

October 13, 2025

Via Electronic Mail and First Class U.S. Mail

Julie Lee
Chair of the Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814
engage@deltacouncil.ca.gov

Re: Request for Equitable Process for Certification of Consistency for the Delta
Conveyance Project (DCP)

Dear Chair Lee and Council Members:

By this letter, our public interest organizations request that the Delta

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Stewardship Council (DSC) exercise its discretion to ensure that important deadlines for the DCP Consistency Certification process are equitable and result in a fair hearing and sufficient due process.

Our public interest organizations do not believe DWR will be able to demonstrate consistency with the co-equal goals or numerous Delta Plan policies based on the body of publicly available information available about the DCP, including the DCP environmental impact report and the testimony submitted in the pending DCP Water Rights Hearing.

The 10 day comment period provided by DWR is far too short to understand and comment meaningfully on the 241-page Draft DCP Consistency Certification and its 23 appendices.

Our public interest organizations join in, and adopt and incorporate by this reference, the October 13, 2025, Request for Equitable Process Letter submitted by the Delta Public Agencies to you. A copy of that comment letter by the Delta Public Agencies is attached.

The public interest organizations joining in this comment letter are Sierra Club California, AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Friends of the River, Planning and Conservation League, and Restore the Delta.

The contact for this supplemental comment letter is E. Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com . We will do our best to answer any questions you may have.

Sincerely,



*E. Robert Wright, Counsel
Sierra Club California*



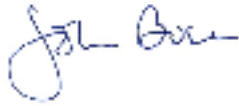
*Howard Penn, Executive Director
Planning and Conservation League*



*Miguel Miguel, Director
Sierra Club California*



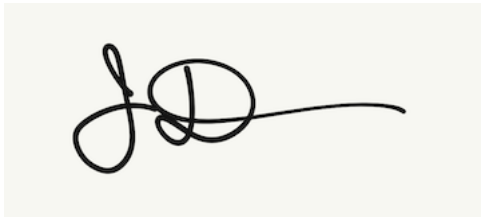
Conner Everts, Facilitator



John Buse, Senior Counsel
Center for Biological Diversity



Barbara Vlamis, Executive Director
AquAlliance



Jann Dorman, Executive Director
Friends of the River

Environmental Water Caucus



Carolee Krieger, Executive Director
California Water Impact Network



Chris Shutes, Executive Director
California Sportfishing Protection
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Barbara Barrigan-Parrilla, Executive
Director, Restore the Delta

Attachment: Delta Public Agencies Request for Equitable Process Letter (October 13, 2025)



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Re: Request for Equitable Process for Certification of Consistency for the
Delta Conveyance Project

Dear Chair Lee and Council Members:

The following request regarding the Delta Stewardship Council's (DSC) process for the California Department of Water Resources' (DWR) Delta Conveyance Project (DCP) Certification of Consistency with the Delta Plan 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 request the DSC exercise its discretion to ensure that important deadlines for the DCP Consistency Certification process are equitable and result in a fair hearing and sufficient due process.

The DCP is the largest and most impactful water project in the State of California since the State Water Project was approved, funded, and constructed. The DCP would construct new expansive and intrusive water diversion and maintenance facilities, including a 45-mile long tunnel, partially within and near Delta legacy communities over the course of 14 years to divert up to 6,000 cubic feet per second of water from the Sacramento River in the north Delta to Bethany Reservoir in the south Delta, bypassing the Delta ecosystem to deliver water to Central and Southern California, parts of the eastern Bay Area and Silicon Valley. The DCP would result in significant and unmitigated impacts to Delta communities and their water supply, agriculture, the environment and the landmark Harvest Water Program, which will deliver drought-resistant recycled water to agricultural lands and existing habitats in southern Sacramento County and which is the first water storage project to be awarded funding under the State's Water Storage Investment Program. Due to these devastating impacts, the Delta Public Agencies have a direct and substantial interest in the DCP and its relationship to the Delta Plan policies and the Delta Reform Act's co-equal goals of a reliable statewide water supply and a protected, restored, and enhanced Sacramento-San Joaquin Delta ecosystem, while preserving the Delta as a place for its unique cultural, recreational, natural

resource, and agricultural values. There can be no doubt the DCP is the most consequential project that will ever come before the DSC for evaluation of consistency with these goals and policies.

The October 2025 *Public Draft Delta Conveyance Project Certification of Consistency with the Delta Plan* (Draft DCP Consistency Certification) is comprised of a 241-page primary document and 23 appendices, some of which exceed 180 pages. The Final DCP Consistency Certification will be as big or bigger, and the record supporting it, presuming DWR submits the true “full and complete” record that “was before the certifying agency at the time it make[s] its certification,”¹ would comprise many thousands of pages. Reviewing and evaluating this material will require a substantial effort by Delta Public Agency staff and their consultants.

As previously documented, the Delta Public Agencies object to the so-called “early consultation” on the Delta Tunnel project, which has been occurring since DWR withdrew its consistency certification for the California WaterFix project in 2018. The Delta Public Agencies and others have requested, but been denied, the opportunity to participate in these meetings, which should have been open to the public. As a result of this extensive “early consultation,” DSC staff has had serial meetings with DWR over several years and has had the opportunity to review the entire draft consistency certification and provide iterative comments on it. The Delta Public Agencies and other members of the public have not had such an opportunity and are only now seeing these voluminous materials (which have been withheld from Public Records Act disclosures by DSC) for the first time.

The Delta Public Agencies’ opportunity to consider the Draft DCP Consistency Certification (and the Final Certification, assuming DWR submits it immediately following the expiration of the minimum notice period, as the Agencies understand is DWR’s plan) is also stymied by the competing deadlines and responsibilities associated with the multiplicity of already pending DCP-related proceedings. These proceedings include: a hearing requested by DWR at the Third Appellate District Court in connection with its appeal on its Delta Program General Bond Resolution (set for November 19); DWR’s scheduling of mandatory meet and confer meetings in DCP California Environmental Quality Act (CEQA) litigation² the week of November 3; a December 5 deadline (specifically sought by DWR over objection from interested parties) for trial briefs in DWR’s litigation seeking to validate bond resolutions for the DCP; and, the State Water Resources Control Board (SWRCB) public hearing on DWR’s pending Petitions for Change of Water Right Permits 16478, 16479, 16481, and 16482 (DCP Water Rights Hearing). Each of these DCP proceedings has pending deadlines and tasks involving the same stakeholders in the DCP Consistency Certification. The DCP Water Rights Hearing in particular has the Delta Public Agencies and other DCP stakeholders occupied with full days of hearing on October 9, 10, 14 15, 16, 20, 23, 27, 28

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

² The litigation also includes claims brought under the Delta Reform Act, Delta Protection Act, the Watershed Protection Act, and the Public Trust Doctrine.

and 29, including half and full-day Delta site visits on October 14, 18, and November 10, plus the potential for additional hearing days to be scheduled in November, and rebuttal testimony (the deadline for which could be as soon as early December, if the SWRCB hearing officer accepts the aggressive schedule DWR has proposed). The schedule for an appellate process for the Certification of Consistency would run concurrent with these other proceedings and span the Thanksgiving and winter holidays.

It is unclear to the Delta Public Agencies why DWR believes this is the appropriate time to submit its certification of consistency for the DCP, given that it still lacks the necessary water rights to operate the proposed diversions, which will dictate the DCP construction and operating terms, or information about appropriate Delta flow criteria, which depend in part on the outcome of the pending update of the Bay-Delta Water Quality Control Plan (WQCP). The SWRCB is preparing additional CEQA analysis of the WQCP alternative that DWR has relied on for its DCP water supply and impact analysis, and the SWRCB's additional CEQA analysis *and* a final determination on the WQCP will not be available until well into 2026. Moreover, the Administrative Hearing Office (AHO) for the water right change petition hearing determined, in an October 10, 2025 letter to DWR (attached), that it lacks the "administrative record" required "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 BayDelta Plan" and has required "supplemental modeling and associated results" from DWR. (See Attachment, pp. 3-4, citing Wat. Code, § 85086.) Until DWR provides this supplemental information, and until the WQCP is adopted and its flow objectives are operable, it is impossible to determine consistency with Delta Plan Policy ER P1.³ The lack of water rights and information related to appropriate Delta flow criteria was, in the DSC's staff draft determination in 2018, a fatal flaw in DWR's attempt to certify consistency with the Delta Plan for its WaterFix project. It should likewise be considered a fatal flaw here.

Given the scope of the DCP and its direct and reasonably foreseeable indirect effects, the amount of material to review during the consistency certification process, and the competing deadlines in other DCP proceedings, DCP stakeholders must be allowed substantial time to review the iterations of the DCP Consistency Certification and its record and to prepare hearing material to ensure an equitable process.

More specifically here, the amount of time to review the Draft DCP Consistency Certification is insufficient. DSC requires DWR to post a draft certification "[a]t least 10 days prior to its submission of a certification to the council ... for public review and comment."⁴ The timing of DWR's notice of intent to submit its certification, on a Friday,

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

⁴ 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].

ensuring the 10-day comment period would span two weekends and a week when three of the five working days are scheduled for all-day hearings in the DCP Water Rights Hearing, and the likely schedule for appellate proceedings, strongly suggests an intent to chill participation by DCP stakeholders. A 10-day public review period may be sufficient for smaller and less impactful covered actions under other circumstances, but it is plainly insufficient, and impossible under the specific circumstances described here, to allow a reasonable opportunity to review a certification of this size and significance. Any equitable review period for this type of statewide action and volume of material should be between 30 and 60 days.⁵ As a result of this truncated 10-day review period, the Delta Public Agencies are unable to comment on the substance of the Draft DCP Consistency Certification. The Agencies' failure to submit comments on the Draft DCP Consistency Certification should in no way be interpreted as a lack of interest or concern, but a reflection of the impossible situation that DWR has created. DSC has discretion to extend the public review period, and it should do so here to ensure an equitable process.

Based on the body of publicly available information available about the DCP, including the DCP environmental impact report and the testimony submitted in the pending DCP Water Rights Hearing, the Delta Public Agencies do not believe DWR will be able to demonstrate consistency with the co-equal goals or numerous Delta Plan policies. The Delta Public Agencies therefore presume there will be one or more appeals of the Final DCP Consistency Certification. The timelines associated with the appeal proceeding are also of grave concern given the scope of the DCP. DSC has discretion when specifying deadlines related to requests for admission of additional documentation and information in the record, written submissions for the appeal hearing, and the appeal hearing.⁶ In accordance with fair hearing⁷ and due process⁸ principles, DSC should set deadlines that afford stakeholders reasonable time to review the record and, if warranted, make requests to include additional documentation and information, prepare written submissions, and prepare for and participate in the hearing itself. DSC should set the date for the written submissions that precede the hearing at least 60 days past the effective date of the Final DCP Consistency Certification, as allowable by express regulation language or by an agreed-upon extension.⁹ The hearing date should be set at least 90 days past the effective date of the Final DCP Consistency Certification,¹⁰ reasonably providing at least 30 days from the written submissions due date

⁵ See, e.g., Cal. Code Regs., tit. 14, §§ 15000 et seq. (CEQA Guidelines), 15105, subd. (a) [requiring at least a 30-day public review period, and up to 60 days, for draft environmental impact reports that are comparable in size and scope to the Draft DCP Submittal].

⁶ Cal. Code Regs., tit. 23, §§ 5027, subd. (a)(1), 5029, subd. (b), 5030, subd. (b).

⁷ Stakeholders here have the right to a fair hearing, including a reasonable opportunity to respond. (See, e.g., *Applebaum v. Board of Directors* (1980) 104 Cal.App.3d 648, 657, citing *Ezekial v. Winkley* (1977) 20 Cal.3d 267; *People v. Ramirez* (1979) 25 Cal.3d 260; see also Code Civ. Proc., § 1094.5, subd. (b).)

⁸ Procedural due process applies to all governmental adjudicatory action. (See Cal. Constitution, art. I, § 7; *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 563-564.

⁹ Cal. Code Regs., tit. 23, § 5029, subds. (a), (b).

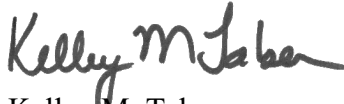
¹⁰ *Id.*, § 5030, subds. (a), (b).

for DCP stakeholders to prepare for the hearing. Moreover, DSC can and should hold more than one hearing and/or continue the hearing given the resources at stake in this proceeding.¹¹

Accordingly, the Delta Public Agencies request that DSC adjust timelines and deadlines as indicated to allow DCP stakeholders to equitably engage in the DCP consistency certification process and ensure a fair hearing with sufficient due process for this project of incalculable impact and statewide importance.

Sincerely,

Somach Simmons & Dunn

Handwritten signature of Kelley M. Taber in black ink.

Kelley M. Taber

*Counsel for County of Sacramento, Sacramento
County Water Agency, Sacramento Area Sewer
District, and City of Stockton*

Soluri Meserve, A Law Corporation

/s/ Osha R. Meserve

Osha R. Meserve

*Counsel for County of San Joaquin, County of
Solano, and County of Yolo*

Attachment

¹¹ *Id.*, §§ 5029, subds. (c), (d), 5030, subds. (c), (d).

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
SERVICE LIST**

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