

# Exhibit C

Monterey Plus Final Revised EIR

**EXHIBIT C****MONTEREY AMENDMENT TO THE STATE WATER PROJECT CONTRACTS  
(INCLUDING KERN WATER BANK TRANSFER) AND ASSOCIATED ACTIONS AS  
PART OF A SETTLEMENT AGREEMENT (MONTEREY PLUS)  
(INCLUDING 2016 MONTEREY PLUS REVISED EIR – KERN WATER BANK  
DEVELOPMENT AND CONTINUED USE AND OPERATION)****STATEMENT OF OVERRIDING CONSIDERATIONS**

The California Environmental Quality Act (CEQA) Guidelines Section 15093 states:

- a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
- b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

The California Department of Water Resources' (Department or DWR) Findings and Determinations are found in Exhibit B to the Department's 2010 and 2016 Decision Memos. Part I.A of the 2010 and 2016 Findings and Determinations identify the proposed project's impacts that are potentially significant that can be reduced to less-than-significant. Part I.B of the 2010 and 2016 Findings and Determinations identify the proposed project's impacts that are potentially significant and unavoidable. Part II of the 2016 Findings and Determinations explains why the Department concluded that there are no feasible alternatives. In this Statement of Overriding Considerations, the Department finds that the remaining significant and unavoidable environmental impacts of the proposed project are acceptable in light of the environmental, economic, legal, social, technological, and other considerations set forth below, because the benefits of the proposed project outweigh the significant and unavoidable environmental impacts of the proposed project.

The proposed project's potentially significant effects which may not be avoided or substantially lessened, as described in the 2010 Monterey Plus Draft Environmental Impact Report (DEIR) and the 2016 Draft Revised EIR (Draft REIR) in Section 10.2 and in Chapter 8 of both documents, are restated below prefaced by their referenced identification number from the 2010 Monterey Plus Final EIR (FEIR) and 2016 Monterey Plus Final Revised EIR (REIR).

**Monterey Plus FEIR (2010):**

7.4-2 Implementation of the proposed project could potentially affect special-status terrestrial biological resources in the southern San Joaquin Valley portion of Kern County (excluding the Kern Fan Element property) resulting from construction of new groundwater storage facilities.

7.4-5 Implementation of the proposed project could potentially affect special-status terrestrial biological resources at Lake Perris.

7.4-6 Implementation of the proposed project could potentially affect riparian habitat and the special-status terrestrial species it supports at Lake Perris.

7.5-4 Implementation of the proposed project could affect visual resources at Castaic Lake and Lake Perris.

7.7-6 Fluctuation in water surface elevations at Lake Perris as a result of flexible storage and extended carryover practices could potentially alter the amount of shoreline exposed to wind erosion, which could generate wind-blown particulate emissions.

7.8-4 Implementation of the proposed project could potentially affect rates of erosion at Lake Perris.

7.9-1 Implementation of the proposed project could potentially affect recreational resources at Castaic Lake and Lake Perris.

7.13-2 Groundwater banks developed or expanded in response to opportunities to store groundwater outside service areas under Article 56 could potentially damage or destroy cultural and paleontological resources in the southern San Joaquin Valley portion of Kern County (excluding the Kern Fan Element).

7.13-6 Implementation of the proposed project and its alternatives could result in potential damage and/or destruction of cultural and paleontological resources in Plumas County as a result of watershed improvement projects.

10.1-3 Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect special-status terrestrial biological resources in the southern San Joaquin Valley.

10.1-5 Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect special-status terrestrial biological resources at Lake Perris.

10.1-6 Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially affect riparian habitat and the special-status terrestrial species it supports at Lake Perris.

10.1-8 Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially affect visual resources at Lake Perris.

10.1-11 Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially alter the amount of shoreline exposed to wind erosion, which could generate wind-blown particulate emissions.

10.1-13 Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially increase rates of soil erosion.

10.1-15 Implementation of the proposed project in combination with the Lake Perris Seismic Retrofit Project could potentially affect recreational resources at Lake Perris.

10.1-19 Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially damage or destroy cultural and paleontological resources in the southern San Joaquin Valley.

10.1-20 Implementation of the proposed project in combination with cumulative water development and reallocation projects could potentially damage or destroy cultural and paleontological resources in Pumas County.

Chapter 8 Growth-inducing Impacts.

### **Monterey Plus Final REIR (2016):**

10.1-69 Growth-inducing impacts.

## **BACKGROUND**

### **The Long-Term Water Supply Contracts**

Some understanding of the history that led to the Monterey Amendment and the Settlement Agreement is helpful in understanding the benefits of both. The long-term State Water Project (SWP) water supply contracts were originally entered into in the 1960s and earlier amendments were products of negotiations between the Department and the SWP contractors, as is the Monterey Amendment. Decisions about the Monterey Amendment fit into the context of those earlier negotiations and the balancing of interests in those negotiations.

Each long-term water supply contract has an Article 6(a) which lists each contractor's Table A amount. A contractor's Table A amount is the maximum amount of SWP water that the State has agreed to make available to a contractor during the calendar year from the SWP supply. Table A amounts serve as a basis for allocating certain costs and for allocating water in any year when the project supply is less than the sum of all contractors' Table A amounts. The Monterey Amendment did not change Article 6(a). Table A amounts were previously called "entitlement." As a result of the Settlement

Agreement, the term "entitlement" was eliminated, and the Article 6(a) amounts are now referred to as "Table A amounts."

Prior to the Monterey Amendment, the long-term water supply contracts contained provisions specifying how the Department would curtail water deliveries to contractors during a temporary or permanent shortage of water supply and providing additional water to contractors in times of sufficient supply. Article 18(a) provided a two-tier system (between SWP agricultural and municipal and industrial ("M&I") contractors) and specified that allocations to agricultural contractors would be reduced first in a shortage, but not to exceed 50 percent in any one year and not to exceed an aggregate limit of 100 percent in any series of seven consecutive years. The agricultural reductions were to occur before reducing water deliveries to M&I contractors and if additional reductions were necessary after all allowable agricultural reductions were applied, they were to be allocated proportionately among all contractors. In the event the Department declared a permanent shortage under Article 18(b), the Department would proportionally reduce Table A amounts so that the sum of the Table A amounts equaled the reduced SWP yield.

In some years when there are higher inflows to the Sacramento-San Joaquin River Delta (Delta), more water is available for pumping beyond the amounts needed to meet the Table A amounts. This water is sometimes called "surplus water" or "Article 21" water. "Surplus water" as described in Article 21 of the SWP long-term water supply contracts has a very specific meaning under these contracts, pre- and post- Monterey Amendment. It means "...project water available as determined by the State that is not needed for fulfilling contractors' annual [Table A] deliveries as set forth in their water delivery schedules furnished pursuant to Article 12 or for meeting project operational requirements, including storage goals for the current or following years." Under Article 21 before the Monterey Amendment, this extra water would go first to agricultural contractors and groundwater replenishment before it could go to M&I contractors. As with any other water that is permitted to be exported from the Delta, Article 21 exports must be in compliance with current State and federal regulatory requirements in effect at the time of export.

Through the 1980s, rising contractor demands and increased environmental needs made it more difficult for the SWP to deliver the water requested by SWP contractors. In addition, the drought of 1987 to 1992 sharply reduced SWP water supplies. From 1990-1992, the Department imposed reductions in contractor allocations in accordance with the provisions of Article 18(a). In the early to mid-1990s, there were disagreements among the contractors and the Department over how the SWP water supply contracts were to be interpreted and water supply allocated between agricultural and M&I contractors, as well as difficulties with other issues including potential development of the planned Kern Water Bank (KWB).

Some agricultural contractors wanted Article 18(b) of the long-term water supply contract invoked because they asserted they had been hurt by the complete cut off of water deliveries from the SWP during the drought due to allocation of water supplies under Article 18(a). They believed that invoking Article 18(b) would reduce the future likelihood

and hardship of receiving no water but still having large bills to pay. Accordingly, they threatened to sue the Department unless the Department invoked Article 18(b).

The M&I contractors were concerned that the overall result of implementing an Article 18(b) reduction in Table A amounts and following the then-existing contract provisions on Article 21 water availability would result in a shift in water deliveries from urban users to agricultural users. The M&I contractors contended that while the water shift would favor agricultural users, the majority of costs would still be borne by the urban users. As a result, some M&I contractors were likely to file a lawsuit challenging a decision by the Department to invoke Article 18(b). The Department and the contractors thought that negotiations among the contractors and the Department would be more likely to result in an acceptable balancing of the interests involved than would a litigated outcome. There was also concern that if some contractors went to court over this issue, all contractors and the Department would incur significant litigation costs for several years which would only be a prelude to settlement negotiations. The decision to enter the mediated negotiations that led to the Monterey Agreement was a decision to enter into negotiations directly rather than spending large sums on litigation before starting negotiations. As negotiations continued, it became obvious that the water allocation problem could not be addressed as a single issue and the parties agreed not to limit the discussions to Article 18. The final result of the negotiations was the adoption of the multi-faceted Monterey Agreement that incorporated compromises among all of the parties, and which became the basis for the Monterey Amendment.

### **The Monterey Agreement EIR**

An EIR was prepared and certified by the Central Coast Water Authority (CCWA) on the Monterey Agreement. The *Planning and Conservation League (PCL) v. DWR* litigation ensued, challenging that EIR. After the Court of Appeal ordered the EIR to be decertified and the Department to prepare a new EIR, the plaintiffs in the case, most of the SWP contractors, and the Department entered into a Settlement Agreement to resolve disagreements among the Department, SWP contractors, and the plaintiffs over how to proceed following decertification of the CCWA EIR. The intent of the Settlement Agreement was to avoid further litigation and associated costs. From the plaintiffs' view, it provided for an effective way to participate in the preparation of a new EIR and make other improvements in the operation and responsiveness of the SWP. From the contractors' view, it also provided various assurances regarding specific actions that had already taken place.

The impetus behind the Monterey Amendment and the Settlement Agreement is to reduce the conflicts and provide a solution that competing interests could support. The proposed project's objectives were established taking into consideration the whole of the proposed action. The history and description of both the Monterey Amendment and the Settlement Agreement in the Monterey Plus FEIR describe the negotiation process leading up to both agreements. Because they were negotiated agreements, all parties to the agreements must have perceived a benefit or there would have been no reason to enter into the agreements. The reasons for signing may have been different for each party, but each had to believe that it would benefit from the changes as a whole. Some

parties may have given up some rights or benefits in exchange for other benefits. These benefits are incorporated into the objectives. If any component is removed or any objective is not met, one of the parties is likely to have not gained the benefit it thought it was gaining to offset its own compromises when signing the agreement.

The Department has determined in this case that to fulfill the fundamental intent and purpose of the proposed project, it is important that essentially all of the objectives of the Monterey Amendment and the Settlement Agreement are met, whether pursuant to the proposed project or a feasible alternative. The basic purpose of these agreements can be achieved only if the carefully balanced provisions of the agreements are met. Failing to meet one or more objectives would leave one of the parties to the agreement in a poorer situation than the other parties, thus fundamentally changing the proposed project..

### **The Monterey Plus EIR**

The Department, as the lead agency under CEQA, prepared the EIR for the *Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus)* (Monterey Plus EIR) and certified the Monterey Plus EIR on February 1, 2010. On May 5, the Department filed a Notice of Determination (NOD), explaining that it had determined, after review of the Monterey Plus EIR, to continue operating under the existing Monterey Amendment and the Settlement Agreement. The EIR evaluated the 1995 Monterey Amendment and 2003 Settlement Agreement, which address aspects of SWP long-term water supply contracts, including transferring ownership of approximately 20,000 acres of land known as the Kern Fan Element (KFE) from the Department to the Kern County Water Agency (KCWA). (KCWA, in turn, transferred the property to the Kern Water Bank Authority, who started operating the KWB on the property in 1997.)

Several parties challenged the adequacy of the Monterey Plus EIR under CEQA. In 2014, the Monterey Plus EIR was found by the Sacramento County Superior Court (Court) to comply with CEQA in all aspects except with respect to the development, use, and operation of the KWB. The court specified that the Department vacate its February 1, 2010 certification of the Monterey Plus EIR and correct the deficiencies and recertify the EIR without reopening the non-defective portions of the EIR. Upon recertification, only those portions of the revised EIR (REIR) that are new or changed shall be subject to challenge under CEQA by petitioners or other interested parties.

### **The Revised Monterey Plus EIR**

The Department decertified the Monterey Plus EIR on December 11, 2014, and has developed the three-volume Monterey Plus Draft REIR and Final REIR in response to the Court ruling and in accordance with Public Resources Code Section 21168.9. Document A1 (Monterey Plus Draft REIR) presents all the changes to the Monterey Plus EIR made as a result of the Department's reanalysis of the KFE property transfer and new analysis of the KWB development and continued use and operation. Document A2 (Final REIR) presents errata for the Draft REIR, comments on the Draft REIR, and responses to comments on the Draft REIR. Since DWR decertified the Monterey Plus EIR, pursuant to the Court's order, the REIR also includes, without modification, the 2007 Draft EIR (Document B, including

Volumes I and II) and the 2010 Final EIR (Document C, including Volumes I and II). Together, these four documents (A1, A2, B, and C) constitute the Monterey Plus REIR.

Part II of the Findings and Determinations (Exhibit B) explains why the Department determined that specific economic, legal, social, technological, or other considerations make infeasible the project alternatives identified in the Monterey Plus REIR as required by Section 15091(a)(3) of the CEQA Guidelines. This Statement of Overriding Considerations balances the economic, legal, social, technological, or other benefits of the proposed project against its unavoidable environmental risks in accordance with Section 15093(a) of the CEQA Guidelines.

## **CONCLUSIONS AND FINDINGS**

As stated within Part II of the Findings and Determinations (Exhibit B), the proposed project analyzed in the 2010 Monterey Plus EIR was the Monterey Amendment and the Settlement Agreement. The Monterey Plus EIR considered five “elements” of the Monterey Amendment, including “Transfer of property known as the “Kern Fan Element property” in Kern County.” These findings for the Monterey Plus REIR address the description of the Kern Fan Element property transfer as changed in the Draft REIR on page ES-4 as follows:

- Transfer of property known as the “Kern Fan Element property” in Kern County and its development and continued use and operation as a locally owned and operated groundwater banking and recovery project (KWB activities).

The conclusions and findings for the 2016 Monterey Plus REIR do not make any changes to - and do not supersede - the previous conclusions and findings adopted in the Statement of Overriding Considerations for the 2010 Monterey Plus EIR. Because of the change to the project description, however, and in an effort to contain the conclusions and findings for this 2016 Statement of Overriding Considerations in one location, DWR is restating here the 2010 Monterey Plus EIR conclusions and findings.

### **The Department makes the following conclusions and findings:**

1. The proposed project cannot be implemented in a way that accomplishes the fundamental project purpose and key objectives without resulting in the significant and unavoidable impacts described in the final EIR and summarized above. The Department has balanced the economic, legal, social, technological, and other benefits of the proposed project and has determined that the benefits of the proposed project outweigh its unavoidable adverse environmental impacts.
2. All of the significant and unavoidable direct impacts are the result of four activities of the proposed project:
  - a. The water supply management practice regarding flexible storage provisions for Castaic Lake and Lake Perris.
  - b. The water supply management practice regarding storage outside a SWP contractor's service area.

- c. The Settlement Agreement provisions regarding watershed improvement projects in Plumas County.
- d. The KWB's development, use and operation.

As discussed in Exhibit B, Findings and Determinations, many of these potentially significant effects are unlikely to occur and in most cases are likely to be mitigated by actions of local public agencies with responsibility and jurisdiction for such actions. The Department nonetheless took a conservative approach and found that such impacts were significant and unavoidable because it could not say with certainty that the impacts would never occur. Even those potentially significant effects that cannot be mitigated by local public agencies are likely to be the subject of further CEQA review by such agencies and subject to additional scrutiny, analysis and mitigation.

- 3. The Department has determined that the proposed project would provide the following public benefits that justify proceeding with the project despite the environmental cost of the residual significant effects:
  - a. Water supply reliability and equitable allocation among SWP contractors would be facilitated in both wet and dry years, creating significant related statewide benefits for the economy, agriculture, environment and citizens.
  - b. Procedures by which agricultural and M&I contractors would allocate shortages and surpluses are restructured and clarified to allocate water on a pro-rata basis in proportion to Table A amounts, thereby eliminating potentially economically devastating agricultural first shortage provisions and giving equal priority for Article 21 water to all contractors in proportion to each contractor's Table A amounts.
  - c. More equitable allocation of shortages would eliminate the reasons for declaring a permanent shortage under Article 18(b) due to a reduction in firm (or minimum) yield, and, consistent with current practices (which consider the probability of an amount of water being delivered annually rather than firm yield when determining the reliability of SWP water supplies) would make Article 18(b) irrelevant.
  - d. Financial responsibility for SWP operations would be more equitably distributed based on water allocation and distribution.
  - e. Statewide water reliability would be improved by providing more flexible water storage capability. Increased water supply reliability helps support the State economy and meets the public's need for agricultural and domestic water supplies.
  - f. Water supplies could be moved more easily through Department administered water pools and Table A transfers to areas of greater economic need between agricultural uses and urban uses.

- g. Agricultural water users would face a lower risk of receiving no water supplies in a dry year while still being required to pay high water contract costs. The lowered risk could keep some lands in agricultural production even in dry years and consequently provide agricultural water users with a baseline of income and reduce their financial loss.
- h. Resolution of legal and institutional issues relating to storage of water in KWB Lands and development of KWB Lands by local interests facilitated the expanded development of the water banks and increased the flexibility and utility of groundwater banking in the southern San Joaquin Valley for water management of local and state water resources through underground storage.
- i. Reliability and flexibility of SWP water supplies would be improved in conjunction with local supplies.
  - i. Users of Lake Perris and Castaic Lake allow contractors paying for the capital costs of these reservoirs to borrow and later return stored water from the reservoirs, giving them more flexibility to manage their available water resources.
  - ii. Storage in SWP facilities and outside a contractor's service area allows contractors more flexibility to store available water that is not needed for current uses for use at a time of future need.
  - iii. The Turnback Pool encourages contractors with more Table A water than they need to turn it back for use by other SWP contractors sooner in the season when it has more certainty and value and provides revenue for the selling contractors to help offset part of their costs for the SWP.
  - iv. Specifying and clarifying conditions of transport of non-SWP water facilitates and expedites these transfers.
- j. Watershed management and restoration would be implemented in Plumas County, improving the conditions for retention (storage) of water for augmented instream flow, improved water quality, enhanced upland vegetative management, and increased groundwater retention/storage.
- k. Plumas County's access to SWP water would be changed to reflect actual local hydrologic conditions.
- l. Public understanding of SWP water issues would be improved through the changes to the long-term water supply contract language by eliminating the word "entitlement", publishing the biennial SWP Delivery Reliability Report, and providing for public participation in the event of future project-wide contract amendments.
- m. The risk that local decision-makers will make inappropriate planning decisions based on a contractor's "paper water" Table A amount is reduced due to the

Department's biennial preparation and distribution of its SWP Delivery Reliability Report.

- n. Assurances regarding finality of some Table A transfers provides certainty for the parties to those transfers, and the transfer of title of the KFE property with the accompanying assurances regarding environmental protection of KWB Lands and limitation on use and sale of the KWB Lands provides certainty for the parties to the transfer and protection for environmental resources of the KWB Lands.