

# North Delta Water Agency Public Meeting

November 19, 2009  
Courtland, California

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## North Delta Water Agency Introductions

- Melinda Terry
  - North Delta Water Agency
  
- George Basye
  
- Gary Kienlen
  - MBK Engineers
  
- Joe Schofield
  - Downey Brand, LLP

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Public Meeting Agenda

- History of Delta Water
- North Delta Water Agency
- Contract and Contract Benefits
- Legal Aspects of Contract
- Delta Planning Process
- Payments and Assessments
- Questions
- Summary and Next Steps

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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# North Delta Water Agency Background and Contract

George Basye

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## North Delta Water Agency History of Delta Water



- Completion of Shasta Dam
- Sacramento River Settlement Contract Negotiations 1950 – 1960
- Passage of Delta Protection Act 1959
- Delta Water Agency formed 1968
- Delta Water Agency dissolved 1973
- North Delta Water Agency formed January 1, 1974
- South and Central Water Agencies formed

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Background

- Approx. 277,000 acres
  - Sacramento
  - San Joaquin
  - Solano
  - Yolo counties



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## North Delta Water Agency Background

- Division I
  - Steve Mello
- Division II
  - Carel van Loben Sels
- Division III
  - Henry Kuechler
- Division IV
  - Kenneth A. Ruzich
- Division V
  - Neil Hamilton



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## North Delta Water Agency Contract



- Contract between Agency and Department of Water Resources
  - Executed in 1981
  - Protects and assures
    - Water quality
    - Water supply

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Contract

NORTH DELTA WATER AGENCY

**WHY HAVE AN AGREEMENT?**

The demand for water both above the Delta and for export south of the Delta is constantly increasing. Water rights law is changing in response to the ever-increasing demands. Even though most North Delta water users have vested water rights, the extent of those rights can be established only through a general adjudication of all water rights in the entire Sacramento-San Joaquin River System and Delta. Such an adjudication would take years to resolve, would be extremely expensive, and the outcome as to any particular water user is uncertain.

- Contract is impressive in its brevity, clarity and relevance after 29 years

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## North Delta Water Agency Contract and Contract Benefits

Gary Kienlen  
MBK Engineers

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## North Delta Water Agency Contract Benefits

CONTRACT  
BETWEEN  
DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY  
DEPARTMENT OF WATER RESOURCES  
AND  
NORTH DELTA WATER AGENCY  
FOR THE ASSURANCE  
OF A DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY

(Contract Title, emphasis added) 11

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## North Delta Water Agency Dependable Water Supply



- Quantity of Water
  - Reasonable and Beneficial Use
- Place of Use
  - Within boundaries of Agency
- Continued diversion
  - Curtailment periods – Term 91
  - Periods of Unavailability

Photo Source: [http://www.grandstandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandstandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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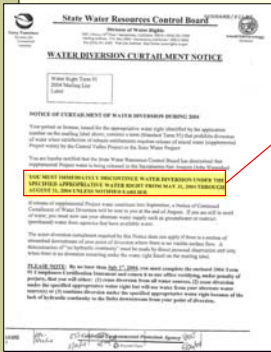
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## North Delta Water Agency Dependable Water Supply Cont.



**YOU MUST IMMEDIATELY DISCONTINUE WATER DIVERSION UNDER THE SPECIFIED APPROPRIATIVE WATER RIGHT FROM MAY 31, 2004 THROUGH AUGUST 31, 2004 UNLESS NOTIFIED EARLIER.**

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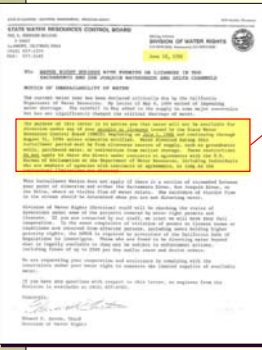
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## North Delta Water Agency Dependable Water Supply Cont.



The purpose of this letter is to advise you that water will not be available for diversion under any of your permits or licenses issued by the State Water Resources Control Board (SWRCB) beginning on July 1, 1994 and continuing through August 31, 1994 unless otherwise notified. Water diverted during this curtailment period must be from alternate sources of supply, such as groundwater wells, purchased water, or redirection from earlier storage. These restrictions do not apply to those who divert under contracts or agreements with the U.S. Bureau of Reclamation or the Department of Water Resources, including individuals who are members of agencies with contracts or agreements, as long as the contractual limitations are observed.

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## North Delta Water Agency Dependable Water Supply Cont.

- Phase 8 Hearings
  - MOU recognized by SWRCB
- Protection from changes in SWP operations
  - Changes in natural flow
  - Flow direction
  - Water surface elevation

Photo Source: [http://www.grandstandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandstandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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### North Delta Water Agency Suitable Water Quality

- Quality of water
  - SWP operated to meet better of
    - SWRCB Standard
    - NDWA Contract criteria
  - No measureable change in ocean salinity gradient

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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### North Delta Water Agency Water Quality Monitoring

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### North Delta Water Agency Suitable Water Quality

- Water Quality Control Plan (D 1641)
  - April 1 thru August 15
- Agency Contract
  - Year Round

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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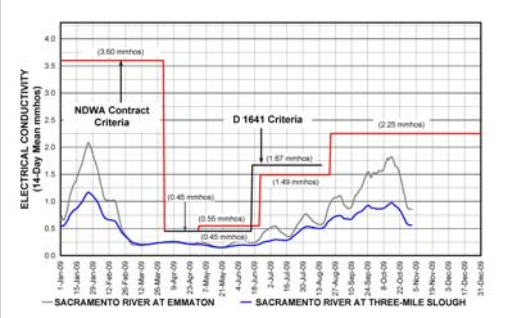
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## North Delta Water Agency Sacramento River at Three-Mile Slough



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## North Delta Water Agency Contract Compliance



- Contract compliance
  - Periods of non-compliance
  - Remedies

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Contract Compliance



- Emergency Drought Provisions
  - Four River Basin Index
    - Less than 9 MAF in two consecutive years
  - SWRCB emergency regulation
  - SWP agriculture contractors reduction in entitlements

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Term of Contract

- “This Contract shall remain in full force and effect until such time as it may be terminated by written consent and agreement of the parties hereto....” (Article 9(a))
- Parties can renegotiate price 40 years after execution (1981-2021)

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Contract Payment

- Initial Payment \$170,000/year
- Payment may increase up to 25% every 5 years
- Current Payment \$370,000/year

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## Water Rights and Legal Aspect of the Contract

Joe Schofield  
Downey Brand, LLP

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**North Delta Water Agency**  
Overview of Surface Water Rights

- Riparian
- Pre-1914 Appropriative
- Post-1914 Appropriative

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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**North Delta Water Agency**  
Overview of Surface Water Rights

“[T]he rule of priority *applies only to the use of natural or abandoned flows* in a watercourse. No riparian or appropriator has a right to use water that was previously stored or imported by another upstream and then released into the watercourse for use . . . .”

*El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937.

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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**North Delta Water Agency**  
Overview of Surface Water Rights

State Water Resources Control Board:

- Letters/Notices of Curtailment
- Cease and Desist Orders / Fines
- *Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89.

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Contract

“The State recognizes the right of the water users of the Agency to divert from the Delta channels for reasonable and beneficial uses for agricultural, municipal and industrial purposes on lands within the Agency, . . . and the State shall furnish such water as may be required within the Agency to the extent not otherwise available under the water rights of water users.” (Article 8(a)(ii); emphasis added.)

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Reasonable and Beneficial Use

- California Constitution Article X Section 2 requires all use of water to be reasonable and beneficial
- Definition of reasonable use of water
  - Dynamic

“At some point in the future, the Legislature, the SWRCB or the courts may declare that water use not in compliance with defined urban or agricultural water use efficiency measures/best management practices is unreasonable.” (Attorney General)

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## North Delta Water Agency Contract

“The State recognizes the right of the water users of the Agency to divert from the Delta channels for reasonable and beneficial uses for agricultural, municipal and industrial purposes on lands within the Agency, and said diversions and uses shall not be disturbed or challenged by the State so long as this contract is in full force and effect....” (Article 8(a)(ii); emphasis added)

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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# California Delta Planning Processes

Melinda Terry  
North Delta Water Agency

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## California's Delta Planning Processes

- Bay-Delta Conservation Plan (BDCP)
  - Ongoing process, Permit approval in Dec 2010  
[www.baydeltaconservationplan.com](http://www.baydeltaconservationplan.com)
- California Water Legislation (2009)
  - SB X7 – 1 Delta Policy Bill
  - SB X7 – 8 Water Diversion and Use Reporting
    - Bond measure to be included on November 2010 ballot
- State Water Resources Control Board (SWRCB)
  - Delta Strategic Workplan (through 2013)
  - Establish accounting, use reporting, and enforcement of water diversion and use in the Delta by December 2010
  - Develop flow criteria in Delta necessary to protect public trust resources (within 9 months)
  - Delta Watermaster

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## California's Delta Planning Processes Cont.

- Delta Stewardship Council (DSC)
  - Prepare Delta Management Plan by Jan 2012
  - Develop interim plan for early actions
- Delta Protection Commission (DPC)
  - Prepare Economic Stability Plan by July 2011
  - Recommend changes to primary zone by July 1, 2010
  - Provide recommendations to DSC on significant Delta projects
- Delta Conservancy
  - Prepare Strategic Plan by Dec 2012
- Delta Counties
  - Prepare resource management plan

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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# Financing Agency Activities

## Present and Future Activities

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## Present Activities

- Bay Delta Conservation Plan
  - Engineering, legal and science advisor
    - Prepare public comments
    - Analyze modeling results

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## Potential Future Activities

- Bay Delta Conservation Plan
  - Engineering and Legal
    - Continue to prepare public comments
    - Continue to analyze modeling results
    - Negotiate new Bay-Delta Plan MOU
    - Protect 1981 Contract provisions
- Delta Stewardship Council, Delta Protection Commission, Delta Conservancy, and SWRCB Delta Plans
  - Engineering
    - Additional monitoring and reporting
  - Legal
    - Protect 1981 Contract provisions
- Legal Challenges – BDCP, DSC, SWRCB, etc.

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## Agency Payments and Assessments

Gary Kienlen  
MBK Engineers

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### Landowner Assessment and Contract Payment

- Current Assessment
  - \$1.80 per acre
  - \$8.00 minimum
- Contract Payment
  - First payment in 1982 was \$170,000
  - Payment may increase up to 25% every 5 years
  - Current payment is \$370,000

Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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### Need for Assessment Adjustment

Year	Annual Expense (k\$)	Current Annual Income (k\$)	Available Funds (k\$)
2007	550	550	1000
2008	550	550	950
2009	550	550	900
2010	550	550	850
2011	550	550	800
2012	550	550	750
2013	550	550	700
2014	550	550	650
2015	550	550	600
2016	550	550	550
2017	550	550	500
2018	550	550	450
2019	550	550	400
2020	550	550	350
2021	550	550	300

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## Requirements for Assessment Adjustment

- Comply with Proposition 218
  - Effective in 1997
  - Requires:
    - Assessment based on proportional "special benefits"
    - Assessments must be supported by a detailed engineer's report
    - Report to describe proposed methodology for allocating proportional benefits

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## Engineer's Report

- Commission appointed by Sacramento County Board of Supervisors
  - Gary Kienlen
  - Mike Hardesty
  - George Basye
- Engineer's Report
  - Identify "special benefit"
  - Determine proportional "special benefit"
    - Water Supply
    - Water Quality

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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## Proposition 218 Process

- Notice to owner of record
  - Summary of proposed assessment
  - How assessment was derived
  - Ballot
  - Date of public hearing
- Hearing 45-days after notice
- Approval by simple majority
- Vote weighted proportional to assessment

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Photo Source: [http://www.grandislandmansion.com/Archive-11-6-2008/about\\_the\\_california\\_delta/index.htm](http://www.grandislandmansion.com/Archive-11-6-2008/about_the_california_delta/index.htm)

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**North Delta Water Agency**

Questions?



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