



October 29, 2021

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Jason R. Phillips
Chief Executive Officer

Honorable Wade Crowfoot
California Natural Resources Agency
715 P Street, 20th Floor
Sacramento, CA 95814

Honorable Jared Blumenfeld
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

Transmitted via email

**SUBJECT: OCTOBER 18, 2021, DRAFT MEMORANDUM OF UNDERSTANDING
ADVANCING A TERM SHEET FOR THE VOLUNTARY AGREEMENTS TO
UPDATE AND IMPLEMENT THE BAY DELTA WATER QUALITY
CONTROL PLAN, AND OTHER RELATED ACTIONS**

Dear Secretaries Blumenfeld and Crowfoot:

I am appreciative of your efforts, and that of the State team, over the past several years regarding the development of the proposed Voluntary Agreements (VAs). Friant Water Authority (FWA) has been engaged in this process from early on and has invested in it significant amounts of time and effort with the hopes of reaching a consensus-based VA that truly meets the needs of the environment while also protecting water supplies. In our most recent discussions, you asked for Public Water Agency (PWA) executives to review the October 18, 2021 *Draft Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay Delta Water Quality Control Plan, and Other Related Actions* (Term Sheet) and related appendices and to provide you with “red flag” comments and questions by the end of the business day today, October 29. This letter is in response to your request and contains FWA’s red flag comments below.

As a threshold matter, negotiating an operations plan for the upcoming water year that is inconsistent with the type of operational flexibility needed in any short- or long-term operational regime appears to be an inappropriate and unproductive use of time and resources. In our view, a more efficient approach would be for the State to dismiss its pending litigation against the United States regarding the 2019 Biological Opinions. This would allow water managers from State and federal agencies and the PWAs to discuss operational issues more freely, and in an

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environment of solving common problems. In our view, dismissing the litigation must occur as part of reaching agreement on the Term Sheet.

In addition to dismissal of the ongoing litigation we have other concerns, several of which we have raised consistently over the negotiations but yet remain unresolved. These concerns are:

Section 4.1 of the Term Sheet, as currently drafted, creates an open-ended obligation on PWAs to provide an unspecified amount of water and funds as part of any overall agreement. We do not understand how the State believes the PWAs or any governmental body can agree to such open-ended terms as both a matter of law and policy. This section must be revised to establish a firm ceiling on the extent of potential commitments of both water and funds.

It must be clearly expressed that the VAs will not cause any involuntary water delivery impacts to the Exchange Contractors and the Friant Division Long-term Contractors (Friant Contractors) will not be responsible for making up for any water shortages to the Exchange Contracts as a result of the implementation of the VAs.

Friant Contractors willingness and ability to pay for the actions called for in the VA are significantly less than what we believe is the expectation. As you are aware, our primary interest in the VAs is the reliability of water deliveries to the Exchange Contractors. On most Central Valley Project issues, Settlement Contractors and Exchange Contractors are treated similarly. Yet to date, when it comes to the VA, they are not. We believe that if the water delivery fees associated with the VAs on the Exchange Contract deliveries were equal to those of the other Settlement Contractors, the funding issue would be resolved. Failure to treat Exchange Contractors and Settlement Contractors similarly places Friant Contractors at extreme financial risk and is simply not an equitable allocation of costs. This issue must be addressed.

Friant Contractors will not be responsible for the 50 TAF of flows in Appendix 1 if those flows are not present in any given year. These flows are entirely dependent on San Joaquin River Restoration Program flows, which Friant Contractors do not control. Simply put, we cannot agree to amend the formula regarding recapture constraints. In technical conversations with your team last year, we were very clear on this point. Failure to address this point will involuntarily increase the flow contribution from Friant Contractors – something to which we simply cannot agree.

There must be enactment of authorizing federal legislation for any charges associated with funding implementation of the VA. In short, all contractors must be required to pay their fair share.

We believe our concerns are self-explanatory, and most of them should come as no surprise to you and others engaged in this process. In our most recent principals' discussion, you expressed a desire for PWA executives to execute a Memorandum of Understanding (MOU) committing to bringing the Term Sheet to our respective governing bodies for their review and potential approval. Please understand that I am unable execute such an MOU regardless of the status of the Term Sheet.

However, I do agree to bring the Term Sheet to the FWA Board of Directors for their review and potential approval if the above concerns are addressed. Understanding your desire to move quickly, FWA staff is prepared to meet with your staff at your convenience for further discussion on these points and to work in good faith to resolve our differences.

I very much appreciate your efforts and believe that the VAs, if appropriately developed, present a unique opportunity to address many of California's water issues.

I look forward to your reply and the opportunity to resolve FWA's remaining concerns regarding the October 18, 2018 Draft Term Sheet and appendices.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Phillips". The signature is fluid and cursive, with a large initial "J" and "P".

Jason Phillips
Chief Executive Officer
Friant Water Authority