

NORTH DELTA WATER AGENCY

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February 24, 2015

Via e-mail (SWRCB-2014informational-order@waterboards.ca.gov) and U.S. Mail

Barbara Evoy, Deputy Director
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

RE: Order for Additional Information (Order WR 2015-0002-DWR)¹

Deputy Director Evoy:

The North Delta Water Agency (“NDWA”) respectfully submits these comments on the State Water Resources Control Board’s (“Water Board”) February 4, 2015 Order for Additional Information (“Order”) and online Informational Order Supporting Data form (“Form”) that require a specific group of landowners to submit additional claimed water rights and diversion amounts.²

As the Water Board knows, NDWA and the California Department of Water Resources (DWR) are parties to a water supply and quality settlement contract (“1981 Contract”) in which water users in the north Delta are authorized and have paid for the right to use water stored by the State of California.³ In recognition of the extraordinary drought conditions California is facing, NDWA is working on the development of an agreement with DWR to accommodate future actions contemplated in the 2015 Drought Emergency Plan in a way that assures the State maintains its contractual obligations to north Delta water users. Accordingly, NDWA does not intend to focus on its own water supply needs or compliance concerns to the exclusion of the legitimate needs and rights of other water users. Rather, NDWA seeks to ensure that the Order is applied fairly, consistently, and in accordance with applicable law and contractual commitments.

Failure to Coordinate with Delta Agencies or Targeted Landowners

¹ SWRCB Order available at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/2015sacsjininfoorder.pdf.

² Landowners who must comply are identified in Attachment A of the Order.

³ 1981 Contract and related documents available at: <http://www.northdeltawater.net/our-contract.html>.

NDWA is disappointed the Water Board did not consult with Delta water agencies prior to implementation of the Order and Form so that a less burdensome and more effective process that is consistent with regulatory authority and the 1981 Contract could have been developed in a realistic timeframe. Implementation of the proposed Order and Form should be suspended until each can be revised and the Water Board conducts informational workshops in the Delta to explain the objectives of the Order and how to fill out the Form, find requested information, and submit the documentation. Modification of the Form should include the ability for landowners to send the requested information via regular mail in addition to submitting online.

Until then, NDWA is encouraging landowners in our jurisdiction to make a good faith effort to respond and provide the best information available in the timeframe provided.

Scope of Order Exceeds Cited Authority

The Order is inconsistent with the intent or scope described in the Water Board's February 4, 2015 Drought Informational Order Letter and with public statements released to the media by the Board. The Letter and press releases describe allegations that "*south and central Delta diverters were illegally diverting water in excess of their water rights*" by State and Federal water supply projects, and invoke California Code of Regulations, title 23, section 879, subdivision (c) as the Board's authority. "*Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder, or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year.*"⁴ [emphasis added]

None of the complaints cited in the Order allege any "unlawful diversions of stored water" within the NDWA. Requiring north Delta water users to submit "property patent date, the date of initial appropriation" and other water rights documentation appears to exceed the conditions of the Water Board's section 879(c) regulatory authority.

Therefore, NDWA asserts that: (i) the Water Board is incorrectly applying its authority to seek additional information and take enforcement action in the case of water users within NDWA who have no pending allegations of illegal diversions or water use against them; and (ii) the Order is inapplicable to water diversions within NDWA because DWR is obligated to provide a full water supply of adequate quality to all water users within the NDWA. The Water Board should immediately suspend implementation of the Order and amend to exempt water users in the north Delta.

Technical Flaws with the Online Reporting Form

The March 6, 2015 deadline appears to be arbitrary and unreasonably burdensome, particularly since the water rights information requested is not readily available to landowners. As has been pointed out in discussions with Tom Howard, John O'Hagan, Delta Watermaster Michael George and other members of your staff, as well as in the letters submitted by Central Delta Water Agency and Local Agencies of the North Delta, there are numerous technical problems with the online Form, including internal inconsistencies that make full compliance nearly impossible and render the information gathered potentially useless for achieving stated purposes.

⁴California Code of Regulations, title 23 section 879, subdivision (c)

In addition to fixing general technical problems with the Form, the Water Board should provide clarification of Parts 2 and 3 relating to reporting water rights and diversions in accordance with the 1981 Contract.

- **Information Mismanagement** – Requiring landowners to scan and submit the requested water rights documents in a separate email because the Water Board’s Form does not allow attachments is overly burdensome and could result in information being misfiled or lost. This complicated process will be difficult and confusing for a population uncomfortable using computers or no personal access to e-mail or scanners.
- **Reporting Contract Rights** - The “**Water Supply Contract (if applicable)**” portion of the Form (Part 2) is also confusing as it pertains to the 1981 NDWA-DWR Contract. The Water Board must provide specific direction regarding how landowners should reflect their water rights under the 1981 Contract in a consistent manner.
 - “**Contract No.**”: NDWA does not have a contract number. Will the Water Board accept the title of the 1981 Contract in lieu of a contract number?
 - “**Amount (Acre-feet) authorized to divert under this contract**”: The 1981 Contract does not contain an acre-foot limitation. The diversions are unfettered so long as the water use is for “reasonable and beneficial uses on lands within the Agency.” Will the Water Board accept this explanation instead of a numerical quantification?
- **Reporting Diversions** – The Water Board needs to explain how water users with overlapping riparian and pre-1914 water rights should report their diversions.

Closing Comments and Recommendations

NDWA is committed to assisting the Water Board in ensuring the implementation and enforcement of water rights is effective and in accordance with the State’s priority system. Withdrawing the Order will allow additional time for amendment, fixing of technical flaws and confusing wording in the Form, and development of instructions to assure consistency of responses.

Thank you for your consideration of these comments.

Sincerely,



Melinda Terry,
Manager

Cc: Michael George, Delta Watermaster
Mark Cowin, DWR Director
Cathy Crothers, DWR Chief Counsel