March 21, 2025

Governor Gavin Newsom
1021 O. Street, Suite 9000
Sacramento, CA 95814

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Governor Newsom, Chairman Esquivel, and Members of the State Water Board:

The State Water Contractors (SWC) write to express concern with a ruling by the State Water Resources Control Board's (Water Board) administrative hearing office (Hearing Office) that could jeopardize the hearing schedule for the Delta Conveyance Project (DCP) change petition and be improperly used to determine the baseline water supply for the entire State Water Project

(SWP). Both DCP participating agencies and non-participating State Water Project contracting public water agencies are greatly concerned about the near- and long-term implications of this ruling. The Hearing Office has stated that it may use the requested historic SWP diversion information to place a limit on future DCP diversions. If it were to do so, we are concerned that this would also be construed as a cap on existing SWP diversions because the same underlying water rights are at issue. The issue of DWR's exercise of its existing SWP water rights is far outside of the scope of the Water Board's assignment of the DCP petition to its Hearing Office. The Hearing Office has no authority to define existing SWP water rights in the DCP proceeding. The Hearing Office has stated that it must consider a quantified limit on all SWP diversions so it may determine whether DWR and its water contractors would proceed with the DCP as part of a public interest analysis. This is not a relevant inquiry, particularly since DWR has explained that the DCP is an important climate resilience project regardless of potential further development of SWP water rights. Governor Newsom's policy statement (February 18, 2025) articulated this point very well stating that:

> Decades ago, a separate, north-to-south conveyance system was envisioned as part of the original State Water Project. The idea persists because the need persists.

And because:

> Our future is hotter. Thirsty plants, drier soils, and a warmer atmosphere will consume more of the rain and snow that fall on California. Climate scientists tell us there will be fewer years wet enough to overcome that heat and dryness. As a result, average annual deliveries from the State Water Project will decline. The future will bring fewer days of precipitation- but climate projections also indicate an increase in the intensity of the largest storms. We must adapt. New infrastructure could ameliorate the decline in State Water Project supplies by capturing excess flow from big infrequent storms.
>
> That is one of the many key benefits of the Delta Conveyance Project: It would increase the opportunities to save storm runoff for drier times.
>
> Just as importantly, the Delta Conveyance Project would protect State Water Project supplies in the event multiple Delta islands were breached by earthquake, flood, sea-level rise, or a combination of those forces. Trouble of this kind seems increasingly likely.

The Governor accurately described the public interest benefits of the DCP, explaining that the benefits are significant even at current levels of SWP supply because the DCP is an important climate resiliency project.

The SWP will be injured by the improper expansion of the scope of the DCP change petition hearing. Before the Water Board makes its final decision, the SWC and all of those who contract for SWP water will have already suffered injury. Once data and testimony are considered outside of the proper legal construct and process, and without all of the relevant parties present, the SWC and its members will have already suffered due process violations. At that point, our interests have been injured and few satisfactory remedies are available. Additionally, as it relates to DCP

participants, we understand that the Water Board will ultimately make the decision regarding whether to grant the DCP petition and it could overrule its Hearing Office. However, by the time the Water Board makes its final decision, the DCP participants will have already suffered injury through delay in the DCP hearing schedule, which is an impact that cannot be remedied once lost. For each day of delay in constructing this critical project, the cost of the project increases by over $1 million. Notably, the Water Board Hearing Office's ruling has created significant uncertainty for the SWC participating members as they have just committed another nearly $300 million in planning funds to support the DCP, and now it appears that the DCP change petition hearing will not stay on schedule because current SWP water supplies and uses have just been improperly added to the DCP issue list.

We urge the Water Board to carefully consider DWR's petition and appropriately limit the scope of the DCP hearing to just the new point of diversion and not the out-of-scope issue related to historic SWP operations.

Sincerely,

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