BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER FIX

DWR’S CONSOLIDATED RESPONSE TO OPPOSITION TO ITS MOTION FOR RECONSIDERATION

The CA Department of Water Resources (DWR) submits this consolidated response to opposition arguments to its March 26, 2018 Motion for Reconsideration of Rulings on Hearing Scope.¹

DWR asserts that the oppositions to its motion mischaracterize its request and DWR disagrees with the straw man arguments contained in the papers filed by opposing parties. DWR does not argue that the Hearing Officers are constrained in their consideration to the requirements of D-1641 or other current regulatory requirements when assessing the California WaterFix. DWR simply seeks to avoid this hearing re-litigating the efficacy of D-1641, the 2008/2009 Biological Opinions, the existing Consistency Determinations or Incidental Take Permits, and other regulatory requirements that are applicable to the existing State Water Project.

These existing regulatory requirements do not constrain the Hearing Officers but

¹ Natural Resources Defense Council et al. ’s Opposition to DWR’s Motion for Reconsideration of the Scope of Phase 2, and joiners by Deirdre Des Jardins, CSPA et al., Restore the Delta, and City of Antioch’s Opposition to DWR Motion for Reconsideration re: Hearing Officers Ruling on Scope of the Part 2 Hearing.
they do provide the baseline against which the “change” requested in the Petition, the California WaterFix, should be measured. Re-examination of the baseline itself should not be the focus of this hearing.

Most arguments in opposition to this request for reconsideration based on this false premise are therefore inapposite to the request in DWR's motion.

Finally, contrary to the assertion by NRDC that DWR should have challenged the relevance of testimony submitted by NRDC, the Hearing Officers have asked that DWR not file objections to testimony prior to the party beginning its case-in-chief. Thus, NRDC’s claims of procedural defect regarding objections to scope of Dr. Rosenfield are incorrect. DWR was under no obligation to have objected to this testimony or NRDC's filings prior to seeking this reconsideration.

Dated: April 4, 2018

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Tripp Mizell, Sr. Attorney