



California Department of Water Resources

Special Contract Claims Procedure

For the 1981 Contract Between the State of California Department of Water Resources and the North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality

During the 2022 Drought Emergency

1. Purpose: The California Department of Water Resources (DWR) establishes this Special Contract Claims Procedure in accordance with the procedure called for in the 1981 Contract Between the State of California Department of Water Resources and the North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality and a subsequent amendment in 1997 (1981 Contract), provision 4(b)(iv), which states in relevant part, "When a drought emergency exists, ...a special contract claims procedure shall be established by the State to expedite and facilitate the payment of such compensation." The Special Contract Claims Procedure defined herein shall not modify the 1981 Contract or otherwise abridge the rights or responsibilities of the parties to that contract.
2. Initiation of Drought Emergency: As defined in the 1981 Contract, provision 4(b)(i), this Drought Emergency exists when all the following conditions occur:
 - (1) The Four-River Basin Index (Index) is less than an average of 9,000,000 acre-feet in two consecutive years; and
 - (2) A State Water Resources Control Board (State Water Board) emergency regulation is in effect providing for the operation of the State Water Project (SWP) to maintain water quality different from that provided in the 1981 Contract; and
 - (3) The water supplied to meet annual entitlements of SWP agricultural contractors in the San Joaquin Valley is being reduced by at least 50 percent of these agricultural entitlements or the total of water supplied to meet annual entitlements of all SWP contractors is being reduced by at least 15 percent of all entitlements, whichever results in the greater reduction in acre-feet delivered.

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3. Termination of Drought Emergency: As defined in provision 4(b)(ii) of the 1981 Contract, this Drought Emergency shall terminate if any of the conditions in provision 4(b)(i) of the 1981 Contract cease to exist, or if the flow past Sacramento after October 1 exceeds 20,000 cubic feet per second each day for a period of 30 days.
4. Extra-Contractual Extension of Drought Emergency Time Period: Should DWR and the North Delta Water Agency (NDWA) mutually agree to extend the term of this Drought Emergency, such an agreement shall be in writing and only amend the Termination of Drought Emergency for the purposes of establishing eligible claims.
5. Claims Eligible for Reimbursement under this Procedure: For purposes of the Special Contract Claims Procedure described herein, an eligible claim for evaluation under this Procedure occurs because of this Drought Emergency and within the timeframe(s) between the Initiation of Drought Emergency and Termination of Drought Emergency as determined at the end of the current year. Claims under this Drought Emergency shall be submitted as described in this Special Contract Claims Procedure no later than April 1 of the year following this Drought Emergency (Claim Deadline). Initiation and initial review of any eligible claims submitted by the Claimants on or before the Claim Deadline shall proceed according to Paragraphs 8 and 9 of this Procedure. Claims beyond the scope of those eligible for reimbursement under this Procedure may elect to pursue recovery under the Government Claims Act set forth in Part 3, Division 3.6, Title 1 of the California Government Code (section 900 et seq.) and applicable regulations.
6. Persons or Entities Eligible to Act as Claimant: For purposes of the Special Contract Claims Procedure described herein, an eligible claimant is a legal user of water with a claim arising upon land within the NDWA boundaries as those boundaries are defined in the 1981 Contract provision 1(a), as amended, and shall be referred to hereinafter as Claimant. Lands owned by DWR are excluded from qualifying for claims under this Special Contract Claims Procedure.
7. Calculating the Basis of an Eligible Claim: Calculating the basis of an eligible claim shall comply with the 1981 Contract provision 4(b)(iv). During the this Drought Emergency, and when an overland supply is not available to the Claimant comparable in quality and quantity to the water which would have been available to the Claimant under Attachment A of the 1981 Contract, the State shall compensate the Claimant for loss of net income, calculated on the bases of the Claimant's average net income for any three of the prior five years without the existence of this Drought Emergency for each such acre, for each acre either:
 - (1) planted to a more salt-tolerant crop in the current year; or
 - (2) not planted to any crop in the current year provided such determination not to plant was reasonable based on this Drought Emergency; or
 - (3) which had reduced yield due to this Drought Emergency.

Any recovery by the Claimant under crop insurance, or any other source of income recovery, shall be included in the calculation of net income for the purposes of calculating claims under the 1981 Contract provision 4(b)(iv).

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8. Initiation of Claim: To file a claim under this Special Contract Claims Procedure, the Claimant shall submit a Claim Request, Attachment 1 of this Special Contract Claims Procedure; any supplemental information required at the discretion of DWR; and any information the Claimant considers relevant to the evaluation of the claim. Attachment 1 requires NDWA to certify, using Attachment 2 of this Special Contract Claims Procedure, that the property identified in the claim is within the boundaries of NDWA and properly a beneficiary of the 1981 contractual protections. NDWA bears no other obligations whatsoever related to certifying a Claim Request, but will participate as necessary to facilitate the arbitration of any claim under this Special Contract Claims Procedure.
9. Initial Claim Review: Within 30 days of receipt of the certified Claim Request and any supplemental information, DWR will evaluate the completeness of the claim and issue a written response informing the Claimant of the completeness of the submitted claim. DWR, at its sole discretion, may request additional information from the Claimant during this period.

The Claimant shall make a good faith effort to provide DWR the requested information within 90 days of such request. Should the Claimant fail to make a good faith effort or exceed 90 days, DWR may, at its sole discretion, deny the claim.

Within 60 days of written response informing the Claimant of a complete claim, DWR shall evaluate the claim and provide the Claimant of its decision within 60 days. Failure to provide a decision within 60 days is deemed a denial of the claim. Upon mutual agreement by DWR and the Claimant, this 60-day period may be extended.

Claimants who submit a claim in accordance with this Special Contract Claims Procedure on or before the Claim Deadline may supplement the claim with information regarding crop yield or crop loss prior to final disposition of the claim.

If DWR's decision regarding the claim is unacceptable to the Claimant, then the Claimant may either pursue the dispute resolution procedure described herein Paragraph 10, or pursue other remedies in accordance with the 1981 Contract and applicable state law.

10. Disputes Over Initial Claim Review Outcome: If the Claimant disputes the outcome of the initial claim review process, described herein Paragraph 9, the Claimant may choose to pursue the following Dispute Resolution Procedure.
 - (1) The Claimant shall submit to DWR a completed and signed Dispute Resolution Initiation form, Attachment 3, within 30 days of DWR's decision.
 - (2) Any controversy or claim pursued through this Dispute Resolution Procedure shall be settled by arbitration and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.
 - (3) Rules of Arbitration:
 - a) Claims shall be heard by a panel of three arbitrators. One arbitrator shall be selected by DWR. One arbitrator shall be selected by NDWA. One arbitrator shall be selected by DWR but shall not be a DWR employee, and shall be an agricultural practices and crop yield expert.

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- b) The place of arbitration shall be Sacramento, CA.
 - c) The arbitration shall be governed by the laws of the State of California.
 - d) There shall be no discovery allowed. The arbitration will be based on the production of documents during the initial claims review by the Claimant and DWR, and there shall be no in-person or oral hearing. Written or electronic documents beyond those submitted during the initial claims review may be submitted as clarifications to the claim only at the request of a majority of the arbitrators.
 - e) Time is of the essence for any arbitration under this agreement and arbitration shall take place within 90 days of filing, and awards rendered within 120 days of filing. Arbitrators shall agree to these time limits prior to accepting appointment.
 - f) The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages as determined by the 1981 Contract provision 4(b)(iv), except as may be required by statute.
 - g) Each party shall bear its own costs and expenses, and an equal share of arbitration fees and any administrative fees of arbitration. A cost quote for arbitration shall be prepared by the neutral arbitrator and payment of arbitration fees and any administrative fees of arbitration shall be paid prior to initiation of arbitration, including initial review of documents.
 - h) Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without prior written consent of DWR and NDWA.
11. Timeframe for Payment of Claims: Claims that are approved for payment and not under dispute by the Claimant shall be paid within 60 days from the date upon which DWR receives a complete and signed copy of the Release of Liability form, Form 9512, Form 9657, Std 021, Std 204, and any other such forms as determined by DWR's sole discretion, from Claimant. Such forms shall be furnished by DWR to Claimant with the written notice of claim approval.
12. DWR Contact: All claims and written communications shall be submitted to swp_settlement@water.ca.gov or the address below.

Settlement Contracts and Project Exchanges Unit
Division of Operations and Maintenance
P.O. Box 942836
Alquist, 2nd Floor
Sacramento, CA 94236-0001