

# NORTH DELTA WATER AGENCY

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Melinda Terry, Manager



## Board of Directors

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**Via e-mail (Commentletters@waterboards.ca.gov)**

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

**RE: Comment Letter - Delta September 2014 Workshop**

Dear Ms. Townsend and Board Members:

The North Delta Water Agency (NDWA) respectfully submits these comments on the draft Order for Additional Information (“Order”). The Order as currently drafted would require north Delta water users to provide information to the State Water Board regarding water rights and diversion amounts within the NDWA. This is inconsistent with the intent or scope described in the Board’s Notice or the complaint letter submitted by the DWR and U.S. Bureau of Reclamation.

According to the Notice, the stated purpose of the September 24, 2014 workshop is to obtain information to help the Board determine the most effective process available to “determine the facts pertaining to water availability and water diversion and use within the *central and southern* Sacramento- San Joaquin Delta.” [Emphasis added] This proceeding was precipitated by a letter dated July 23, 2014 from DWR Director Mark Cowin and U.S. Bureau of Reclamation Regional Director David G. Murillo to State Water Board Deputy Director Barbara L. Evoy. On page 1 of that letter Messrs. Cowin and Murillo state: “consideration of our objections to diversions of water beyond a valid water right would be further informed by information obtained from south and central Delta diverters regarding their asserted rights and actual water use.” Nowhere does the subject letter mention, or seek information from, water diverters within NDWA.

For these reasons and those set forth below, inclusion of water users within NDWA in the requirements of the Order is inappropriate because water use within NDWA is subject to the terms and conditions of the 1981 Contract for the Assurance of a Dependable Water Supply of Suitable Quality between NDWA and the California Department of Water Resources (“1981 Contract”), a copy of which is attached to this letter as Attachment 1.

The 1981 Contract, among other things, requires DWR to: 1) maintain water quality within North Delta equal to the better of water quality objectives established by the State Water Board or the water quality criteria set forth in the 1981 Contract; 2) avoid conveying State Water Project water in a way that would be to the detriment of water users within NDWA boundaries; and 3) furnish “such water as may be required within the Agency to the extent not otherwise available under the water rights of water users.” As consideration for these contractual protections, NDWA makes a substantial annual payment to DWR.

In addition, the 1981 Contract acknowledges Agency landowners’ water rights by stating “[t]he State recognizes the right of the water users of the Agency to divert from the Delta channels for reasonable and beneficial uses . . .” and obligates the State of California to “[d]efend affirmatively as reasonable and beneficial” the release of SWP stored water in order to “[p]rovide and sustain the qualities established in this contract . . .” The Contract further prevents the State from examining such uses of SWP water unless a court determines “[t]hat all uses of water exported from the Delta by the State and by the United States, for agricultural, municipal, and industrial purposes are reasonable and beneficial, and that irrigation practices, conservation efforts, and groundwater management within areas served by such exported water should be examined in particular.” Additionally, during “Phase IV” of the water right hearings that led up to Water Right Decision No. 1641, DWR acknowledged its responsibilities to NDWA by means of a Memorandum of Understanding dated May 26, 1998. The 1981 Contract and MOU both remain in full force and effect.

The State Water Board’s Order seems to ignore the assurances provided by DWR in the 1981 Contract. Indeed, page 3 of the Order states that the Order applies to: “[a]ll pre-1914 and riparian water rights holders in the Sacramento-San Joaquin Delta, including but not limited to those identified in Attachment A and Attachment B.” This would appear to include water right holders within North Delta Water Agency.

Recognizing the State of California is facing extraordinary drought conditions, the NDWA does not intend to focus on its own water supply needs to the exclusion of the legitimate needs and rights of other water users. Rather, the NDWA seeks to ensure the State Water Board discharges its legal responsibilities in a manner that is consistent with the State of California’s existing contractual commitments and applicable law, including the contractual right of north Delta water users to continue diverting water within its boundaries pursuant to the 1981 Contract.

In summary, the NDWA requests the State Water board modify its proposed Order to: (i) eliminate all reporting requirements for water users within NDWA; (ii) expressly recognize the right of water users within NDWA to continue to divert water pursuant to the 1981 Contract; and (iii) reiterate the statement contained in the footnote in the May 2, 2014 TUCP order,<sup>1</sup> which

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<sup>1</sup> May 2, 2014 “Order Modifying And Renewing An Order That Approved A Temporary Urgency Change In License And Permit Terms And Conditions Requiring Compliance With Delta Water Quality Objectives In Response To Drought Conditions.” Available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/050214\\_tucp\\_order.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/050214_tucp_order.pdf)

states as follows: “North Delta Water Agency, a contractor with DWR submitted an objection to any future changes to the extent that the changes would violate their contract with DWR. Nothing in this Order relieves DWR of any additional obligations that DWR may have to North Delta Water Agency under its contract.” Inclusion of similar or identical language in the Order and other related documents would serve the purposes of the State of California and our Agency alike.

Thank you for your consideration of these comments.

Sincerely,

Melinda Terry.  
Executive Director

Cc: Mark Cowin, DWR Director  
Laura King Moon, DWR Chief Deputy Director  
Paul Helliker, DWR Deputy Director  
Cathy Crothers, Chief Counsel  
Tripp Mizell, Legal Counsel