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November 9, 2017

State Water Resources Control Board
Delivered Via E-mail: Bay-Delta@waterboards.ca.gov



Subject: Phase II Bay-Delta Plan Input

To secure the current contractual and individual water rights of Agency landowners to adequate water supply and quality, the North Delta Water Agency (NDWA or Agency) submits these comments on the Phase II update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Bay-Delta (the Bay-Delta Plan). The Agency appreciates this opportunity to comment on the State Water Resources Control Board's process for the Bay-Delta Plan Update.

In 1973, the Agency was formed by a special act of the Legislature to represent northern Delta interests in negotiating a contract with both the United States Bureau of Reclamation and California Department of Water Resources in order to mitigate the water rights impacts of the Central Valley Project and the State Water Project (SWP).¹ Representing nearly one-half of the legal Delta, the Agency's boundaries encompass approximately 300,000 acres. This includes all of that portion of the Sacramento-San Joaquin Delta, as defined in Water Code Section 12220, situated within Sacramento, Yolo and Solano Counties, including New Hope Tract, Canal Ranch and Staten Island in northeastern San Joaquin County.

In 1981, the NDWA and the Department of Water Resources (DWR) executed the Contract for the Assurance of a Dependable Water Supply of Suitable Quality (1981 Contract). The crux of the 1981 Contract, which remains in full force and effect, is a guarantee by the State of California that, on an ongoing basis, DWR will ensure through the operation of the SWP that suitable water will be available to satisfy all agricultural and other reasonable and beneficial uses in all channels within NDWA's boundaries. Specifically, the State is obligated to furnish "such water as may be required within the Agency to the extent not otherwise available under the water rights of water users."

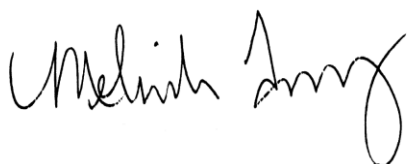
The Agency has a clear statutory mandate under its Agency Act to assure that the lands within the North Delta have a dependable supply of water of suitable quality sufficient to meet present and future needs in accordance with the 1981 Contract. For this reason, NDWA has repeatedly asserted during the various Delta planning processes that any projects, programs, and actions pursued in the name of coequal goals codified in the Delta Reform Act of 2009 must: 1) be based on the best available science; 2) be consistent with the contractual obligations of the State under the 1981 Contract; and 3) be undertaken in compliance with all applicable state and federal law.

¹ North Delta Water Agency Act, Chapter 283, Special Statutes of 1973.

It is with this background that the Agency notes that the State Water Resources Control Board has not yet adopted water quality objectives in connection with the Bay-Delta Plan Update. Under the Porter-Cologne Water Quality Control Act, those objectives must include consideration of past, present and probably future beneficial uses of water and economic considerations, among other things.² Before the State Water Board considers many of the questions posed by the “Opportunity to Provide Input to Inform the Development of the Program of Implementation for the Phase II Update to the Bay-Delta Plan,” it must consider the past, present and future beneficial uses of water within the North Delta and pursuant to the 1981 Contract. The Final Scientific Basis Report notes that “policy considerations of competing uses of water” are forthcoming.³ It would therefore be premature and predecisional to develop a program of implementation before considering these uses and adopting water quality objectives.

The Agency appreciates this opportunity to comment on the Bay-Delta Plan Update process, and looks forward to future opportunities to comment on a substitute environmental document, staff report on the consideration of competing uses of water and proposed water quality objectives prior to adoption by the State Water Resources Control Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with the first name "Melinda" written in a larger, more prominent script than the last name "Terry".

Melinda Terry,
Manager

² Water Code, § 13241.

³ State Water Resources Control Board, “Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows” (2017), at 1-2.