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October 13, 2025

Via Electronic Mail Only

California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
DCP_Consistency@water.ca.gov

Re: Comments on Draft Certification of Consistency for Delta Conveyance Project

Dear Department of Water Resources:

The following preliminary comments on the California Department of Water Resources' (DWR) October 2025 *Public Draft Delta Conveyance Project Certification of Consistency with the Delta Plan* (Draft DCP Consistency Certification) are submitted on behalf of the County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, County of Solano, County of San Joaquin, County of Yolo, and City of Stockton (collectively "Delta Public Agencies"). The Delta Public Agencies strongly disagree with the certification of consistency determination proposed by DWR, but are unable to provide substantive comments in the short 10-day comment period. Ten days is not enough time to read, digest, and comment on the 241-page Draft DCP Consistency Certification and its 23 appendices, some of which exceed 180 pages. It is manifestly inequitable to allow only 10 days for DCP stakeholders to comment on the voluminous and technically dense material for this incredibly important matter especially where DWR submitted its Notice of Intent (NOI) on a Friday, thus ensuring the comment period spanned two weekends, and week in which three full working days are committed to the hearing on DWR's proposed DCP water right change petition. DWR could and should allow additional review time. The Delta Stewardship Council (DSC) requirement to post a draft certification "[a]t least 10 days prior to its submission of a certification to the council"¹ sets a floor, not a ceiling.

¹ Delta Plan, Appen. D [Administrative Procedures Governing Appeals, Statutory Provisions Requiring Other Consistency Reviews, and Other Forms of Review or Evaluation by the Council], p. 2 [¶ 3, citing Wat. Code, §§ 85225, 85225.30].

As a threshold issue, the Draft Certification is fatally incomplete because there is no decision on its pending water right change petition for the DCP. DWR and DSC cannot presume the change petition will be granted, or what the terms of any permit may include. The permit terms and conditions would be essential to evaluate the DCP's consistency with the co-equal goals and Delta Plan policies. Relatedly, there has been no decision as to whether the State Water Resources Control Board (SWRCB) will grant DWR's January 2025 petition to extend the time period to construct and put the water rights associated with the State Water Project to beneficial use. DWR issued a notice of preparation of an environmental impact report for this project on September 30, 2025.² That approval is also essential to the full use of the new DCP intakes as proposed by DWR.

DWR also cannot demonstrate consistency with the requirement that the DCP incorporate appropriate Delta flow criteria as required by Water Code section 85086 and ER P1 with the information in the current record. In an October 10, 2025 letter to DWR (attached), the SWRCB Administrative Hearing Officer (AHO) determined that "the administrative record developed to date is inadequate to inform the State Water Board's decision concerning what Delta flow criteria would be appropriate for the DCP, as required by the Delta Reform Act, and to evaluate requirements that may be necessary to ensure consistency with the proposed updates to the Bay Delta Plan." (See Attachment, pp. 3-4, citing Wat. Code, § 85086.) It is therefore impossible for DWR to use the Bay-Delta Water Quality Control Plan (WQCP) flow objectives to determine the DCP's consistency with the Delta Plan, as required by Delta Plan Policy ER P1,³ because: (a) those flow objectives are still pending adoption; and (b) the AHO has determined that there is insufficient information to determine the appropriate flow criteria for the DCP to comply with the Delta Reform Act and the WQCP. As a result, DWR lacks substantial evidence that it is consistent with ER P1 as this supplemental information has not yet been made available.

The lack of approved water rights and failure to provide substantial evidence supporting appropriate flow criteria⁴ were among the fatal flaws in DWR's certification for the California WaterFix and there is no reason to believe the DCP will not suffer the same fate if DWR proceeds prematurely to certify the DCP. Proceeding with a certification in the absence of this essential information would result in a waste of enormous public resources. DWR should withdraw its NOI and commit to the DSC and the public that it will not submit a certification of consistency for the DCP unless and until it has received water right permits for

² *Notice of Preparation of an Environmental Impact Report and Scoping Meeting for the Petition Requesting an Extension of Time to More Fully Exercise Conditional Water Rights for Operation of the State Water Project* (Sept. 30, 2025) Department of Water Resources <https://water.ca.gov/News/Public-Notices/2025/Sep-25/EIR-and-Meeting-for-Petition-Requesting-Extension-to-Exercise-Conditional-Water-Rights-for-SWP> [as of Oct. 10, 2025].

³ Cal. Code Regs., tit. 23, § 5005, subd. (a).

⁴ See November 8, 2018, DSC Staff Draft Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for California WaterFix, pp. 4, 65.

the North Delta diversions and until SWRCB has taken final action on the pending WQCP amendments.

Although the Delta Public Agencies are unable to provide substantive detailed comments on the Draft DCP Consistency Certification during this very brief 10-day review period, they provide input on what constitutes the “full and complete” record that “was before the certifying agency at the time it make[s] its certification.”⁵ The record for the Final DCP Certification of Consistency with the Delta Plan must include the following materials that are inextricably linked to this matter and have been and are before DWR during preparation of the Draft and Final DCP Submittals:

- The entire record associated with the California WaterFix Certification of Consistency submitted to DSC in 2018—the precursor project for the DCP. DWR previously compiled this record material. In significant respects, the DCP is similar or identical to the California WaterFix project, making the California WaterFix Certification record relevant to the DCP certification.
- All documents to date associated with the ongoing SWRCB hearing for DWR’s Petitions for Change of Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) for implementation of the DCP, including but not limited to written testimony and exhibits, transcripts, orders and rulings, modeling files, supplemental information, policy statements, correspondence, and related litigation documents. All hearing documents are available on SWRCB’s Administrative Hearings Office FTP website created for the DCP.
- All pleadings and other documentation associated with the DCP litigation against DWR brought by several petitioners, including the Commenters named herein, under the California Environmental Quality Act (CEQA),⁶ the Delta Protection Act,⁷ the Watershed Protection Act,⁸ the Delta Reform Act,⁹ the Public Trust Doctrine, and other claims.
- The complete administrative record pursuant to CEQA for the DCP Final Environmental Impact Report (State Clearinghouse No. 2020010227). This record material has already been compiled in draft form by DWR for the above-referenced litigation.

⁵ Cal. Code Regs., tit. 23, § 5022, subd. (e)(1).

⁶ Pub. Resources Code, § 21000 et seq.

⁷ Wat. Code, § 12200 et seq.

⁸ *Id.*, § 11460 et seq.

⁹ *Id.*, § 85000 et seq.

- The September 20, 2024, comment letter submitted to DWR from the Delta Independent Science Board of the DSC on the DCP Final Environmental Impact Report.

The Delta Public Agencies request that the record for the Final DCP Certification of Consistency contains the material listed above so that it reflects the full and complete record before DWR as the certifying agency. If DWR omits this material, the Delta Public Agencies will timely submit a request to DSC (copied here) to supplement the record with this additional documentation and information.¹⁰

Sincerely,

Somach Simmons & Dunn



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District, and City of Stockton*

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/s/ Osha R. Meserve

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Solano, and County of Yolo*

Attachment

cc: Julie Lee, Chair of DSC, engage@deltacouncil.ca.gov

¹⁰ Cal. Code Regs., tit. 23, §§ 5026, subd. (b), 1032.

ATTACHMENT

State Water Resources Control Board

October 10, 2025

Ann Carroll
General Counsel
Department of Water Resources
ann.carroll@water.ca.gov

Re: Request for Additional Information to Supplement the Administrative Record in the Hearing on the Proposed Delta Conveyance Project

Dear Ms. Carroll,

By this letter, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (State Water Board or Board) requests additional information to clarify and supplement information in the administrative record for the ongoing Delta Conveyance Project (DCP) proceeding on the pending petitions to change water right Permits 18478, 16479, 16481, and 16482. The requested modeling results are necessary for the Board to determine appropriate Delta flow criteria for the DCP as required by the Delta Reform Act of 2009 (Delta Reform Act), assess consistency with proposed updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), consider avoidance of any potential unreasonable effects on fish and wildlife or other uses protected by the public trust, and evaluate the potential benefits and impacts of operation of the proposed DCP under possible future climate conditions.

Available Model Runs and Information

DWR prepared and submitted to the AHO, by the deadline for case-in-chief evidence on January 21, 2025, testimony and exhibits based on model runs relied upon in the 2023 Final Environmental Impact Report for the DCP (Final EIR). These model runs incorporated operations in place in 2023 for the State Water Project (SWP), including operations consistent with the 2019 Long Term Operations (LTO) of the SWP and

Central Valley Project and the associated 2019 federal Biological Opinions (BiOps) and 2020 Incidental Take Permit (ITP).

DWR and the U.S. Bureau of Reclamation updated the LTO in 2024 and the State and federal fish and wildlife agencies issued new Biological Opinions and an ITP in November and December 2024, and the California Department of Fish and Wildlife issued the 2025 DCP ITP in February 2025. These permits include different operating constraints from those incorporated into the model runs relied upon in the Final EIR. On February 21, 2025, DWR submitted to the AHO revised expert witness testimony and exhibits based on updated modeling data that incorporated these new regulatory requirements, labeled as the Updated Baseline and ITP DCP scenarios (collectively, ITP Modeling; see Exh. DWR-0104R). The ITP Modeling scenarios also incorporate flows and operations to reflect implementation of the Healthy Rivers and Landscapes proposal (also known as the Voluntary Agreements (VAs)). The ITP Modeling scenarios centered on the year 2020 and did not include climate adjusted model runs centered on the year 2040, as was included in the model runs relied upon in the Final EIR.

On March 7, 2025, DWR submitted to the AHO the underlying technical files for the ITP Modeling. On July 11, 2025, DWR submitted a summary of the model output data for the ITP Modeling in a form and level of detail equivalent to that included in the Final EIR, as directed by the AHO.

Delta Flow Criteria

Under the Delta Reform Act, any approval of the change petitions for the DCP must include “appropriate Delta flow criteria” informed by the flow criteria necessary to protect the Sacramento-San Joaquin Delta (Delta) ecosystem. (Wat. Code, § 85086.) To protect native fish species, the flow criteria developed by the Board in 2010 included a net Delta outflow criterion of 75 percent of the total unimpaired flow into the Delta, between January and June, and an inflow criterion of 75 percent of unimpaired Sacramento River flow at Rio Vista from November through June. (AHO-057, pp. 98-103, 114-117.) In developing the 2010 flow criteria, the Board did not take into consideration and balance competing demands for flows in the Delta to satisfy other beneficial uses, including municipal, industrial, and agricultural uses. (*Id.* at p. 2-3.)

The Board is currently updating the Bay-Delta Plan for the reasonable protection of fish and wildlife beneficial uses in the Bay-Delta watershed. This process includes consideration and balancing of all beneficial uses of water. In July 2025, the Board released draft updates to the Bay-Delta Plan, which would establish a requirement for

water rights that are not subject to approved VAs that “inflows from Sacramento/Delta tributaries shall be maintained at 55 percent of unimpaired flow year-round on a 7-day running average to achieve the narrative inflow objective.” (July 2025 Draft Bay-Delta Plan, p. 46.) The draft plan also would establish an inflow-based Delta outflow objective that would provide for required inflows to be provided as Delta outflows. (*Id.* at pp. 57-58.) The July 2025 Draft Bay-Delta Plan identifies water supply adjustments that would apply to the inflow requirements for existing water rights, but the draft plan does not specify whether those adjustments would apply to new water rights or changes to existing water rights. The draft plan provides that in future water right actions, the Board will determine based on the record in individual adjudicative proceedings what requirements should be imposed “to ensure that the use of water is consistent with and supports the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior Delta flow objectives.” (*Id.* at pp. 46, 64.)

The AHO has determined that the administrative record developed to date is inadequate to inform the State Water Board’s decision concerning what Delta flow criteria would be appropriate for the DCP, as required by the Delta Reform Act, and to evaluate requirements that may be necessary to ensure consistency with the proposed updates to the Bay-Delta Plan. Modeling of DCP operational scenarios with a range of possible bypass flow requirements will inform the Board’s consideration of the trade-offs between different levels of protection for fish and wildlife in the Delta and the water supply benefits of the DCP, and is relevant to the Board’s findings whether the proposed changes to DWR’s water right permits would unreasonably affect fish and wildlife, appropriately protect public trust resources, be in the public interest, and be consistent with the Bay-Delta Plan applicable at the time the Board acts on the petitions.

Range of Climate Scenarios

DWR states that one objective of the DCP is to “help address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events.” (AHO-1004, p. 2-2 [Final EIR, Section 2.3, Project Purpose and Objectives].) However, the DCP ITP Modeling runs that DWR submitted in this proceeding did not incorporate future climate assumptions. Furthermore, the 2040 Central Tendency (2040 CT) climate scenario relied upon by DWR in the Final EIR predicts hotter and wetter conditions. (AHO-1198, p. 30A-5, Figure 30A-2 [Final EIR, Section 30A.1.1, Climate Change Assumptions].) DWR did not submit model runs for any future climate scenario with lower precipitation or streamflow than existing conditions, representing hotter and drier conditions in the Bay-Delta Watershed, even though DWR’s climate modeling identifies such conditions to be reasonably possible.

(DWR-00214, p. 5-38, Table 5-1 [Risk-Informed Future Climate Scenario Development for the State Water Project Delivery Capability Report].; LAND-60, pp. 7-63 to 7.77 [The State Water Project Delivery Capability Report 2023 (DCR), Section 7, SWP Water Delivery Capability Under Future Climate Change Conditions (DCR-Climate)].; FOR-103, pdf p. 4 [California's Water Supply Strategy; Adapting to a Hotter, Drier Future].)

Additional modeling of DCP operations that incorporate recent regulatory changes and a reasonable range of future climate conditions is necessary to inform the Board's findings and consideration of appropriate conditions on any approval of the proposed DCP. This information is necessary to identify a range of potential benefits and impacts of operation of the project, which is relevant to the Board's findings whether the proposed changes to DWR's water right permits may injure legal users of water or unreasonably affect fish and wildlife, appropriately protect public trust resources, and be in the public interest.

Direction to Submit Supplemental Information

In response to questions by the AHO, DWR stated that it is conducting CalSim 3 and DSM2 model runs for the Updated Baseline and DCP-ITP for 2043 and will submit model results on rebuttal. (2025-09-17 AHO email to DWR; 2025-09-19 DWR email to AHO (modeling response).) DWR indicated that it also intends to conduct CalSim 3, but not DSM2, model runs for the Updated Baseline and DCP-ITP for 2085, and will submit those model results on rebuttal. DWR stated that it has not conducted any model runs incorporating unimpaired flows as bypass flows requirements with the Updated Baseline and DCP-ITP. Because it appears that the information gaps in the record described above may not otherwise be addressed by the parties on rebuttal, I direct DWR to conduct and submit supplemental modeling and associated results, as detailed below.

The AHO directs DWR to submit by the deadline for submission of rebuttal exhibits, CalSim 3 and DSM2 model runs and summaries of model results in a form and level of detail equivalent to the May 23, 2025 Supplemental Information Request for ITP Modeling, with and without DCP, including technical model files, for the following scenarios:

1. Model runs incorporating a percentage of unimpaired Delta outflow (e.g., Net Delta Outflow Index (NDOI) or other appropriate Delta outflow measurement) as bypass flow requirements at the proposed DCP north Delta pumping facilities for net increases in diversions due to the proposed DCP Project, ranging from 35 percent to 65 percent of unimpaired flow in 5 percent

increments. DWR may submit model runs in 10 percent increments if DWR demonstrates that linear interpolation of data between modeled 10 percent increments is appropriate. The bypass flow requirements should be formulated to prohibit net increases in total diversions using the proposed DCP north Delta pumping facilities and the existing south Delta pumping facilities, relative to without DCP conditions, when the specified percentage of unimpaired Delta outflow is not met. The modeling should assume that the percentage of unimpaired flow is a limitation on additional diversions due to DCP but should not assume that changes in reservoir operations or other changes to operations would be made to achieve the specified percentage of unimpaired flow. The modeling can assume that pumping is shifted from the existing south Delta pumping facilities to the proposed DCP pumping facilities when the specified percentage of unimpaired flow is not met provided that there are no net increases in total diversions using the two facilities compared to without DCP conditions on a monthly basis. These model runs shall otherwise have the same assumptions as the ITP modeling. These model runs shall use the 2040 central tendency (CT), or similar condition, as the climate scenario. The modeling results should be accompanied by a summary of the modeling assumptions and a detailed description of the technical approach used.

2. Climate adjusted model runs centered around the year 2040, or similar condition, using the CT and the 75th percentile level-of-concern scenario (75-LOC), as described in the DCR (LAND-60, pp. 7-64 to 7-65 [DCR, Section 7, SWP Delivery Capability Under Future Climate Change Conditions].) and the DCR-Climate. (DWR-00214, pp. 5-31 to 5-39 [DCR-Climate, Section 5.3.3, Combining Future Climate States and System Consequence Response and Selection of Future Climate States for Multiple "Levels-Of-Concern"].) These model runs shall otherwise have the same assumptions as the ITP modeling. DWR may propose an alternative to the 75-LOC scenario, subject to AHO review and approval.

3. Climate adjusted model runs centered around the year 2070, 2085, or similar period, that DWR believes are representative of longer-term future climate conditions. These runs shall use the CT, as described in Exhibits LAND-60 and DWR-214. These runs shall otherwise have the same assumptions as the ITP modeling.

Sincerely,

A handwritten signature in blue ink, reading "Nicole Kuenzi". The signature is written in a cursive, flowing style.

Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

Attachments:

- Attachment 1 – Service List

**ATTACHMENT 1
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