



|                     |                       |
|---------------------|-----------------------|
| Chairman            | Steve Mello           |
| Vice-Chairman       | Jack Kuechler         |
| Secretary/Treasurer | Tom Hester            |
| Director            | Topper van Loben Sels |
| Director            | Ryan Mahoney          |
| Manager             | Melinda Terry         |

May 28, 2019

Sent Via Email: [LTO@water.ca.gov](mailto:LTO@water.ca.gov)

Dean F. Messer, Chief  
DWR, Division of Environmental Sciences  
P.O. Box 942836  
Sacramento, CA 94236-0001

**SUBJECT: EIR for Long-Term Operations of State Water Project (hereinafter “Notice”)**

The North Delta Water Agency (NDWA/Agency) is pleased to submit these scoping comments in response to the above-referenced Notice, in which the Department of Water Resources (DWR) states its intent to prepare a Draft Environmental Impact Report (Draft EIR) pertaining to impacts from potential modifications to the long-term operation of the State Water Project (SWP) associated with factors such as recent amendment of the Coordinated Operations Agreement with the U.S. Bureau of Reclamation and DWR’s request for an Incidental Take Permit from California Department of Fish and Wildlife.

**Background of Agency and 1981 Contract**

NDWA has a statutory mandate under California law to assure that the lands within the North Delta have a dependable supply of water of suitable quality sufficient to meet present and future beneficial uses.<sup>1</sup> In accordance with its statutory responsibilities, in 1981 the NDWA and the Department of Water Resources (DWR/Department) 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 State Water Project that suitable water will be available to satisfy all agricultural and other reasonable and beneficial uses in all channels within NDWA’s boundaries. The 1981 Contract contains specific minimum water quality criteria to be maintained year-round and obligates DWR to avoid or repair damages from hydrodynamic changes resulting from conveyance of SWP water. The 1981 Contract also provides that, if necessary, DWR will provide alternative water supplies of suitable quality and quantity or to limit the operations of the SWP pumps and reservoirs in order to maintain compliance with the minimum water quality criteria contained in the contract.

---

<sup>1</sup> North Delta Water Agency Act, Chapter 283, California Statutes of 1973.

Subsequently, during “Phase IV” of the water right hearings that led up to Water Right Decision No. 1641 revised, DWR acknowledged its responsibilities to NDWA by means of a Memorandum of Understanding dated May 26, 1998. Taken together, the 1981 Contract and the 1998 Memorandum of Understanding constitute a broad commitment by DWR to provide a water supply of suitable quality and quantity within the jurisdictional boundaries of NDWA.

DWR’s compliance with the binding terms of the 1981 Contract is not discretionary. Moreover, the legal standards that govern DWR’s discharge of its obligations under the 1981 Contract are quite different from those that govern DWR’s compliance with NEPA, CEQA and other applicable law. For example, while CEQA requires DWR to implement feasible mitigation measures to reduce significant impacts of projects to less-than-significant levels, DWR may not, as a matter of contract law, choose not to comply with the specific requirements of the 1981 Contract based on a determination of infeasibility, or otherwise.

The CVP and SWP are operated in accordance with the Coordinated Operation Agreement between the federal government and the State of California, amended on December 12, 2018 to continue the operation of the Central Valley Project (CVP) in a “*coordinated manner with the SWP*” in a manner that enables the Bureau and the California Department of Water Resources (DWR) to “*maximize water deliveries*” consistent with “*applicable laws, contractual obligations, and agreements.*” (emphasis added). Therefore, DWR must ensure that the coordinated long-term operation of the CVP and SWP comply fully with the terms and conditions of the 1981 Contract.

The following scoping comments are intended to ensure continued compliance with the 1981 Contract and the requirements of the California Environmental Quality Act (CEQA).

### **Scoping Comments**

1. The Draft EIR should include: a) a comprehensive description of the 1981 Contract; b) identify the 1981 Contract as a significant legal constraint on the long-term coordinated operation of the SWP with the CVP; and c) identify in the EIR how proposed long-term coordinated operations will assure water supply reliability, availability, and quality for all North Delta water users, including compliance with the water quality criteria contained in the 1981 Contract.
2. All hydrologic and hydraulic modeling undertaken as part of the preparation of the Draft EIR must assume, as the “baseline” condition, that the terms and conditions of the 1981 Contract, including but not limited to its water quality requirements, will remain in full force and effect. The salinity criteria in the 1981 Contract is separate and distinct from D-1641 standards and therefore should be individually included as a requirement in DWR’s operation of the SWP.
3. The Draft EIR should analyze not only the potential impacts to water quality, water surface elevations, flows and flow direction, increased seepage and erosion resulting from various alternatives, but also the mitigations associated with the repair, modification, or replacement of existing landowner diversion facilities and levees as

required under Article 6 of the 1981 Contract due to the modification of coordinated operations of SWP with the CVP.

4. The Draft EIR must consider a reasonable range of project alternatives in accordance with CEQA and ensure that all of the alternatives proposed in the Draft EIR will avoid undermining or interfering with DWR's ability to comply with its obligations under the 1981 Contract. In other words, the discussion of alternatives in the Draft EIR should focus on alternatives that are feasible in light of the requirements of the 1981 Contract.
5. The Draft EIR should analyze the extent that any of the project alternatives cause agricultural land within NDWA to be taken out of agricultural production.
6. Any project-related significant adverse impacts within the jurisdictional boundaries of NDWA must be properly described, analyzed, and mitigated in accordance with CEQA and other applicable law. In particular, NDWA is concerned that modifying SWP/CVP Coordinated Operations in order to maximize CVP water deliveries will alter water quality, water surface elevations, and velocities in the North Delta. Such impacts must be fully analyzed and mitigated in the Draft EIR.

Thank you for considering NDWA's scoping comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with a large loop at the end of the last name.

Melinda Terry,  
Manager