

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this 26<sup>th</sup> day of May, 1998, by and between North Delta Water Agency (hereinafter "Agency") and Department of Water Resources, State of California (hereinafter "DWR").

### RECITALS

A. In 1981, DWR entered into a contract (hereinafter "1981 Contract") with Agency under which Agency agreed to make certain payments to DWR in exchange for DWR making water of a specified quality and adequate quantity available for the use of diverters within the boundaries of Agency. The 1981 Contract remains in full force and effect.

B. The State Water Resources Control Board ("State Board") has initiated a water right proceeding in order to allocate the obligation to implement water quality objectives contained in the Bay-Delta Water Quality Control Plan adopted by the State Board on May 22, 1995 (hereinafter "1995 Plan").

C. The purpose of this Memorandum of Understanding is to set forth the joint position of Agency and DWR as to the legal effect of the 1981 Contract with respect to the obligation of water users within Agency, if any, to implement water quality objectives contained in the 1995 Plan.

### UNDERSTANDINGS

1. DWR agrees that any obligation to curtail or modify diversions in order to assist in achieving any flow or salinity objective of the 1995 Plan imposed upon the use of water within Agency is entirely in the scope of the existing obligation of DWR under the 1981 Contract to provide water from the State Water Project supply, subject to the

limitations of reasonable and beneficial use. During the term of this Memorandum of Understanding, no party shall assert, before the State Board or in any court, that any other party must reduce or eliminate any of its direct diversions, diversions to storage or re-diversion of stored water, or release any previously stored water so long as the other party's method of use and method of diversion are reasonable under Article X, Section 2 of the California Constitution.

2. The parties agree that the payments made by Agency to DWR pursuant to the 1981 Contract constitute full and adequate consideration for the obligation of DWR described in paragraph 1 of this Memorandum of Understanding.

3. The parties agree that the assurances contained in the 1981 Contract, including the obligation of DWR to provide water to Agency users from State Water Project supplies, and in paragraph 1 of this Memorandum of Understanding, do not apply to any transfer of water outside Agency. The parties agree that the 1981 Contract does not affect any underlying rights the water users within the Agency may have to transfer water to the extent that such a transfer would be permissible under California law in the absence of the 1981 Contract.

4. Nothing in this Memorandum of Understanding constitutes an admission by Agency, express or implied, that the State Board has authority to limit or otherwise modify any right to divert water for use within Agency.

5. Nothing in this Memorandum of Understanding constitutes an amendment of the 1981 Contract as it presently exists.

6. This Memorandum of Understanding shall be effective only for the purposes of the currently pending SWRCB water right hearings to allocate the obligation to implement the 1995 Plan's water quality objectives, and for no other purpose.

THE NORTH DELTA WATER AGENCY

By: Dennis Leary

COUNSEL:

Clayton Payne

Date: 4/20/98

Title: Chairman

THE DEPARTMENT OF WATER RESOURCES

APPROVED FOR LEGAL FORM

& SUFFICIENCY:

By: David H. Leary

Title: Director

Susan N. Weber  
Chief Counsel

Date: 5/26/98

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