



Utilities Department

August 17, 2021

Richard Nominni
President, Congress Valley Water District
P.O. Box 3023
Napa, California 94558

Re: Breach of Water Supply Contract Between The City of Napa and the Congress Valley Water District

Dear Mr. Nominni:

The Water Supply Contract Between The City of Napa and the Congress Valley Water District (Contract), as amended, provides that the District may acquire water from the City "in an amount not to exceed a total of one hundred (100) acre feet in any calendar year." (Contract § 3.)

The District has breached the Contract by taking more than 120 acre-feet (AF) of City water in calendar year 2021 based on meter readings and subsequent billings from February 1, 2021 to July 1, 2021. With 5-months of usage left in the year, the District is on track to use 150-200 AF of water (depending on demand patterns) in further breach of the Contract.

As you know, the City Council declared a water shortage emergency on May 4, 2021 and ordered no less than 11 specific water conservation measures to achieve a 15 percent water use reduction compared to 2020. On July 20, 2021, the City Council adopted an urgency ordinance to order additional conservation measures to achieve a 20 percent water use reduction compared to 2020, effective immediately upon adoption. Pursuant to those enactments, the City has restricted residential and commercial irrigation to two days per week, restricted temporary hydrant meters and bulk water availability (no irrigation or commercial uses allowed and interior domestic use limited to 6,000 gallons per parcel per month), and imposed a 20 percent cut-back on interruptible agricultural irrigation customers.

The District's annual use of water from 2012 through 2020 ranges from 40-65 AF per year (AFY), which includes the severe 2013-2016 drought. While the City orders its customers to make significant changes to reduce their water usage from previous years, the District water use has far exceeded any other year on record. Although the District seems to have adopted a June 14, 2021 Resolution No. 70 enacting water conservation measures resembling the City's May 4, 2021 mandates, the District has failed to take steps to fully manage customer demands, as evidenced by the District's having violated its 100 AFY City water limitation as of July.

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To mitigate the accruing damages, the City hereby demands that the District immediately take all measures necessary to minimize the water it takes from the City. This includes enacting and *enforcing* water conservation programs, as required by Contract Section 9, that achieve a reduction in customer demands. Significant demands, far exceeding historical usage, must be stopped immediately.

In addition, the City hereby demands that the District provide written assurance that the District will pay the City's costs of mitigating the impacts resulting from the District's unauthorized use of water beyond the 100 AF limit in the Contract, including any costs incurred by the City to acquire additional water supplies. To assist the District in mitigating the ongoing damages caused by its continuing Contract breaches, the City is spending time and money seeking to acquire supplemental water from one or more third parties. The market price for supplemental water this year is very high (current option is in the \$3,500 per acre-foot range) because competition is fierce during a severe drought year. The City is interested in learning from the District if it is aware of alternative sources of additional water supplies that the District or the City should consider. The District is responsible for all costs associated with acquiring and taking delivery of supplemental water, up to the amount of supplemental water needed to offset the District's violation of the Contract's 100 AF limit.

The District has a duty to operate within the limits set by the Water Supply Contract with the City. The District's inability to administer itself is a significant distraction that disrupts and damages the City's water planning and investments to provide safe and reliable water service to its customers. The City respectfully requests that the District provide written assurance to the City, in response to this letter, by August 31, 2021 with: (1) confirmation that the District is taking all actions necessary to immediately reduce water usage, (2) confirmation that the District will pay the City's costs of mitigating the impacts resulting from the District's unauthorized use of water, including any costs incurred by the City to acquire additional water supplies and (3) an identification of any actions the District is initiating to acquire additional water supplies to offset usage beyond the 100 AF Contract limit.

Please contact me at (707) 257-9316 or pbrun@cityofnapa.org if you have any questions or require additional information regarding the steps the District needs to take to mitigate these issues.

Sincerely,



Phil Brun
Utilities Director

cc: Steve Potter, City Manager
Michael Barrett, City Attorney
Joy Eldredge, Deputy Utilities Director
Eric Robinson, Kronick Moskowitz Tiedemann & Girard