

**NAGLEE BURK IRRIGATION DISTRICT**

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September 15, 2014

Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board

Via Electronic Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Delta September 2014 Workshop**

Ladies and Gentlemen of the Board:

The Naglee Burk Irrigation District submits that the an evidentiary hearing is the appropriate vehicle to determine what water is available for diversion and use by water rights holder in the central and southern Delta.

In answer to the questions posed at page 3 of your notice, this district submits the following comments:

1) Water released for trust purpose, once it has served those purposes, should be available for diversion by water rights holders in the Delta. For example, if water is released in the Sacramento River to maintain water temperature in that river for migrating fish, and if it has reached the mouth of the Sacramento River at Suisun Bay and then is mixed with the waters in the Delta pool such that it has no further effect on water temperature, particularly when those mixed waters reach the southern Delta, then those mixed waters in the Delta should be available to diverters in the Delta. This is just application of the policy embodied in the constitution that beneficial use of waters is to be maximized.

2) The connection of the Delta to the ocean does provide additional water to satisfy the water rights of the central and southern Delta. The fact that Delta may not have sufficient fresh water inflow from its tributary rivers is immaterial to the riparian exercise of the right to divert from the Delta. "The principle upon which these [riparian] rights are founded is equally applicable to all bodies of water, whether large or small, tidal or non-tidal." [*Turner v. James Canal Co.* (1909) 155 Cal. 82, 88 (quoting from 1 Farnham on Waters, sec. 63, p. 280) "So far as the right to use a reasonable share of the water of Fresno slough for the irrigation of land riparian thereto is concerned, *it is of no consequence how, or from what source, the water comes into the slough.*" [*Id.*, p. 91 (italics added)]]

3) The diversion information proposed in the draft Order will not be sufficient to inform the question of the availability of water for diverters in the central and southern Delta. To put it more aptly, the information would be irrelevant. If, the mixture of tidal flow and fresh water flow reaching the Delta is available to riparian and pre-1914 rights holders, and if the quantity of tidal inflow is as heretofore estimated on the order of 330,000 cfs, then the quantification of what has been recently diverted, and the estimate of what will be diverted in the near future, from the Delta becomes

meaningless. As the DWR has long since recognized, “[a]ctually, in the Delta, the question of quantity is of little concern, since the Delta is never short of water. If flow from the tributary streams were insufficient to meet Delta use water from the Pacific Ocean would flow through the San Francisco Bay system and fill the Delta channels.” [see: The Delta and The State Water Project, (DWR, 1969), pp. 35-36]

Sincerely,

A handwritten signature in blue ink that reads "Robert Mehlhaff". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Robert Mehlhaff  
Secretary and General Counsel  
Naglee Burk Irrigation District