



<i>Chairman</i>	Steve Mello
<i>Vice-Chairman</i>	Jack Kuechler
<i>Secretary/Treasurer</i>	Tom Slater
<i>Director</i>	Justin van Loben Sels
<i>Director</i>	Mark van Loben Sels
<i>Manager</i>	Melinda Terry

February 8, 2023

Sent Via Email: Bay-Delta@waterboards.ca.gov

Joaquin Esquivel, Board Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: Comment Letter – Draft Scientific Basis Report Supplement

Dear Chair Esquivel and Members of the Board:

To secure North Delta landowners’ current contractual and individual rights to adequate water supply and water quality, the North Delta Water Agency (NDWA or Agency) submits these comments on the Draft Scientific Basis Report Supplement (Draft Supplement) in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (Bay-Delta Plan), issued by the State Water Resources Control Board (State Water Board) on January 5, 2023.¹

The Draft Supplement follows the 2017 Scientific Basis Report to describe the underlying science supporting the State Water Board’s Phase II update of the Bay-Delta Plan. NDWA agrees it is imperative that updates to the Bay-Delta Plan be based upon sound scientific evidence. The final Scientific Basis Report should include project-level analysis to support the inclusion of voluntary agreements, such as those described in the 2022 Memorandum of Understanding and the Draft Supplement, as an alternative implementation pathway to the unimpaired flow approach for the Bay-Delta Plan. The Draft Supplement identifies “approximately ten projects” proposed in the VA Term Sheet that aim to restore a total of 5,227.5 acres of tidal and wetland habitat in the Delta and Suisun Marsh, without elaborating on locations and other crucial details. The Agency is concerned that the creation or expansion of tidal habitat may affect water quality, surface water elevations and velocities, levee stability, seepage, and individual water rights in the Delta. Accordingly, NDWA requests that the State Water Board conduct a full environmental analysis of proposed individual Delta habitat projects

¹ On January 25, 2023, the Agency requested an extension of time to review and comment on the Draft Supplement. The request was denied and therefore, these comments have been prepared as sufficiently as possible in the limited time available to review and analyze the Supplement.

to ensure the habitat restoration and related voluntary agreement activities will not adversely impact beneficial water uses within NDWA's boundaries in any way.

I. Background

NDWA was formed in 1973 by a special act of the Legislature to represent northern Delta interests in negotiating a contract with the United States Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) to mitigate the water right impacts of the Central Valley Project and the State Water Project (SWP).² The Agency's boundaries encompass approximately 300,000 acres, representing nearly half of the legal Delta. 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, NDWA and the State of California, acting through DWR, executed the *Contract for the Assurance of a Dependable Water Supply of Suitable Quality* (1981 Contract). The State is obligated, pursuant to the 1981 Contract, to operate the SWP to supply NDWA landowners with water quality at least equal to the standards adopted by the State Water Board, or specific year-round contractual criteria, whichever are better. Water quality criteria under the 1981 Contract vary from month to month and from year to year, based on the Four River Basin Index, and utilizes a 14-day running average of mean daily electrical conductivity (EC). The 1981 Contract also requires the State to avoid or repair damages to Delta channels and adjacent lands within the Agency from changes to natural flow in the Delta, and if necessary, may constrain operation of SWP pumps and reservoirs to further contractual compliance.

It is with this background that the Agency submits these comments on the Draft Supplement. In particular, when the State Water Board adopts new water quality objectives and implementation pathways under the new Bay-Delta Plan Update, those objectives and measures must include consideration of "past, present, and probable future beneficial uses of water" and economic considerations, among other things,³ which are not adequately captured in the Draft Supplement.

II. Comments

A. General Comments

The Draft Supplement does not describe the proposed voluntary habitat projects with enough detail for NDWA to understand the projects' potential effects on Delta water quality, surface water elevations and velocities, efficiency of gravity siphon diversions, and individual water rights. Comments herein are intended to facilitate the State's compliance with the 1981 Contract and to ensure that any significant adverse impacts to water users and Delta channels associated

² North Delta Water Agency Act, Chapter 283, Special Statutes of 1973.

³ Water Code, § 13241.

with Delta habitat projects are properly described, analyzed, and mitigated in accordance with applicable law. NDWA requests that in future environmental review of the Voluntary Agreements and the Bay-Delta Plan, all potential impacts be identified and evaluated, including the individual projects proposed for implementation, and the cumulative impacts of all proposed projects under the Voluntary Agreements. In addition, the Agency is concerned about potential environmental effects on agriculture and forest resources from short- and long-term conversion of farmland for restoration or habitat-based mitigation or enhancements. A potential impact to NDWA would be that if lands are transferred to State or Federal lands or if long-term conversions of farmland resulted in a reduction of lands subject to assessment by the Agency.

Any projects that directly or indirectly affect existing Delta water quality, water surface levels, local diversions, or flood flow velocities that can erode levees should involve early and meaningful consultation with responsible, trustee, and otherwise affected agencies and water users, including NDWA and reclamation districts in the vicinity.

B. Delta Water Supply and Water Quality Impacts

The Draft Supplement discusses the potential benefits that non-flow restoration actions, may have on ecosystem productivity, but does not analyze the potential increases in salinity levels in the North Delta that may result from expanded tidal habitat. The modeling done for the Draft Supplement shows restoration projects within the Agency's boundaries in both the baseline and Voluntary Agreement configurations (Draft Supplement, Figure 5-5). To date, NDWA has not been included in the development of the Voluntary Agreements and has not had sufficient time since the release of this Draft Supplement to further investigate the proposed project locations and details. However, restoration projects have the potential to alter the hydrology and water quality, upstream of, downstream of, and within the Agency's boundaries. Water quality is influenced by the balance of sea water entering the Delta and fresh water pushing salinity out. Any project that expands tidal habitat could result in changes to those tidal ranges, which may lower water elevations and reduce water quality due to greater salinity intrusion. Increases in mean daily EC during the irrigation season, or extreme salinity fluctuations occurring on an hourly basis, can be particularly harmful to Delta crops and soils.

Section 6.2.3 of the Draft Supplement contemplates the species benefits of tidal wetland restoration and restoration of agricultural lands that are not currently hydrologically connected. Through levee modification or removal, portions of certain project sites could become permanent open water areas with greater depths at high tides and during winter high flow events. In those scenarios, channel banks would be subjected to more intensive wave-fetch forces, leading to erosion of the levee slopes for reclamation districts within and around NDWA boundaries. Local diverters in the area could face changes in surface water elevations that affect the efficiency of irrigation siphons and pumps, requiring longer diversion periods, additional regulatory restrictions, greater likelihood of seepage damage from adjacent flooded habitat, and increased costs associated with a greater presence of endangered species in the vicinity of these local

diversion intakes. These considerations are not presently included in the Draft Supplement. NDWA has a vested interest in knowing more details about the potential for increased salinity intrusion in areas like Cache Slough, and the physical impacts of proposed projects on landowners within the Agency's boundaries. The State has an obligation under the 1981 Contract to avoid those impacts, which it cannot do without a sufficient underlying scientific understanding of the projects.

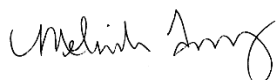
III. Concluding Recommendations

In light of the aforementioned potential impacts to water users, NDWA urges the State Water Board conduct a more comprehensive, robust analysis and modeling to be included in the Substitute Environmental Document (SED) under CEQA provide the details necessary for the public to comprehend the locations, severity, duration, and seasonal differences of all potential impacts to Delta water quality and elevation, and the State's compliance with the NDWA 1981 Contract. Any proposed changes to flows or other local water supply impacts under individual habitat projects should be adequately analyzed in the Bay-Delta Plan SED, with detailed mitigation measures that will reduce the severity of impacts on crops and soil conditions, allow efficient operation of local water diversions, and comply with water quality criteria in the 1981 Contract and applicable laws.

NDWA, local flood agencies, and Delta landowners should be engaged in meaningful consultation with State Water Board staff and project proponents as these projects become better defined. The Scientific Basis Report should analyze the specific proposed habitat locations and the extent of possible impacts to Delta flows, levee erosion and seepage, landowner diversion intakes, and water quality.

The Agency appreciates the opportunity to provide comments on the Draft Supplement and hopes to engage in a meaningful way with the State Water Board, DWR, and Voluntary Agreement participants to avoid and mitigate potential impacts to NDWA water users. With coordination and sufficiently protective measures in place, the Agency is hopeful that it can support the inclusion of Voluntary Agreements as an alternative to the unimpaired flow approach in the Bay-Delta Plan Update.

Sincerely,



Melinda Terry,
Manager