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THE STATE OF CALIFORNIA
BEFORE THE STATE WATER RESOURCES CONTROL BOARD
ADMINISTRATIVE HEARINGS OFFICE

IN THE MATTER OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES' PETITION FOR CHANGE IN POINT OF DIVERSION OR REDIVERSION ON APPLICATIONS 5630 (PERMIT 16478), 14443 (PERMIT 16479), 14445A (PERMIT 16481), AND 17512 (PERMIT 16482) WITHIN THE SACRAMENTO-SAN JOAQUIN DELTA ESTUARY TO IMPLEMENT THE PROPOSED DELTA CONVEYANCE PROJECT.	**TESTIMONY OF CHRIS SHUTES**

Introduction

1. I, Chris Shutes, am the Executive Director of the California Sportfishing Protection Alliance (CSPA). I have held this position since January 10, 2023. Prior to that, I worked for CSPA beginning in February 2006 under the titles of FERC Projects Director and Water Rights Advocate. My statement of qualifications is given in Exhibit CSPA-005.
2. CSPA is a statewide public benefit non-profit organization whose mission is to advocate for fisheries, habitat, and water quality.
3. As Water Rights Advocate for CSPA, and since January 2023 as Executive Director, I have developed an integrated working knowledge of Central Valley water operations and hydrology through various means. These include my understanding of input hydrology and

operations from watersheds upstream of Central Valley rim dams, as well as direct work on power projects on some of those rim dams. I have also attended multiple workshops at the State Board, including those to develop the 2010 Delta Flow Criteria Report and dozens related to the update of the Bay-Delta Water Quality Control Plan. I have also reviewed and often commented on tens of thousands of pages of technical and environmental review documents related to the operation of the State Water Project (SWP) and the Central Valley Project (CVP).

4. Though I did not participate in the relicensing of the Oroville Facilities *per se*, I engaged in the State Water Board's proceeding for the Water Quality Certification of that project. Before the Board in 2010, I advocated for establishment of a carryover storage requirement to protect the Oroville cold-water pool. I have also advocated for improved operations and management of Oroville Reservoir as an expert witness in the 2016-2018 hearings for the "California WaterFix," in various iterations of Temporary Urgency Change Petitions and Orders, the ongoing update of the Bay-Delta Water Quality Control Plan, and in state and federal Endangered Species Act consultations for the operations of the State Water Project and the Central Valley Project.
5. My work for CSPA has also included researching and drafting and/or contributing to objections to Temporary Urgency Change Petitions filed by the California Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) that, when granted by the State Water Board, weakened (or "relaxed") Delta water quality requirements in 2014, 2015, 2021, 2022, and 2023.
6. Through these activities and related direct and background research, I have developed an understanding of the complex multi-variate actions that create flow and water quality conditions in the Delta.
7. I further explain the development of my understanding and advocacy in Central Valley and Bay-Delta water operations in my Statement of Qualifications (Exhibit CSPA-005).

8. Over the course of twenty-five years of working in regulatory venues related to water management, I have also come to realize the pitfalls of relying on external requirements and simply on recently experienced normal operations to provide certainty for future operations and protections for instream resources.
9. CSPA opposes the Delta Conveyance Project (DCP). I submit this testimony in support of the protest of CSPA et al. and some of the proposed permit terms that CSPA et al. proposed as necessary should the DCP nonetheless be constructed. An updated version of those proposed permit terms is shown in Exhibit CSPA-006.

Structure of Testimony

10. This testimony deals with these major topics:

- Oroville Reservoir operations and the need to condition them in a permit term.
- Temporary Urgency Change Petitions and Orders, and DCP operation.
- The DCP's operational incentives for water transfers.
- The need to anticipate future efforts to increase exports.

DWR Reservoir Operations and the DCP

11. DWR states that it does not plan to change the operation of Oroville Reservoir to export more stored water with the DCP. DWR's proposed permit term 1 ("Release of Stored Water") states in part:

> The Department of Water Resources (DWR) will not divert additional stored water releases, beyond what would have been available, absent the Delta Conveyance Project (DCP), from Oroville Reservoir or any of its now existing upstream reservoirs for the purpose of south of Delta State Water Project (SWP) exports, except as provided in this term. … excluding the following:
>
> I. Export of carriage water savings generated by DCP operations;
> II. Export of any transfer or wheeling water; and
> III. Export of any required releases capable of export.

(Ex. DWR-1101 Revised at 1.) DWR witness Ms. Molly White affirmed this commitment in her testimony, citing to Ex. DWR-1101R. (*See* Ex. DWR-300R at 9:5-10.)

12. Under current operations, the end-of-September (EOS) storage target for Oroville Reservoir is 1.6 million acre-feet (MAF). (Ex. CSPA-001, p. 5.) Ms. White confirmed this "planning target" on cross examination. (HT Vol. 16, 5/27/25, at 9:16-17.[1]) This is the target that is modeled in the CalSim 3 modeling for the California Department of Fish and Wildlife's (CDFW) Incidental Take Permit (ITP) for the DCP. (*See* Ex. CSPA-002, at. 2-3 for a screenshot of CalSim 3 model output that shows 1.6 MAF as the EOS storage target for Oroville Reservoir.)

13. Under current conditions, there is no regulatory requirement that requires DWR to operate Oroville Reservoir for storage in any particular way. On cross-examination, Ms. White explicitly confirmed this: "I'm not aware of any regulatory requirement for an end-of-September carryover target storage [in Oroville Reservoir]." (HT Vol. 16, 5/27/25, at 11:3-5.) It is a discretionary target. (*Id*. at 14:17-20.)

14. As a discretionary target, DWR does not meet the EOS target for storage in reservoir in all years. On cross-examination, Ms. White stated: "The carryover target is a planning target, and it is not met every year based different -- based upon conditions." (*Id*. at 15:2-4.) Ms. White mentioned a few of the considerations that DWR makes that affect its ability to meet the target, including flood control, hydrology, and contractual and downstream requirements, but did not point to any rules for prioritizing these factors, for meeting the storage target more generally, or for measures that minimize the degree to which the target is not met in certain years or that mitigate the effects of not meeting the target. (*Id*. at 15:17-17:11.)

15. DWR chose the most recent elaboration of the "planning target" for EOS storage in Oroville Reservoir without environmental review and without the involvement of, or consultation with, the State Water Board. (*Id*. at. 10:5-21.)

[1] All references to Hearing Transcripts are to transcripts provided by DWR.

16. At present, any decision by DWR to evaluate or change its target EOS reservoir storage at Oroville would be a process internal to DWR. (*Id*. at. 12:9-14:14.)

17. Currently it is unclear what the rules are for the operations of Oroville Reservoir that DWR says it is not going to change under the DCP. On cross-examination, DWR modeling witness Mr. Singh was unable to state where one could find a description of the modeling assumptions or simply the rules for the operations of Oroville Reservoir. On cross-examination, he was asked, "So how is DWR, the operator, going to know whether she is changing upstream reservoir operations? Where are the rules written down that tell her exactly what she is not changing?" (HT Vol. 7, 4/22/25, at 16:20-23.) Mr. Singh replied: "I think that is a question for the operators." (*Id*. at 16:24-25.)

18. DWR witness Ms. White was equally unable to describe where one could find a copy of those rules written in plain language (as opposed, for instance, to modeling code).

19. In modeling the DCP, DWR modeled the operation of Oroville Reservoir as virtually the same under the with and without project scenarios. The sole difference was the added storage and release of water conserved because of reduced need for carriage water with the DCP facilities. Otherwise, "No additional stored water is diverted at the proposed north Delta intakes in the model." (Ex DWR-101R, Slide 10.) (Testimony of Singh). I personally verified this in reviewing the CalSim 3 model output, comparing the ITP Base Case against the ITP-with-DCP model runs. I provided a sample in Ex. CSPA-002, p. 4.

20. The ITP for the proposed Delta Conveyance Project contains Condition of Approval 11-110, which states in part:

> This Condition of Approval is intended to replicate CalSim 3 modeling assumptions for the Project that reduce the impacts of diversions at the north Delta intakes by maintaining upstream reservoir storage, which in turn limits the times at which flows are available for diversion. The Project does not change operational criteria associated with upstream reservoirs. SWP upstream facilities will continue to be operated to meet regulatory, environmental, and contractual obligations consistent with existing SWP operations (as of the date of issuance of this ITP) and Permittee shall not change upstream reservoir operations to move additional stored water through the north Delta intakes."

(Ex. AHO-065 at 213-214.)

21. Condition 11-110 does not cure the defects of the representations of DWR for proposed operation of Oroville Reservoir. Non-exhaustively, this Condition of Approval:

- Is fundamentally flawed because it asks DWR to replicate modeling assumptions instead of defining the baseline condition for reservoir operations that is the desired outcome and clear rules that would achieve the desired outcome. Yet, none of DWR's witnesses could say how he or she would go about finding, let alone integrating into operations, the modeling assumptions referenced. As such, there is no basis of comparison for success; the only apparent measure of success is the model output, without definition of how it was achieved, and effectively asking DWR and others to use the CalSim 3 model output in a predictive rather than comparative way.
- Assumes that the underlying existing operation of Oroville Reservoir is acceptable, including in dry and critically dry years and in sequences of such years, when the State Water Board often approves DWR's Temporary Urgency Change Petitions (see discussion below).
- Accepts the frame that a new permit for the State Water Project does not also need to evaluate the rest of the SWP's operations for their adequacy in protecting fish and wildlife and other instream beneficial uses.
- Is tied to an external document (the ITP) issued by another agency and not to the water right permit between DWR and the State Water Board. That external document, moreover, has an expiration that is close to the projected completion date of the DCP if built, thus offering short-lived protection prior to the need for a new ITP (*See* AHO-065, p. 1, expiration of ITP in 2045). The future development of a new ITP will not be subject to oversight or engagement by the State Water Board or the public. It will also by its nature focus on protection of species listed under the California Endangered Species Act and not on broader considerations like non-listed public trust resources and the public interest.

- As currently structured for the DCP, DWR could change the EOS storage target for Oroville Reservoir through action with CDFW, without oversight or engagement by the State Water Board or the public.

22. In the California WaterFix hearing from 2015 to 2018, CSPA advocated for a hard 1.6 MAF carryover storage requirement for Oroville Reservoir, to be achieved at 99% exceedance, for both end of September and end of December. During the course of the hearing, CSPA softened that proposed exceedance value. In CSPA's protest of the DCP, CSPA et al. reduced that to 90% exceedance. These constraints on storage releases specific to dry years are necessary to limit the likelihood of following-year hydrology creating conditions that might cause DWR to fail to meet Delta water quality and flow requirements or file Temporary Urgency Change Petitions for Delta operations
23. Using the CalSim3 model output that DWR provided for the ITP, I plotted Oroville storage for the 100-year period of simulation. The results are shown in Exhibit CSPA-007.
24. Page 1 of that exhibit shows the data I plotted from the ITP-with-DCP-On and ITP-with-DCP-Off files, in the HEC-DSSVue program. The blue line represents DCP-On; the red line represents DCP-Off. Page 2 shows Oroville storage from the entire period of simulation, water years 1922-2021. Page 3 zooms in on the same plots, showing the period 2002-2021. Page 4 zooms in on the same plots, showing the period 1983-2001. Page 5 zooms in on the same plots, showing the period 1964-1982. Page 6 zooms in on the same plots, showing the period 1945-1963. Page 7 zooms in on the same plots, showing the period 1927-1944. And page 8 zooms in on the same plots, showing the period 1921-1938.
25. Using the hover function of DSSVue, which allows one to hover the cursor over a plot line to see the daily value for that date, I turned back to the DSSVue model output, of which Ex. CSPA-007, page 2 is a screenshot. I counted 38 years in which EOS Oroville storage under both the DCP-On and DCP-Off plots drops below the nominal EOS storage target of 1.6 MAF. Of those 38 years, only six years were within 50 thousand acre-feet (TAF) of the EOS target.

26. Reviewing the annual plots in the above-referenced model output, I also noted that the low point of Oroville storage in any given calendar year is often in December. This suggests the need for a protocol for limiting Oroville releases between the end of September and either the end of December or a major runoff event into Oroville Reservoir.

27. Managing reservoir operations is fundamentally managing risk. CalSim 3 modeling for the DCP (with the ITP) shows that many of the years in which EOS storage drops below the 1.6 MAF target are not followed by years in which EOS Oroville storage also fails to meet the EOS storage target. However, the point of managing to the target is to avoid those situations where Oroville storage falls so low that DWR is unable to meet basic requirements such as Delta water quality and flow requirements. EOS storage is a necessary margin of safety for fish and wildlife against dry hydrology in the following year.

28. Part of my understanding of the policy implications of the Delta Reform Act was that any effort to build a new Delta conveyance was also supposed to provide greater water supply reliability for fish. Carryover storage in Oroville is one of the few tools that DWR has available to achieve that reliability. Stated differently, part of "appropriate Delta flow criteria" is assurance that there is sufficient stored water to meet Delta flow and water quality requirements, at least in the vast majority of water years.

29. To be successful in protecting conditions for fish and other uses in the Delta, responsible reservoir management by DWR requires concurrent responsible reservoir management by Reclamation. However, since Reclamation is not a partner in the DCP as currently proposed, it is my understanding that the State Water Board cannot use the instant proceeding to condition reservoir operations of the Central Valley Project. At present, the State Water Board should assume that it will use a different proceeding to achieve responsible reservoir management on the part of Reclamation.

30. Any condition placing needed constraints on storage in Oroville must be enforceable by the State Water Board in DWR's water rights permit. Reliance on external documents or

proceedings is inherently unreliable, for reasons of longevity, lack of evidentiary process to make changes, lack of public involvement in potential changes, and others.

Water Transfers

31. Entities using the DCP facilities to move transfer water from north of the Delta to South of Delta will get up to a 35% discount due to transfer water savings. (*See* White testimony, Ex, DWR-300, at &:17-8:9.) Lower cost, greater yield, and increased capacity are likely to incentivize increased north to south water sales.

32. Water transferred through the DCP facilities will be less saline than water transferred from the south Delta, because the DCP facilities would divert water directly from the Sacramento River, without mixing in the Delta. (For qualitative description, *see* Ex. DWR-305.)

33. There is already consistent demand for transfers of water from north of Delta to south of Delta, particularly in dry water years. (*See* Ex. CSPA-008 at 2-2 – 2-5, Appendix K.)

34. At present, the Incidental Take Permit for the operation of the State Water Project ("SWP ITP") limits aggregate annual north to south transfers to 600 TAF in Critical water years and in Dry years that follow Dry or Critical water years, and 360 TAF in all other years. (Ex. CSPA-009, SWP ITP, p. 19.)

35. As far as I can determine, there is no clearly articulated fish and wildlife rationale for the SWP ITP's annual limitations on north-to-south transfers. The limitations rather seemed to stem from export capacity. Appendix 1 of the National Marine Fisheries Service's (NMFS) 2009 Biological Opinion for the operation of the SWP and the CVP (Ex. CSPA-010),[2] describes considerations for transfer limits at 123-127, and states at 126: "In consideration of the estimates of available capacity for export of transfers during July-September, and in recognition of the many other possible operations contingencies and constraints that may

[2] Downloaded from: https://www.fisheries.noaa.gov/resource/document/biological-opinion-and-conference-opinion-long-term-operations-central-valley

limit actual use of that capacity for transfers, the proposed use of SWP/CVP export capacity for transfers is as follows …"

36. Absent a permit term that forecloses it, and particularly since transfer limits appear to be capacity constrained, it is reasonable to expect that there will be pressure to increase these limits once the increased capacity of the DCP is available to transfer water.

37. DWR has not yet determined how it will allocate transfer water between the south Delta export facilities and the DCP diversion facilities. (HT Vol. 15, 5/23/25. at 226:17-227:15.)

38. The CVP is not a partner in the DCP, and is not proposing to alter its water rights permits to include the DCP intakes as points of diversion or rediversion. However, CVP contractors, in particular CVP Settlement Contractors, could petition to use the DCP to transfer water, including under their underlying water rights.

39. Similarly, Feather River settlement contractors could petition to transfer water through the DCP facilities, including under their own underlying water rights. In this regard, it is notable that DWR witness Ms. Wu testified in discussing "supplemental information" that DWR accounts for water diverted by Feather River Settlement Contractors first under the underlying water rights of those contractors. (HT Vol. 18, 6/10/25, at 74:15-75:3.)

40. Availability of transfer capacity to CVP or SWP contractors, and especially senior contractors, would be particularly attractive to transferors when Temporary Urgency Change Order (TUCOs) are in effect, to avoid combined limitations on exports of 1500 cubic-feet-per-second (cfs) (or greater only if required to meet health and safety needs). (S*ee* Exs. CSPA-011 at 30 and CSPA-012 at 37-38.[3])

41. Often, transfer sellers will offset their loss of surface water sold for transfer through crop idling and/or groundwater substitution. (*See generally* CSPA-008.) This is important because additional groundwater pumping can cause adverse impacts to stream flow, groundwater dependent ecosystems, subsidence, and over-drafted groundwater levels. (*See*

[3] For a complete list of TUCOs for Delta operations from 2014 to present, *see* https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/index.html. Exs. CSPA-011 and CSPA-012 are shown as representative examples.

Ex. CSPA-013 [featuring comments submitted by the National Marine Fisheries Service and CDFW on the Vina Subbasin Groundwater Sustainability Plan].) Similarly, additional cropland idling to compensate for north-south transfers could cause adverse impacts to the Giant Garter Snake, a species listed as "threatened" under the Endangered Species Act. (*See generally* CSPA-014.)

Temporary Urgency Changes

42. DWR promises to meet all existing or future operational requirements as a precondition to operating the DCP. For example, DWR witness Ms. White states: "Once the DCP is constructed and operational, the operations will be in accordance with the water rights permits, regulatory requirements, permit conditions, and applicable laws at that time." (Ex. DWR-300R, at 4:21-23.) However, Ms. White stated under cross-examination that if a TUCO for Delta operations is in effect, DWR considers itself in compliance with "controlling regulatory standards" if DWR is in compliance with the modified standards pursuant to that TUCO. (HT Vol. 16, 5/27/25, at 27:5-13.)

43. DWR does not propose to include flow requirements in its water rights permits. Instead, DWR plans to rely on the ITP and possibly other external documents. (*See* Ex. DWR-1101R, proposed permit terms, which do not include flow requirements.)

44. In 2014, 2015, 2021 and 2022, DWR and Reclamation filed Temporary Urgency Change Petitions to weaken ("relax") Delta water quality and flow requirements under very dry conditions. When asked directly whether DWR planned to "reduce or otherwise change its reliance on temporary urgency changes in the future, either with or without the Delta Conveyance Project," (HT Vol. 16, 5/27/25, at 27:24-289:2) DWR witness Ms. White did not directly answer the question. After stating, "[T]he plan is not to rely on temporary urgency change petitions," Ms. White added the qualification: "I'd like to correct that and say historically, under very dry conditions, DWR has filed for temporary urgency change petitions. And it's by the authority of the Board on whether to issue temporary urgency --

temporary urgency change orders. And so for the future, it is uncertain." (HT Vol. 16, 5/27/25, at 28:23-24, 29:4-8.)

45. DWR modeling witness Mr. Singh, in a study performed for DWR dated December 3, 2023, analyzed results for a CalSim 3 model run (sensitivity analysis) that evaluated DCP operations under a series of 2070 climate changes scenarios. (*See* Ex. SAC-004.) In that study, Mr. Singh noted that DWR's 2020 and 2040 model runs "does not consider emergency actions that may be instituted during extended drought conditions such as occurred in 2014, 2015, and 2021 as a result of Temporary Urgency Change Petitions (TUCPs)." (Ex. SAC-004 at 26.) On cross-examination, Mr. Singh also stated that the model runs for the ITP-with-DCP-Off and the ITP-with-DCP-On model runs did not simulate operations with TUCOs in effect. (HT Vol. 7, 4/22/25, at 163:19-22, 164:10-14.) However, for his 2070 analyses, Mr. Singh noted: "By 2070, TUCP-like actions are likely to become more frequent-potentially occurring in about 15% of years." (*Id.* at 27.)

Transfers when Temporary Urgency Change Orders for Delta Operations Are in Effect

41. Ex. DWR-805R, the Revised Operations Plan for the DCP, states at 12: "Given the commitment to operate the south Delta SWP facilities as described in section 2.2, the conditions during a Temporary Urgency Change Petition (TUCP) are not times when the north Delta intakes will likely be used." However, there is a series of reasonable scenarios in which DWR could transfer water through the DCP facilities when TUCPs (*i.e.*, when Temporary Urgency Change Orders, or TUCOs, approving TUCPs) were in effect.

42. When asked about transferring water through the DCP facilities when a TUCO for Delta operations was in effect, Ms. White stated, "[A]ny use of the Delta Conveyance Project, again, would be in compliance with all the bypass flow requirements." (HT Vol. 16, 5/27/25, at 31:1-5, 18-20.) In a similar vein, Ms. White noted: "[W]e have committed to a permit term to maximize our South Delta facilities." (*Id*. at 32:22-24.)

43. The first assumption here is that a TUCO for Delta operations would not reduce bypass flow requirements at the DCP. Based on my experience with TUCOs in 2014, 2015, 2021, and 2022, this is an erroneous assumption. In those past circumstances, the State Water Board reduced the values for the ***controlling requirements*** in the Delta at that time. If bypass flows at the DCP intakes were controlling, it is likely that DWR would request reduction of flow requirements at the DCP intakes as well. Moreover, it is not clear, as currently structured, that CDFW could not independently waive or reduce the bypass flow requirements under the ITP, as the document that controls flows.

44. Additionally, the proposed permit condition requiring the preferential use of the south Delta export facilities for the first 3000 cfs of exports covers only the months of July, August, and September. This leaves the months of October and November when DWR proposes no such preferential use of south Delta export facilities. Again, Ms. White appears to make an assumption that a TUCO for Delta operations would not reduce or eliminate the south Delta preference in the months for which that preference is promised. This is an unwarranted assumption, since, as stated above regarding DCP bypass flows, the south Delta preference when a TUCO for Delta operations is in effect would control the amount of water available for transfer. Under the recent TUCOs discussed above, the State Board modified or eliminated controlling requirements in favor of increased water supply.

45. Under the recent TUCOs, transfers were not subject to the export restrictions on the CVP and SWP that limited exports to levels that meet health and safety requirements. (*See, e.g.*, Ex. CSPA-011, TUCO from March 5, 2015, p. 30: "These export limits do not apply to water transfers…;" *see also* Ex. CSPA-012 TUCO from June 6, 2021, p. 37, "excluding transfers" from "combined export limits".)

46. Because TUCOs for Delta operations by their purpose reduce freshwater flow in the Delta, the permit for the SWP, should the State Water Board approve the DCP, should include a prohibition on water transfers through DCP facilities when TUCOs control Delta operations.

47. DWR in this proceeding has proposed to leave the details of TUCOs for Delta operations to the State Water Board, framing it as a matter of State Water Board discretion to determine in each case what conditions it may place on DWR and Reclamation in a TUCO for Delta operations. DWR's witnesses have also framed what may happen in future TUCOs for Delta operations as uncertain. (*See, e.g.*, HT Vol. 16, 5/27/25, at 29:4-8.) My experience has been that certain elements of TUCOs for Delta operations in 2014, 2015, 2021, and 2022 were very consistent, and that future such elements are generally predictable. My experience has also been that, in the heat of the moment, the State Water Board has been extremely reluctant to set sideboards on operations under TUCOs for Delta operations, in part because the State Water Board has thought of temporary urgency changes as both temporary and urgent. This calculus as I perceive it inadequately discourages reliance on TUCPs and the operations in antecedent years that lead to them. TUCPs have become, in my opinion, an accepted and regular factor in Delta operations. This is wrong. In a long-term planning proceeding such as this, the conditions that have in the past given rise to TUCPs are neither temporary nor urgent, but instead are entirely foreseeable. As such, the State Water Board must consider and weigh the conditions that will foreseeably give rise to future TUCPs for Delta operations, and require in advance all foreseeable options to avoid having to grant them. The State Water Board must also establish expectations that any TUCO issued will be severe and have consequences, not only for the immediate situation, but also in subsequent years. If the Board approves the instant Petition, it should absolutely not allow the use of the new facilities to further gain advantage for water supply in the conditions most detrimental to public trust resources.

48. The impacts to fish of conditions under TUCOs are severe, and well documented in the February 3, 2015 TUCO, notwithstanding the Executive Director's decision to issue another TUCO. (Ex. CSPA-015. S*ee* pp. 9, 10 record low numbers of Delta smelt and longfin smelt; p. 11, 95% egg mortality of winter-run Chinook salmon notwithstanding TUCO.) *See* further analysis and discussion in the testimony of Dr. Rosenfield.

49. Whether the DCP is built or not, this moment requires anticipating in advance, on a planning and general basis, rather than on a reactive basis in a series of supposed one-offs, how to reduce both the frequency of, and the effect of, TUCOs for Delta operations. The goal is to not have them. The minimum is to limit the advantages of using them afforded both by existing and new facilities and operations.

50. The State Water Board should develop permit terms for the State Water Project that discourage TUCOs to the maximum possible extent and that systemically disadvantage operations, in particular those involving DCP facilities, that develop workarounds to constraints when TUCOs are in effect, including those involving transfers.

Likely Changes in Controlling Rules and Constraints

51. Based on twenty-five years of experience in regulatory processes dealing with water in California, it is my opinion that it is reasonable to assume that DWR and its contractors will seek to change the limitations on the SWP, and on the DCP in particular, to increase exports. I have already discussed a likely effort to change constraints, increasing the annual maximum transfer volume, above.

52. An extreme example of an effort to change limitations on SWP exports is a trailer bill proposed by the Newsom administration in May 2025 and currently live in the state legislature. (Ex. CSPA-016.) In relevant part, the bill reads at page 4:

> 11262. The units described in Section 11260 for which the department has received a water right, notwithstanding Section 1382, shall not be subject to the permit requirements found in Article 4 (commencing with Section 1395) of Chapter 6 of Part 2 of Division 2 or subject to revocation pursuant to Article 4 (commencing with Section 1395) and Article 5 (commencing with Section 1410) of Chapter 6 of Part 2 of Division 2. It is the intent of the Legislature that those permits are perpetual until determined by the department to no longer be necessary for the purposes of Section 11260.

It is my understanding of this language that it would remove any limitation on the time that DWR has under its existing water right permits to put water to use up to the face value of its water rights permits. Reviewing the supplemental testimony of DWR witness Thomas

Fitzhugh, the ability of DWR to use the full face value of its water rights permits would increase the average export yield of the DCP from 319 TAF to 472 TAF, compared to the average yield if DWR were limited to its historical use through 2009, when its time to put water to full use ended under DWR's existing water right permits. (*See* DWR-312, Table 2 at 5.) Additionally, changing DWR's permits to allow use up to the full value of its existing permits would have allowed increased exports of over 1 MAF in fifteen years in the 100-year period of simulation, of which 4 years would have allowed increased exports of over 2 MAF. (See *id.*, Table 4 at 7-8.)

53. It is my understanding that the State Water Contractors have actively supported the trailer bill shown as Ex. CSPA-016. (*See* Newsom Press Release, Ex. CSPA-017.)

54. It is possible that DWR could achieve an extension of time for its permits through the normal water rights petition process that it undertook on January 21, 2025. *See* DWR Petition for Extension of Time for its existing water rights permits and transmittal email to Division of Water Rights, January 21, 2025, served on the service list in the instant proceeding on that date. However, it is not known whether the State Water Board would indeed extend time, how long a time extension the State Water Board might grant, or what, if any, additional conditions the State Water Board might place in any Order extending time.

55. Over the past ten years, it has been my personal experience that politicians have become increasingly engaged in seeking to influence the outcome of regulatory proceedings that deal with water use and allocation. This is not limited by party affiliation. I expect this trend to continue. It is therefore my opinion that regulators including the State Water Board must establish firm enforceable rules and conditions in permitting, with accompanying statements that clearly state the rationales for decisions. The State Water Board must also consider the likely realities of future changed rules when determining whether or not to approve a project of this magnitude.

56. Efforts to change the rules affecting water use generally, and Delta exports more specifically, are by no means limited to political actions. It is also reasonable to expect that

DWR and its beneficiaries will try to increase the yield of the combined system for water supply through technical analysis and the evaluation of multiple scenarios in order to devote the least amount of resources required to meet project constraints. They will likely seek novel interpretation or re-interpretation of project constraints. They are also likely to seek augmentation of water supply deliveries by modifying project constraints, either through adaptive management or by explicitly seeking modification of controlling requirements.

57. The DCP, if built, would be a major new element of Delta export operations and the largest water infrastructure project built in California in fifty years. While the State Water Board cannot know exactly what efforts to reduce constraints on exports may be, or how beneficiaries may seek to achieve them, the existence of the infrastructure itself will create a demand for loosening the constraints on its use.

Executed this 11th day of July, 2025 at Berkeley, California

Chris Shutes
Executive Director
California Sportfishing Protection Alliance