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**SUBJECT: Comments on Draft EIS for Reinitiation of Consultation on the Coordinated Long-Term Operation of the CVP and SWP**

Dear Mid-Region Office:

The following comments on the Draft EIS for Reinitiation of Consultation on the Coordinated Long-Term Operation of the CVP and SWP are submitted on behalf of the North Delta Water Agency (NDWA/Agency).

**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 the operation of the State Water Project (SWP).

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

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

DWR's compliance with the binding terms of the 1981 Contract is not discretionary. Therefore, 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.

Under the 1981 Contract, the State is prohibited from conveying SWP water so as to cause decrease in natural flow, increase in natural flow, reversal of natural flow direction, or alteration of water surface elevations in Delta channels to the detriment of Delta channels or water users within the Agency. The State is also required to either repair or alleviate damage, improve the channels as necessary, or provide diversion facility modifications required for any seepage or erosion damage to lands, levees, embankments, or revetments adjacent to Delta channels within Agency associated with conveyance of SWP water supply. Under California law, the operation of CVP and SWP must also ensure protection of area-of-origin water rights.<sup>2</sup>

### **Impacts of Proposed Project**

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).

In addition to the protection of fish, the Proposed Project must ensure the protection of other beneficial uses in the Delta, including water quality and availability for agriculture, municipal, and industrial water supply.

NDWA is concerned that recent modifications to SWP/CVP Coordinated Operations Agreement (COA) in order to maximize CVP water deliveries and shift greater reliance on releases from Oroville Reservoir to meet Delta Water Quality Control Plan objectives (D-1641) between May 1 and August 15 will alter water quality, water surface elevations, and velocities in the North Delta to the detriments of water users. Such impacts must be fully analyzed and mitigated in the Final EIS.

None of the four alternatives in the Draft EIS describe operating the CVP and SWP in accordance with contractual obligations of DWR. Therefore, the Project Description and Preferred Alternative should be revised to ensure that the long-term CVP and SWP operations to maximize water deliveries, including water transfers and recent COA Addendum changes, ensures DWR's ability to fully comply with the water quality and availability terms and conditions of the 1981 Contract.

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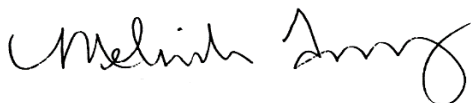
<sup>2</sup> County of Origin Law of 1931 (Wat. Code, §§ 10500-10506), the Watershed Protection Statute of 1933 (Wat. Code, §§ 11460-11465), and the Delta Protection Act of 1959 (Wat. Code, §§ 12200-12205) (collectively the “Area of Origin Laws”) enacted by the State Legislature to clarify the priority of areas of origin and help preserve water quality in the Delta

The following comments on the Draft EIS are intended to ensure continued compliance with the 1981 Contract and the requirements of the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA):

1. The final Preferred Alternative and Project Description 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 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. Section 3.3.5.3 (Delta Water Diversions) of the Draft EIS fails to mention the thousands of individual diversion intakes, primarily agricultural siphons, located in the north Delta. The Final EIS must analyze and mitigate any adverse impacts to surface water elevations and water quality where these diversions are located.
3. The Draft EIS fails to analyze whether the flows necessary for DWR to comply with obligations under the 1981 Contract will be assured in long-term coordinated operations of the CVP with the SWP. The salinity criteria in the 1981 Contract is separate and distinct from D-1641 standards and is year-round; therefore, this water quality criteria should be included as an objective in the final Preferred Alternative selected for the Record of Decision. All hydrologic and hydraulic modeling undertaken to analyze the alternatives must assume, as the “baseline” condition, that the terms and conditions of the 1981 Contract, including but not limited to its water quality requirements in the fall and winter months (August 16 through April 30), will remain in full force and effect;
4. The Final EIS should not only analyze and mitigate the potential impacts to water quality, water surface elevations, flows and flow direction, increased seepage and erosion resulting from implementing a Preferred Alternative in the north Delta, but also incorporate 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;
5. The Draft EIS failed to analyze the extent to which any of the project alternatives will cause agricultural land within NDWA to be taken out of agricultural production. Under NEPA these economic impacts need to be analyzed and mitigated in the Final EIS.

If you have any questions regarding these comments, please contact me at [melinda@northdeltawater.net](mailto:melinda@northdeltawater.net) or (916) 446-0197.

Sincerely,



Melinda Terry,  
Manager