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STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY **GAVIN NEWSOM,** *Governor*

DEPARTMENT OF WATER RESOURCES
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January 21, 2025

State Water Resources Control Board
Administrative Hearing Office
Delta Conveyance Project Hearing
DCP-WR-Petition@Waterboards.ca.gov

Submittal of Case-in-Chief, Time Extension Petition, and Hearing Issues

Dear Presiding Hearing Officer Nicole Kuenzi and Members of the Hearing Team:

The Department of Water Resources (DWR) has uploaded its case-in-chief written testimony and exhibits, witness list, exhibit identification index, and proposed permit conditions to the Administrative Hearing Office's (AHO's) FTP site. The proposed permit terms are marked as DWR-01101.

Additionally, after the opportunity to review the Second Amended Notice of Public Hearing and Procedural Ruling dated January 17, 2025 (January 2025 Notice), DWR submits the following to address several issues raised in the January 2025 Notice.

Time Extension Petition and Request for Supplemental Information

DWR notes the Hearing Officer's prior statements and the statement in the January 2025 Notice relating to cross over between this existing change in point of diversion (CPOD) proceeding and a future time extension petition. Specifically, the January 2025 Notice on pages 11-12 states:

> *The overlap of issues is one reason that I strongly suggested that DWR consider submitting companion petitions for extension of time to be addressed in the same hearing process as these petitions for change. (2024-09-17 Notice of Pre-Hearing Conference, p. 5 ["This approach might be lawful but seems likely to cause inefficiencies and complexity by requiring the Board to conduct two proceedings when the underlying issues are significantly interrelated"].)*

DWR sees the Hearing Officer's logic in filing a new, separate petition for an extension of time for DWR's water rights to avoid inefficiencies and to apply the appropriate legal standard for each proceeding. For this reason, attached to this letter is a copy of the petition for extension of time filed by DWR today (Time Extension Petition).

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As DWR has previously stated, environmental review under the California Environmental Quality Act has not yet been completed for the Time Extension Petition. As explained in the Time Extension Petition, DWR is working diligently to complete this document and anticipates that it will have a final document in early 2026. Because of the pending environmental review for the Time Extension Petition, which will result in commencing the Time Extension Petition hearing in 2026, the CPOD proceeding should proceed as scheduled.

In the Hearing Officer's July Notice, the AHO stated,

> *Should DWR … submit new petitions for extension of time while the change petitions for the DCP are being processed, the State Water Board will evaluate the extent to which the two types of petitions are interrelated and will provide the opportunity for public input. Absent receiving new or modified time extension petitions, appropriate conditions will be considered for any approval of the DCP petitions, and the public will be afforded the opportunity to provide input on appropriate conditions. (July 2024 Notice, p.8.)*

The Hearing Officer subsequently raised the concern that "the Board cannot accept DWR's assurance that it will comply with legal limitations on the SWP Permits absent some method for verification." (January 2025 Notice, p. 7)

To address this concern and to maintain the current CPOD hearing schedule, DWR has submitted a separate Time Extension Petition requesting a coordinated proceeding, and proposes that any order granting a CPOD include the following permit term:

> **The Department shall not divert water at the points of diversion identified in the table below, until the State Water Resources Control Board issues an order granting, in part or in whole, or denying the Department's January 21, 2025 petition for extension of time, or as this petition may be amended.**

Intake B	**Fish Screen beginning at N. 1,901,506 feet and E. 6,699,561 feet extending downstream along the left bank of Sacramento River 954 feet to N. 1,900,950 feet and E. 6,698,786 feet within SE1/4 of SE1/4 of projected Section 10, T6N, R4E, MDB&M.**
Intake C	**Fish Screen beginning at N. 1,890,209 feet and E. 6,695,905 feet extending downstream along the left bank of Sacramento River 955 feet to N. 1,889,469 feet and E. 6,695,302 feet within S1/2 of SW1/4 of Section 22 and NW1/4 of NW1/4 of Section 27, T6N, R4E, MDB&M**

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The above condition provides the Hearing Officer and the State Water Resources Control Board with their desired assurance without commingling two separate petitions that have different legal standards. Further, the requested Supplemental Information will be part of the record for the Time Extension Petition.

The Department proposes that the coordination of the procedural issues related to the current CPOD proceeding and the future Time Extension Petition proceeding be discussed at the February 18, 2025, Pre-Hearing Conference. This will allow all interested parties to provide input in their February 11, 2025, statements.

DWR proposes that this CPOD proceeding be restored to the hearing issues identified by the Hearing Officer in the July 2024 Notice, the existing hearing schedule be maintained, and that a subsequent coordinated hearing be scheduled to address the Time Extension Petition in 2026 upon completion of the requisite environmental review for the Time Extension Petition.

Hearing Issues

With the filing of the Time Extension Petition and the assurance provided by DWR's proposed permit condition, the Hearing Officer's rationale for including historical maximum use in the CPOD proceeding is moot. DWR has agreed to not operate the DCP until the State Water Resources Control Board acts on the Time Extension Petition. Thus, the additional hearing issues set forth in the November and January notices are not necessary to provide the requested assurance that DWR is complying with its permit conditions and will be addressed in the subsequent coordinated Time Extension Petition proceeding. DWR therefore requests that the hearing issues in the CPOD proceeding be limited to those issues set forth in the July Notice. (July Notice pp. 8-10.)

Incidental Take Permit

DWR notes the Hearing Officer's request for submittal of the Incidental Take Permit (ITP) as soon as practicable. DWR will submit the ITP as requested.

DWR appreciates the Hearing Officer's consideration of the above and will submit additional comments on the other issues raised in the January 2025 Notice by the February 11, 2025 deadline.

Respectfully submitted,

Ann K. B. Carroll

Ann K. B. Carroll
General Counsel
Office of the General Counsel