

June 18, 2015

VIA U.S. MAIL AND E-MAIL: RICH.SATKOWSKI@WATERBOARDS.CA.GOV

Mr. Rich Satkowski
California State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments regarding Request to Renew and Modify Temporary Urgency Change Order for Central Valley Project and State Water Project Operations for July through November, dated May 21, 2015

Dear Mr. Satkowski:

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 Request to Modify and Renew the April 6, 2015 Order that approved in part and denied in part a Petition for Temporary Urgency Changes in License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions (“May 21 TUCP”).

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”). The crux of the 1981 Contract is a guarantee by the State of California that, on an ongoing basis, it will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. The 1981 Contract requires DWR to operate the State Water Project to meet specified water quality criteria while providing enough water to satisfy all reasonable and beneficial uses of water within NDWA’s boundaries. (1981 Contract, Art. 2) In return, North Delta 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 SWRCB finds that “[t]he proposed change may be made without injury to any other lawful user of water.” The May 21 TUCP asks the Board to maintain the relocation of the D-1641 water quality compliance point from Emmaton to Three Mile Slough until August 15. The May 21 TUCP also asks the Board to reduce the D-1641 flow requirement at Rio Vista from 3,000 cfs in September and October and 3,500 cfs in November to 2,500 cfs from September to November. The D-1641 water quality objective is 2.78. Although that salinity standard is in place until

August 15, relaxation of the Rio Vista flow requirement for the period proposed could continue to impact salinity at Three Mile Slough well after that date. The 1981 Contract specifies a water quality criterion at Three Mile Slough of 2.20 through June 22, 2.63 from June 23 through August 22 and 2.80 from August 23 through November 30. NDWA has not waived this, or any other, contract requirement.

From NDWA's standpoint it is critical that the Department of Water Resources continue to meet the water quality criteria contained in the 1981 Contract, and that the SWRCB not interfere with the contractual requirements of the 1981 Contract through the TUCP process. Accordingly, NDWA respectfully requests that the SWRCB ensure that any modifications of the April 6 Order are consistent with the 1981 Contract. In the alternative, NDWA requests an evidentiary hearing to present evidence on the issue of injury that will arise from the modifications proposed in the May 21 TUCP. Thank you for your consideration of these comments and objections.

Very truly yours,

DOWNEY BRAND LLP



Kevin M. O'Brien

KMO

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cc: Melinda Terry, NDWA
Chris Carr, SWRCB
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