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<i>Manager</i>	Melinda Terry

April 5, 2022

**VIA E-MAIL:
BAY-DELTA@WATERBOARDS.CA.GOV**

Board Members
California State Water Resources Control Board
PO Box 2000
Sacramento, California 95812-2000

Re: Comments Regarding Temporary Urgency Change Petition for Changes in License and Permit Terms of the SWP and CVP in Response to Drought Conditions Dated March 18, 2022

Dear Members of the Board:

The North Delta Water Agency (NDWA) respectfully submits these comments to the above-referenced Temporary Urgency Change Petition (TUCP) seeking to change certain water right license and permit terms of the State Water Project (SWP) and Central Valley Project (CVP) imposed by Water Rights Decision 1641 (D-1641) during the April 1 through June 30, 2022 timeframe.

As stated in our January 7, 2022 letter providing comments relative to the TUCP for February 1, 2022 through April 30, 2022, NDWA fully recognizes that the past two years have been extraordinarily dry and that the State of California is facing significant water supply shortages in 2022. It is not the intent of NDWA in submitting these comments to focus on its own water supply needs to the exclusion of the legitimate needs of other water users. Rather, the intent is to ensure that the State Water Resources Control Board (Board) discharges its legal responsibilities in a manner that is consistent with statutory law and California's existing contractual commitments

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"), a copy of which is attached as Exhibit 1. As noted in our prior letter, the 1981 Contract requires DWR to operate the SWP to meet specified salinity criteria while providing enough water to satisfy all reasonable and beneficial uses of water within NDWA's boundaries. (1981 Contract, Art. 2) In

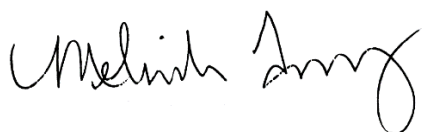
return, NDWA consents to the State's export of water from the Delta and makes an annual payment to DWR. (*Id.* Art. 10). The 1981 Contract remains in full force and effect.

Section 1435(b)(2) of the Water Code provides that a temporary urgency change order may be issued only if the Board finds that "[t]he proposed change may be made without injury to any other lawful user of water." To the extent that DWR's operation of the SWP under the TUCP would result in violations of the 1981 Contract, such violations would constitute "injury" within the ambit of Water Code section 1435(b)(2). Accordingly, NDWA submits these comments out of an abundance of caution to ensure that its rights under the 1981 Contract are fully protected.

NDWA is generally supportive of DWR and the Bureau of Reclamation's aim to use the TUCP to maximize conservation of upstream storage during the spring months of this dry year. However, project operations under the 2021 TUCP, coupled with low-pressure systems and high tides, resulted in exceedances of the 1981 Contract water quality criteria last year. Therefore, NDWA is concerned that under similar environmental conditions, the reduction in Delta outflow requirements and the relocation of the D-1641 Western Delta Agriculture compliance point from Emmaton to Three Mile Slough requested in the current TUCP could result in additional exceedances of the 1981 Contract water quality criteria in 2022, to the injury of legal users of water within the North Delta. By this comment letter, NDWA asks the Board to ensure that its approval of the TUCP will not allow DWR to violate the 1981 Contract.

Thank you for your consideration of these comments.

Sincerely,



Melinda Terry,

Manager

cc: (via email)
Scott Frazier, SWRCB
James Mizell, DWR
Amy Aufdemberge, USBR