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January 9, 2019

**VIA U.S. AND ELECTRONIC MAIL (CONTRACTAMENDMENT\_COMMENTS@WATER.CA.GOV)**

Cassandra Enos-Nobriga  
Executive Advisor, State Water Project  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

Re: Comments on October 2018 State Water Project Water Supply Contract Amendments for Water Management and California WaterFix Draft Environmental Impact Report

Dear Ms. Enos-Nobriga:

To secure the current contractual and individual water rights of Agency landowners to adequate water supply and quality, the North Delta Water Agency (NDWA or Agency) submits these comments on the *State Water Project Water Supply Contract Amendments for Water Management and California WaterFix Draft Environmental Impact Report* (Draft EIR). The Agency appreciates this opportunity to provide feedback on the proposed changes to the State Water Project (SWP) water supply contracts.

In 1973, the Agency was formed by a special act of the Legislature to represent northern Delta interests in negotiating a contract with both the United States Bureau of Reclamation and California Department of Water Resources in order to mitigate the water rights impacts of the Central Valley Project and the SWP.<sup>1</sup> In 1981, NDWA and the Department of Water Resources (DWR) 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 SWP that suitable water will be available to satisfy all agricultural and other reasonable and beneficial uses in all channels within NDWA's boundaries. Specifically, the State is obligated to furnish "such water as may be required within the Agency to the extent not otherwise available under the water rights of water users."

In addition to enforcement of the 1981 Contract, the Agency has a clear statutory mandate under its Agency Act to assure that the lands within the North Delta have a dependable supply of water of suitable quality sufficient to meet present and future needs. It is with this background that the Agency submits these comments on the Draft EIR.

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

1. The Draft EIR is Not Appropriate for Project-Level Approvals of Transfers or Exchanges and Does Not Adequately Analyze the Program Level Impacts to Water Supplies and Quality in NDWA.

The California Environmental Quality Act (CEQA) draws a distinction between a programmatic EIR and a “project EIR,” which is “prepared for a specific project and must examine in detail site-specific considerations.”<sup>2</sup> Here, the Draft EIR refers consistently to the proposed changes to SWP Contracts as a “project,”<sup>3</sup> but provides only general information about potential transfers and exchanges under the proposed contract amendments. Elsewhere, the analysis performed in the Draft EIR is referred to as “programmatic”<sup>4</sup> because the specific timing and amount of transfers and exchanges that would result from the amendments are not known. For example, the Draft EIR explains that the changes “could result in an increase in transfers from existing conditions,”<sup>5</sup> but does not explain how the additional transfers and exchanges would impact water supplies or water quality within the North Delta.

The Agency appreciates that the Draft EIR calls for the appropriate project-level CEQA review for specific transfers and exchanges. Indeed, without details as to the timing, location, and quantity of any given transfer or exchange, the present Draft EIR is insufficient to support project-level decision making on those potentially environmentally significant transfers and exchanges and their attendant impacts. However, the Draft EIR also fails to provide sufficient analysis of the *program*-level impacts to water supplies within NDWA, and in particular the affect that these changes may have on compliance with the 1981 Contract. D-1641 does not have water quality standards in autumn and winter months, but the water quality requirements of the 1981 Contract are in place year-round, and any seasonal fluctuations in water transfers and exchanges through the Delta must be able to assure compliance with the specific salinity criteria under that agreement. NDWA therefore requests that DWR acknowledge its obligations under the 1981 Contract and include the appropriate modeling and effects analysis in the final EIR.

2. The Amendments’ Relationship to WaterFix Operations Must Be Clarified and Water Supply and Quality Impacts and Compliance with the 1981 Contract Must Be Analyzed.

The description of the proposed project is confusing and at times inconsistent. For example, the Draft EIR explains that because the volume of water delivered pursuant to the SWP contracts is not expected to change, the proposed amendments “would not change SWP operations.”<sup>6</sup> But, the amendments are specifically *intended* to change SWP operations by providing greater flexibility in transfers and exchanges within the SWP system, including under WaterFix operations.<sup>7</sup> Elsewhere, the EIR presents these amendments as “a separate and independent project from California WaterFix,” with water management actions that “would need to occur

<sup>2</sup> *Ctr. for Sierra Nevada Conservation v. County of El Dorado*, 202 Cal. App. 4th 1156, 1184 (2012), see also CEQA Guidelines § 15160 (explaining how the content of an EIR may be “tailored to different situations and intended uses”); § 15168 (“[a] program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible.”).

<sup>3</sup> See e.g., Draft EIR, at 4-1 to 4-2.

<sup>4</sup> Draft EIR, at 5.1-5.

<sup>5</sup> Draft EIR, at 5.1-6; see also Draft EIR, at 5.1-7 (“[E]xchanges may be used more frequently to respond to variations in hydrology, such as dry-year conditions when less SWP water might be available.”).

<sup>6</sup> Draft EIR, at 1-2.

<sup>7</sup> Draft EIR, at ES-3.

regardless of the outcome of California WaterFix.<sup>8</sup> However, the Draft EIR acknowledges that when and if the California WaterFix project is operational, “water transfers would occur using the California WaterFix facilities,” and that the impacts of those facilities’ operations have already undergone CEQA review.<sup>9</sup> DEIR 5.2-5. The Draft EIR fails to explain how that prior review disclosed the impacts of the SWP operational changes now proposed by the contract amendments.

The increased operational flexibility offered by the proposed contract amendments must be considered within the context of the additional operational flexibility that is proposed by the WaterFix project. The Agency requests that DWR clarify the project description to explain how the timing and volume of during all months and water year types of future transfers or exchanges carried out pursuant to the proposed contract amendments would affect the coordinated operation of the SWP and the Central Valley Project with or without the WaterFix project. In addition, DWR must analyze and disclose how those changes in operation might affect the contractual and individual water rights of Agency landowners, including DWR’s compliance with the 1981 Contract.

Thank you for your consideration of these comments.

Sincerely,



Melinda Terry,  
Manager

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<sup>8</sup> Draft EIR, at 1-2.

<sup>9</sup> Draft EIR, at 5.2-5.