

Memorandum

Date: December 11, 2018

To: 1. Joel Ledesma 
2. Cindy Messer
3. Karla A. Nemeth

Spencer Kenner
Chief Counsel 

Pedro Villalobos 
Chief, State Water Project Analysis Office

From: Department of Water Resources

Subject: Water Supply Contract Extension Project (SCH# 2014092036)
Project Approval

The purpose of this memorandum is to recommend that you, as Director of Water Resources, review the Final Environmental Impact Report (FEIR) for the Water Supply Contract Extension Project (proposed project) and approve the proposed project under the California Environmental Quality Act (CEQA). On November 13, you certified the FEIR as being completed in accordance with CEQA, along with other required certifications. If you determine to approve the proposed project, we also recommend that you sign the Notice of Determination for the proposed project and approve and sign each separate Water Supply Contract Extension Amendment with each of the 29 State Water Project Contractors (Contractors).

Description of Project

The proposed project would extend the term of each of the State Water Supply Contracts (Contracts) to December 31, 2085 and amend and add financial provisions to the Contracts based on the negotiated Agreement in Principle (AIP) between DWR and the Contractors. The proposed project would not create new water management measures, alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the Contracts. The changes to the State Water Project (SWP) Contracts by the proposed project are composed of the following five project elements:

1. **Extended Contract Term** - Revise Article 2 to extend the term of the 29 Contracts to December 31, 2085 (subject to the provisions of Article 4).
2. **Increased Operating Reserves** - Provide for increased SWP financial operating reserves.
3. **New Billing Provisions** - Implement a comprehensive pay-as-you-go repayment methodology with a corresponding billing system that more closely matches the timing of future SWP revenues to future expenditures. The

pay-as-you-go repayment methodology generally means to recover capital, operation, and maintenance costs within the year incurred and/or expended.

4. **Enhanced Funding Mechanisms and New Accounts** - Provide enhanced funding mechanisms and create additional accounts to address SWP financial needs and purposes.
5. **Enhanced Coordination Regarding SWP Finances** - Provide for a finance committee and other means to increase coordination between DWR and the Contractors regarding SWP financial matters.

Negotiations, Agreement in Principle and Amendment Drafting

- (1) Article 4 of the Contracts provides that a Contractor may elect to receive continued service after the expiration of the current term (and every subsequent term) on certain fundamental terms and conditions in the existing contract upon giving at least six months notice to DWR prior to the expiration of the then current term. Other terms and conditions of the continued service may be included if reasonable and equitable and mutually agreed upon. Nine Contractors provided their Article 4 notice to DWR prior to the start of the public negotiations described in item (2) immediately below.
- (2) In response to the notices the Contractors provided to DWR pursuant to Article 4 of the Contracts (see item (1) directly above) and in accordance with the public participation process set out in the Monterey Amendment Settlement Agreement (Attachment D) dated May 5, 2003, DWR and the 29 Contractors participated in 23 public negotiating sessions between May 2013 and June 2014. The negotiations resulted in AIP for the proposed project that was reached on June 18, 2014. To date, 25 Contractors have signed the AIP.
- (3) Thereafter, a joint DWR and Contractor attorney drafting committee, prepared a proposed Contract Extension Amendment based on the principles contained in the AIP. That proposed Contract Extension Amendment was presented to the Legislature in informational hearings required by Water Code section 147.5 as described below.
- (4) The statutory authority to enter into and amend contracts for the delivery of water from the SWP, including the long-term water supply contracts with the Contractors, is found in the Central Valley Project Act (Water Code, § 11100 et seq.), and in particular Water Code sections 11160 and 11454 and Chapter 7 (Wat. Code, § 11625, et seq.), and the California Water Resources Development Bond Act (Wat. Code, § 12930 et seq.), and in particular Water Code sections 12931 and 12937(b).

- (5) The proposed Contract Extension Amendment has been prepared in execution format separately for each of the 29 Contracts by, among other things, inserting the name of the Contractor and the applicable amendment number for each specific Contractor's Contract. In addition, because the AIP did not propose changes to Article 5 ("Pledge of Revenues") and a change in Article 5 is not necessary for the purposes of the AIP, the final execution version does not include the changes to Article 5 that appeared in the proposed Contract Extension Amendment. A copy of the model execution version of the Water Supply Contract Extension Amendment is included in Exhibit 1.

California Environmental Quality Act—Environmental Review

- (1) DWR prepared a Draft Environmental Impact Report (DEIR) for the proposed project. The DEIR was circulated for public review and comment from August 17, 2016 through October 17, 2016.
- (2) DWR found that the proposed project would not result in any physical environmental impacts because it would amend and add financial provisions to the Contracts and would not create new water management measures, alter the existing authority to build new or modify existing SWP facilities, or change water allocation provisions of the Contracts.
- (3) On November 13, 2018, you certified that the FEIR prepared by DWR had been completed in compliance with CEQA, was presented to you as DWR's decision making body, that you reviewed and considered the information contained in the FEIR and that the FEIR reflects DWR's independent judgment and analysis.

Legislative Informational Hearing: Water Code Section 147.5

Water Code section 147.5 requires, in relevant part, that at least 60 days prior to the final approval of the renewal or extension of a long-term water supply contract, DWR shall present at an informational hearing before the Legislature the details of the terms and conditions of the contract. The presentation shall be made to the Joint Legislative Budget Committee and any other relevant committees as determined by the leadership of the Legislature. In compliance with this requirement, DWR presented the proposed Contract Extension Amendment at informational hearings before the Senate Natural Resources and Water Committee on July 3, 2018 and the Joint Legislative Budget Committee on September 11, 2018. Thus, project approval may be made on or after November 10, 2018.

Required Actions and Findings

CEQA requires lead agencies, such as DWR, to make a number of determinations when approving a project which could have a significant impact on the environment. The first step is certification of the FEIR, which you certified on November 13, 2018.

(CEQA Guidelines, § 15090.). Following certification of the FEIR, the lead agency must make one or more written findings for any significant adverse environmental effects. (CEQA Guidelines, § 15091.) On the basis of the whole of the record before DWR, there was no substantial evidence that the project will have a significant effect on the environment. Therefore, no findings, statement of overriding considerations or mitigation monitoring or reporting plan is required for the proposed project. (see CEQA Guidelines, §§ 15091, 15093, and 15097.) DWR may now decide whether to approve or carry out the proposed project consistent with the requirements of CEQA. (See CEQA Guidelines, § 15092.)

Recommendations

1. We recommend that you make the following determinations and approve the proposed project and that you confirm your approval and your determinations by signing the "Approval of Water Supply Contract Extension Project" in the form attached as Attachment A.
 - a. On the basis of the whole of the record before you, there was no substantial evidence that the project will have a significant effect on the environment. Therefore, no findings, statement of overriding considerations or mitigation monitoring or reporting plan has been adopted.
 - b. That you have considered the Final EIR, including all issues raised during preparation of the FEIR.
 - c. On the basis of the record before you, the Water Supply Contract Extension Amendments are consistent with, and have met all applicable legal requirements, including:
 - (1) Water Code section 147.5 (the informational Legislative hearing requirement);
 - (2) The Central Valley Project Act (Wat. Code, § 11100 et seq.), and in particular Water Code sections 11160 and 11454 and Chapter 7 (Wat. Code § 11625 et seq.);
 - (3) the California Water Resources Development Bond Act (Wat. Code § 12930 et seq.), and in particular Water Code sections 12931 and 12937(b);
 - (4) Article 4 of the Water Supply Contracts (Contractor right to extend contract term provision); and
2. We also recommend that you sign the Notice of Determination in the form attached as Attachment B.

3. Finally, we recommend that you approve each separate Water Supply Contract Extension Amendment with each of the 29 State Water Project Contractors and indicate your intention to execute, but also in the event of your absence, authorize and direct the Deputy Director for the SWP to execute, each such Contract Extension Amendment, in accordance with its terms.

If you have any questions or need additional information, please call Pedro Villalobos at (916) 653-4313 or Steve Cohen at (916) 653-1101.

APPROVAL RECOMMENDED:



Joel Ledesma
Deputy Director

Date 12/11/18

APPROVAL RECOMMENDED:



Cindy Messer
Chief Deputy Director

Date 12/11/18

Attachment A: Approval of Water Supply Contract Extension Project

Attachment B: Notice of Determination

Attachment C: Model Execution Version – Water Supply Contract Extension
Amendment

ATTACHMENT A

**APPROVAL OF WATER SUPPLY
CONTRACT EXTENSION PROJECT**

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

APPROVAL OF WATER SUPPLY CONTRACT EXTENSION PROJECT

Under the CEQA Guidelines Section 15090, subd. (a), on November 14, 2018, I certified the Final EIR (FEIR) for the Water Supply Contract Extension Project as complying with CEQA. On the basis of the whole of the record before me, there was no substantial evidence that the project will have a significant effect on the environment. Therefore, no findings, statement of overriding considerations or mitigation monitoring or reporting plan has been adopted.

After considering the Final EIR, including all issues raised during preparation of the FEIR, I approve the Water Supply Contract Extension Project under CEQA.

In addition, on the basis of the record before me, the Water Supply Contract Extension Amendments are consistent with, and have met all applicable legal requirements, including:

- (1) Water Code section 147.5 (the informational Legislative hearing requirement);
- (2) The Central Valley Project Act (Wat. Code, § 11100 et seq.), and in particular sections 11160 and 11454 and Chapter 7 (Wat. Code § 11625 et seq.);
- (3) the California Water Resources Development Bond Act (Wat. Code § 12930 et seq.), and in particular Water Code sections 12931 and 12937(b); and
- (4) Article 4 of the Water Supply Contracts (Contractor right to extend contract term provision).

Consistent with the foregoing, I also approve each separate Water Supply Contract Extension Amendment with each of the 29 Water Supply Contractors. Furthermore, I intend to carry out the project by executing, but also in the event of my absence hereby authorize and direct the Deputy Director for the State Water Project to execute, each such Contract Extension Amendment, in accordance with its terms.

Dated _____

Karla A. Nemeth, Director

ATTACHMENT B
NOTICE OF DETERMINATION

Notice of Determination

To: Office of Planning and Research
1400 Tenth St., Rm 113
Sacramento, CA 95814

From: Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Contact: Pedro Villalobos, Chief, SWPAO Phone: (916) 653-4313

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number: 2014092036
Project Title: Water Supply Contract Extension
Project Applicant: Department of Water Resources
Project Location: No specific physical location, although the EIR reviewed areas encompassing SWP operations and facilities, as well as Contractor service areas
Project Description: **SEE ATTACHED**

This is to advise that the Department of Water Resources acting as the Lead Agency has approved the above described project on December 11, 2018 and has made the following determinations regarding the above described project.

1. The project will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan was not adopted for this project.
5. A Statement of Overriding Considerations was not adopted for this project.
6. Findings are not necessary and were not made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, is available to the General Public at: <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.

Signature:

Title:

Date:

Date Received for filing at OPR:

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Notice of Determination (cont.)
Project Description

Description of Project

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4. **Enhanced Funding Mechanisms and New Accounts.** Provide enhanced funding mechanisms and create additional accounts to address SWP financial needs and purposes.
5. **Enhanced Coordination Regarding SWP Finances.** Provide for a finance committee and provide other means to increase coordination between DWR and the Contractors regarding SWP financial matters.

ATTACHMENT C

**MODEL EXECUTION VERSION
WATER SUPPLY CONTRACT EXTENSION AMENDMENT**

(Accompanies This Memorandum)