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July 17, 2023

**Via U.S. and Electronic Mail (SWPDeltaOps@water.ca.gov)**

Chris Wilkinson,  
Division of Integrated Science and Engineering  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

Re: Comments on the Notice of Preparation of an Environmental Impact Report for the Long-Term Operations of the California State Water Project

Dear Mr. Wilkinson:

To secure the current contractual and individual water rights of constituent landowners in the North Delta of the Sacramento and San Joaquin Rivers to adequate water supply and quality, the North Delta Water Agency (the “Agency”) submits these comments on the Notice of Preparation of an Environmental Impact Report (EIR) for the Long-Term Operations of the California State Water Project (NOP).

## **I. Background**

The Agency was formed in 1973 by a special act of the Legislature to represent northern Delta interests in negotiating a water supply and quality contract with both the United States Bureau of Reclamation and California Department of Water Resources (DWR), to mitigate the water rights impacts of the Central Valley Project (CVP) and the State Water Project (SWP). In 1981, the Agency and DWR executed the Contract for the Assurance of a Dependable Water Supply of Suitable Quality (“1981 Contract”). The 1981 Contract’s fundamental guarantee is that the State of California, on an ongoing basis, will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. As the implementing agency of the 1981 Contract, DWR must operate the SWP to meet specified water quality criteria on the Sacramento, San Joaquin, Mokelumne, and North Fork Mokelumne Rivers and on Steamboat Slough, while providing enough water to satisfy all reasonable and beneficial uses of water within the Agency’s boundaries. (1981 Contract, Art. 2) In return, the Agency makes an annual payment to DWR. (*Id.* Art. 10).

## **II. Comments**

Under the California Environmental Quality Act (CEQA) an EIR serves as an “environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental

changes before they have reached ecological points of no return.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal. App.3d 818. The EIR is intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *No Oil, Inc., v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; State CEQA Guidelines, § 15003(d). To serve that purpose, the EIR for long-term operations of the SWP must provide the necessary detail to allow the public and decision-makers to make informed decisions about the potential impacts. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 672. When a project will cause potentially significant environmental impacts, the EIR must propose and describe mitigation measures to minimize or avoid those effects. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 303, citing Pub. Res. Code §§ 21002.1(a), 21100(b)(3); State CEQA Guidelines, 14 C.C.R. § 15126.4(a)(1). For DWR’s proposed Project, the EIR must contain a complete analysis of the reasonably foreseeable impacts to water supply and quality, water diversion infrastructure, and water channels and embankments in the Delta. The EIR must also provide adequate, enforceable mitigation measures and monitoring programs to minimize or avoid those potential impacts.

#### **A. The Project Description Needs to Identify the 1981 Contract.**

As set forth in the Project Description, DWR seeks to change the long-term operations of SWP facilities in the Delta, Suisun Marsh, and Suisun Bay to accommodate implementation of Voluntary Agreements for the Water Quality Control Plan Update, pending approval by the State Water Resources Control Board (SWRCB). The NOP identifies potential impacts to a number of environmental resource categories, including surface water quality and hydrology. The Agency is concerned that the contemplated updates to the long-term operations of the SWP could alter water quality, water surface elevations, and flow velocities to the detriment of water users in the North Delta. Such impacts must be fully analyzed and mitigated in the EIR.

The NOP states DWR will continue to operate the SWP in compliance with “all applicable laws and regulations, including contractual obligations” under the proposed Project. The EIR should expressly articulate DWR’s contractual obligations under the 1981 Contract and analyze how the proposed changes to the long-term SWP operations are consistent with DWR’s obligation to fully comply with the year-round water quality criteria and other terms and conditions of the 1981 Contract.

#### **B. The EIR Needs to Consider the Effects of Operating the SWP in Compliance with the 1981 Contract.**

The criteria set forth in the 1981 Contract should be incorporated into the environmental baseline from which DWR analyzes the potential impacts of its proposed changes. Modeling and analysis for the Project alternatives should address the potential effects in the North Delta and identify how the proposed long-term coordinated operations will assure adequate water supply reliability, availability, and quality for all North Delta water users. If the modeling indicates that there may impacts to surface elevations, water quality, supply, or Delta hydrology and hydraulics, the EIR must explain how DWR will continue to meet its contractual obligations under the 1981 Contract.

DWR's compliance with 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, the 1981 Contract still forbids DWR from choosing not to comply with the specific requirements of the 1981 Contract based on a determination of infeasibility, or otherwise.

The EIR should address thresholds of significance for water quality impacts including any potentially significant impacts if the Project would cause violation of a water quality standard or substantially degrade water quality, including addressing compliance with the water quality criteria of the 1981 Contract. The salinity criteria of the 1981 Contract are separate and distinct from Water Quality Control Plan standards, and are year-round. The EIR and supporting materials should therefore include DWR's nondiscretionary obligation to abide by the terms of the 1981 Contract, and analyze the impacts of the project operating in compliance with those terms. All hydrological and hydraulic modeling undertaken to analyze the alternatives must assume 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.

Moreover, water quality analysis must not be restricted only to the direct effects of the proposed changes to the long-term operations of the SWP. Section 15130 of the CEQA Guidelines requires an EIR also consider cumulative impacts. Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which compound or increase other effects. The individual effects may be changes resulting from a single project or a number of separate projects. The cumulative impact from several projects is the change in the environment, which results from the projects when added to other closely related projects. Because of the far-reaching scope of the proposed long-term operational changes, it is all the more incumbent upon DWR to fully analyze the potential cumulative impacts to water quality. Other potential projects must be accounted for in the modeling and the EIS/EIR, including proposed Delta conveyance infrastructure, marsh and habitat creation, and upstream storage projects.

### **C. Additional Comments on the Draft EIR**

The Agency makes the following additional comments on the NOP:

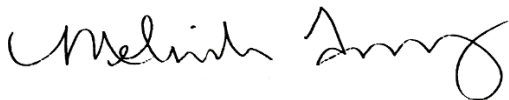
1. The EIR should meaningfully address or quantify the economic, health, and agriculture impacts due to identified and unidentified water quality exceedances and other changes in water surface elevation.
2. The EIR should consider the individual diversion intakes, primarily agricultural siphons, located in the North Delta in order to analyze and mitigate any adverse impacts to surface water elevation and water quality where these diversions are located.
3. The EIR needs to analyze whether the flows necessary for DWR to comply with water quality criteria obligations in the 1981 Contract will be assured in long-term operations of the SWP.

4. The EIR should incorporate any mitigation measures committing DWR to the repair, modification, or replacement of existing landowner diversion facilities and levees as required under Article 6 of the 1981 Contract if there are any proposed long-term modification of the operations of the SWP.

### III. Conclusion

The Agency has long been a stakeholder and highly engaged participant in DWR's operations of the SWP. Long-term changes to the operation of SWP facilities in the Delta have the potential to significantly affect water quality, water supply, and flow for water users within the Agency's jurisdiction. To ensure it can continue to comply with its contractual obligations, DWR should incorporate the criteria and terms of the 1981 Contract in its modeling and environmental analysis. Meaningful public review is the strongest assurance of the adequacy of an EIR. The Agency appreciates the opportunity to participate in that public review and thanks DWR in advance for its attention to these 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