat from year to year since 2010 (± approx. 100 acres). For example, total parcel acreage from the Counties’ tax rolls in 2017 was 287,781 acres. However, we believe the 288,000 acres is a reasonable and perhaps conservative

¹ In 2023, pursuant to a question from DWR staff, MBK confirmed that acreage associated with the portions of the Deep Water Ship Channel within Solano County was also included in the 287,727 acres.

representation of "all lands within the NDWA's jurisdiction" for purposes related to the 1997 Agreement that both parties can consider as discussions move forward.

On February 5, 2021, at the request of DWR, MBK provided geo referenced data of the lands within the Agency's boundary via email for DWR's review. The email was sent to Bill Voss, BG Heiland, Patrick Luzuriaga, and Noel Oberth. At a follow-up meeting on March 12, 2021, DWR and NDWA agreed that, for the purposes of determining the 1981 Contract payment reduction pursuant to the 1997 Agreement, the total acreage of "all lands" within the NDWA is 288,000 acres. This consensus is documented in a March 24, 2021 email to DWR staff Bill Voss, Noel Oberth, and Clayton Guiraud.

A letter from the Department dated November 28, 2021, signed by John Leahigh and identifying Patrick Luzuriaga as a point of contact, requested NDWA to provide "the current gross area of the Agency" to assist with calculations of the annual payment pursuant 1981 Contract. A response letter from NDWA dated December 9, 2021 identified "the total land area for the North Delta [W]ater Agency is 288,000 acres". This letter was sent via email to John Leahigh, BG Heiland, and Mandana (Donna) Azar. In a December 15, 2021 letter from DWR to NDWA describing the 2022 annual payment obligation, DWR used the agreed upon 288,000 acres as the total land area in its calculations. The letter states:

DWR notes that, historically, the approach to determining NDWA's gross acreage has been inconsistent, resulting in differing values from approximately 288,000 acres upwards to 301,906 acres. Given the past inconsistency, DWR believes that, moving forward, articulating a mutually agreed upon approach to determining the acreage for annual payments would be beneficial. DWR accepts the 288,000 acre value for 2022, but is of the position that clarity is needed in the [1981] Contract with regard to how acreage for annual payment purposes is determined.

NDWA and DWR have historically had differences in what was considered DWR owned acreage. Therefore, due to the progress made in agreeing upon the 288,000 acres² and successful working relationships with DWR staff, during 2022, NDWA staff contacted DWR staff to continue the coordination efforts. In October of 2022, BG Heiland of DWR provided new DWR contacts of Donna Azar, Andy Chu, and Anna Fock. On November 2, 2022 NDWA provided these DWR staff a list of parcels it considered as being owned by DWR.

During 2023, NDWA and DWR staff began meeting monthly to resolve discrepancies in DWR owned parcels. These meetings have included Donna Azar, Andy Chu, Ryan Yu, Enit Madriz, and Hamed Khorasani of DWR. Most of the discrepancies were due to NDWA's use of county tax roll parcel data versus DWR's use of its own identification system. The use of the county tax roll data (which is typically obtained by NDWA in July for use for its annual landowner assessments) often conflicted with the timing of DWR purchases within a given year (e.g.

² On May 18, 2023, MBK provided new DWR staff copies of the email exchanges and correspondence summarizing the process of arriving at the 288,000 acres. On October 6, 2023 MBK provided the georeferenced 2020-2021 county parcel data with identified waterways (originally provided to DWR prior staff on February 5, 2021).

NDWA had a parcel as being owned by a private landowner as of July of that year, who was assessed in that year, when DWR had identified itself as the owner due to a purchase later in the year or the county being behind in making the change on its tax roll). In addition, there were several instances of minor differences in acreage due to NDWA’s use of the county parcel data from assessor parcel maps and DWR’s use of its own identification system and mapped acreage. These discrepancies were resolved on a case-by-case basis based on procurement of grant deeds, updated land surveys, and in coordination with the county assessors’ offices. Adjustments were made within both NDWA’s database and DWR’s database as needed. As of the date of this memorandum, NDWA and DWR staff agree upon DWR owned acreage within Sacramento County, San Joaquin County, and Yolo County. Within Solano County, there is disagreement on how to account for acreage that is underwater (mainly the Deep Water Ship Channel) as it applies to “acreage of land” owned by DWR, although both parties recognize that DWR owns the parcels in question. The following table summarizes the DWR owned acreage within each county for tax year 2022-2023.

2022-2023 DWR Owned Parcel Acreage	
County	Acreage
Sacramento	14,997.30
San Joaquin	104.62
Yolo	365.84
Solano	5,399.86
Total	20,867.62

NDWA and DWR staff have agreed to continue communications in the future as DWR purchases additional properties within NDWA. Receiving parcel change information directly from DWR will ensure that NDWA’s database is up to date and maintaining the working relationships amongst staff will improve consistency and understanding of the 1981 Contract payment calculations.

Anne Williams