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**VIA E-MAIL AND U.S. MAIL**

Karla Nemeth, Director  
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Re: North Delta Water Agency's Comments on the Final Environmental Impact Report for the Delta Conveyance Project

Dear Director Nemeth:

These comments on the Final Environmental Impact Report ("Final EIR") for the Delta Conveyance Project ("DCP" or "Project") are submitted on behalf of the North Delta Water Agency ("NDWA" or "Agency") and the water users within its boundaries. In furtherance of its statutory duty to protect and preserve the contractual and individual rights of the constituent landowners within its service area under the 1981 *Contract for the Assurance of a Dependable Water Supply of Suitable Quality* ("1981 Contract"), NDWA respectfully submits these comments for the Department of Water Resources' ("DWR") consideration.

As a preliminary matter, the Agency is concerned that DWR has stated it aims to certify the Final EIR in as little as 10 days after its December 8, 2023 public release date. This is simply not enough time to fully analyze DWR's responses and evaluate the 27,000-page document. In addition, the Final EIR does not clearly indicate where DWR has revised the text or provided new information, and the individual comment letter response tables do not identify commenters, making it extremely difficult and time-consuming to cross-reference indices and compare with the Draft EIR to determine the extent to which DWR has properly considered and responded to the comments it received. NDWA strongly disagrees with DWR's plan to hurriedly certify the Final EIR and requests that, at a minimum, DWR reconsider its decision to deny further public review.

NDWA incorporates by reference its prior comment letter submitted on the Draft EIR in December 2022. (Final EIR, Vol. 2, Table 4-3, Comment Letter Number 538.) In conjunction with its prior comments, this comment letter is intended to identify remaining concerns about the Final EIR and to urge DWR to reconsider its decision to deny a public comment period. Nothing

in this letter should be construed as a withdrawal or waiver of points raised in NDWA's prior comment letter.

The 1981 Contract serves as a guarantee by the State of California that, on an ongoing basis, DWR will ensure through its operation of the State Water Project ("SWP") that water of suitable quality and quantity will be available to satisfy all agricultural and other reasonable beneficial uses of water in all channels within NDWA's boundaries. (1981 Contract, Art. 8(a).) If a shortfall occurs, DWR 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." (*Id.* at Art. 8(b).) The 1981 Contract contains certain year-round water quality criteria, as well as provisions relating to physical hydrological changes that obligate DWR to provide specific remedies, including limiting the operations of the SWP. (*Id.* at Art. 2, 6, and 12.) In return, NDWA makes an annual payment to DWR and expressly consents to the export of water from the Delta "so long as this contract remains in full force and effect and the State is in compliance herewith." (*Id.* at Art. 8(e), 10.)

NDWA has a statutory mandate 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, in accordance with the 1981 Contract. (North Delta Water Agency Act, Chapter 283, Special Statutes of 1973.) Accordingly, NDWA reiterates that the DCP Final EIR must: (1) be based on the best available science; (2) be consistent with the contractual obligations of the State under the 1981 Contract; and (3) accurately analyze and guard against significant impacts to water quality and water supply in the North Delta.

NDWA previously commented that the Draft EIR obscures and underestimates the impacts of the proposed Project. As a result, the Final EIR fails to address the extent of impacts the DCP will have on existing in-Delta water users and the Delta levees, channels, and facilities that DWR will continue to utilize in conjunction with the new DCP components. Limiting the analysis in the Final EIR to the newly constructed structures and facilities rather than the full operation of SWP is inconsistent with the rule against "piecemealing" a project under CEQA.

The Agency remains concerned by the lack of transparency and clarity in DWR's overall project description. NDWA commented that DWR has not adequately defined the Project's operational parameters and that the undefined use of the term "operational advantage" to describe when DWR may switch to diversions from the North Delta intakes and change Delta flows and drainage was too vague. In its response, DWR does not attempt to define or clarify what conditions would trigger an "operational advantage" to warrant switching to north Delta diversions, but instead generally refers NDWA back to Chapter 3 of the Final EIR. (Final EIR, Vol. 2, Table 4-3, Response to Comment 538-5.) This response is inadequate as a matter of law because it does not enable NDWA or the general public to fully understand the nature and scope of the impacts of the proposed project. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 303, citing Pub. Resources Code, §§ 21002.1(a), 21100(b)(3); State CEQA Guidelines, 14 Cal. Code Regs., § 15126.4(a)(1).) Accordingly, the Final EIR fails to satisfy the requirements of CEQA.

The Final EIR fails to describe a clear plan with stable and defined parameters for how DWR will operate the DCP. DWR states it has revised the project description in Chapter 3 regarding operational criteria and integration of the north Delta intakes to clarify that assumptions used in the hydrologic modeling of SWP operations “are an accurate depiction of actual project operations.” (Final EIR, Vol. 2, Rev. Table 4-3, Response to Comment 538-5.) DWR’s response and the “clarifications” in Chapter 3 do not, however, establish that the modeled criteria reflect any operational *constraints* that would actually stop DWR from utilizing more of its new conveyance capacity than what is depicted. (See Final EIR, Vol. 1, Ch. 3, § 3.16.3, at p. 3-146 [“Shifting from south Delta intakes to proposed north Delta intakes has trade-offs and is not expected *unless there is an operational advantage to do so at DWR’s discretion* under limited circumstances.”]) The Final EIR lists real-time fish protections or reducing salinity at Jersey Point as examples of operational advantage that may trigger a shift in diversion priority (Final EIR, Vol. 1, Ch. 3, § 3.16, at p. 3-146), but that list is by no means exhaustive and DWR does not attempt to define “operational advantage.” Again, this approach fails to satisfy the requirements of CEQA. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-1455 [adoption of project limits as part of the certification of the EIR “was too little too late to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences”].)

Similarly, the Final EIR adds new language to Chapter 3 to say that despite the added diversion facilities and export capacity, the Project “would not increase storage withdrawal for exports .... The only exception would be to divert any stored water that was a result of a more efficient system operation because of the proposed Delta Conveyance Project.” (Final EIR, Vol. 1, Ch. 3, § 3.16.3 at p. 3-146.) The term “more efficient system operation” is not defined. By contrast, the modeling used to support DWR’s conclusions is bound by built-in operational limitations and therefore does not evaluate the effects of increased storage withdrawal and greater exports through Project facilities resulting from DWR’s discretionary actions.

NDWA appreciates DWR’s efforts to analyze its compliance with its contractual obligations by modeling electrical conductivity (“EC”) levels and water quality degradation at Three Mile Slough, the monitoring point for the 1981 Contract. (Final EIR, Vol. 1, Ch. 9, Impact WQ-5, at pp. 9-93 – 9-94.) DWR correctly describes that the 1981 Contract criteria measure EC levels on a 14-day running average basis and apply year-round, including when Bay-Delta Water Quality Control Plan criteria are not operative. (*Id.*) However, additional information is needed to determine whether DWR’s proposed operations of the DCP would cause more frequent exceedances of the water quality criteria relative to existing conditions. This is a critically important issue for NDWA and its water users.

The Final EIR indicates that EC at Three Mile Slough would measurably increase under the proposed Alternative 5 compared to modeled existing conditions in all but two months, May and June, as expressed over the full simulation period, in all year types. Median average EC levels would increase the most in September, by an average of 37%. (*Id.* at 9-93.) This degree of increased salinity is significant. Despite acknowledging that EC levels must be assessed on a 14-day average under the 1981 Contract, DWR’s modeling reflects monthly averages over the course of the simulation period. (Final EIR, Vol. 2, Table 4-3, Response to Comment 538-8.) Exceedances of the 1981 Contract water quality criteria will occur more frequently as a result of

the proposed Project, but DWR's analysis fails to disclose such exceedances due to use of the longer, averaged timestep. Moreover, the lack of a clear operations plan further obscures the accuracy of DWR's modeled results.

Even if operation of the DCP does not exceed the salinity criteria set forth in the 1981 Contract, flow changes associated with the DCP may still result in injury to NDWA water users, independent of other contract criteria. Such flow-related impacts are not adequately discussed or analyzed in the Final EIR. DWR's insistence that "changes to water supply, by themselves, are not considered an impact and are not evaluated as impacts" is in direct conflict with CEQA, which defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, *water*...." (Final EIR, Vol. 2, Table 4-3, Response to Comment 538-9; Pub. Resources Code, § 20160.5, emphasis added.) DWR's Common Response 1 and its limited analysis of environmental impacts on surface water and water supply changes as they relate to other resource categories are wholly inadequate for a water supply project. (*Id.*; Final EIR, Vol. 2, Common Response 1; see *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5<sup>th</sup>, 814, 869 ["[T]he level of detail provided in the EIR about mitigation for the significant water supply impacts fails to enable the public and decision makers to understand and consider meaningfully the issues relating to water supply impacts and mitigating those impacts."].)

NDWA appreciates DWR's continued commitment to meet its contractual obligations under the 1981 Contract. NDWA has long been a stakeholder and engaged participant in DWR's Delta conveyance planning processes. Unfortunately, the vague assurances that the DCP will not result in harmful impacts to water users and communities in the north Delta, and the failure to develop a clear operations plan and finite project description show that the DWR must do more to satisfy CEQA. NDWA appreciates your consideration of these comments.

Very truly yours,



Steve Mello  
Board President