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Sent via electronic mail

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Board Chair and Members

Presiding Hearing Officer Kuenzi, Administrative Hearings Office

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

Subject: Summary Comments on Draft Decision and Draft Permit for Sites Reservoir Project Water Right Application and Related Petitions

Dear Board Chair, Members, and Presiding Hearing Officer:

On behalf of the Sites Project Authority (Authority), thank you for the opportunity to comment on the Administrative Hearings Office's (AHO) Draft Decision and Draft Permit for the Sites Reservoir Project (Sites Project).¹ The Authority appreciates the extensive record developed through this proceeding and the State Water Resources Control Board's (State Water Board) responsibility to carefully evaluate new water storage in the Sacramento River and the Bay-Delta watershed.

The Sites Project is an important part of California's long-term water supply strategy and the State Water Board's goals of ensuring reasonable water resource allocation, protecting all beneficial uses, improving climate resilience, and balancing Sacramento-San Joaquin rivers and Bay-Delta ecosystem needs with water supply reliability for present and future generations. The entire construct of the Sites Project has been designed with these values and goals at its forefront and would ensure water is made available when California needs it most—for people, farms, communities, wildlife refuges, and the environment. The Sites Project is also important to helping California meet its goals of adding 4 million acre-feet of water storage and achieving 9 million acre-feet of new water supply, conservation, or storage capacity by 2040.

¹ The Authority, through its special legal counsel in the AHO proceeding, is also separately submitting to the AHO and the State Water Board detailed comments, with supporting technical memoranda, on the Draft Decision and Draft Permit. The Authority's specific proposed revisions to certain Draft Permit Terms are set forth in redline format in those detailed comments.



After decades of planning, outreach, and project revisions, the Sites Project is poised to become a reality. The Project has completed environmental review under the California Environmental Quality Act, received Incidental Take Permits (ITPs) from the California Department of Fish and Wildlife (CDFW), entered into a Master Lake and Streambed Alteration Agreement with CDFW, and been conditionally awarded \$1.094 billion by the California Water Commission. If the State Water Board issues a water right permit consistent with the evidence and balanced beneficial uses, the Project will play a major role in improving California's water supply resilience in response to climate change.

Unfortunately, the Draft Permit imposes several new conditions that further erode the Project's benefits and puts the Project's feasibility at significant risk. The proposed diversion restrictions and Bay-Delta Plan compliance terms unnecessarily constrain the Project and collectively would reduce the water yield by approximately 50 percent. In addition, the inability to store local runoff reduces water supply reliability for local communities and weakens local support for the Project.

These conditions prevent the Project's ability to help meet California's long-term water supply and resiliency needs and undermine the public benefits of the Project. It also conflicts with the State Water Board's responsibility to ensure water is used and managed in the best interests of the public. For these reasons, the Draft Permit should be revised so the Sites Project can operate effectively, serve the public interest, and help achieve the State's water supply and climate resilience goals.

Terms 29 and 30 Inappropriately Apply Broad Bay-Delta Restrictions Only to the Sites Project

Draft Permit Terms 29 and 30, which relate to the Bay-Delta Plan, should either be removed or revised so the Project is only responsible for its proportionate share should the proposed Bay-Delta Plan Update requirements be adopted and implemented. As currently written, the Draft Permit terms rigidly condition Sites Project operations in a manner that effectively imposes systemwide regulatory constraints of the Bay-Delta Plan on a single water-right holder. The Authority estimates these terms in isolation would reduce water yield by 41 to 48 percent.

As currently written, these terms place broad Bay-Delta regulatory restrictions almost entirely on the Sites Project, even though the Bay-Delta Plan is intended to apply across the entire watershed. This is inconsistent with the proposed Bay Delta Plan Update because the plan applies watershed-wide, not to just the Sites Project. Importantly, the Draft Decision includes no analysis of the effects of these permit terms on the Project's diversions indicating that these terms did not receive the kind of thorough scrutiny necessary before being included in the Draft Permit.

The Authority supports the proposed objectives in the Bay-Delta Plan and designed the Sites Project to help protect fish, water quality, and the environment. The Project would only divert



water during wetter conditions through state-of-the-art fish screens, storing water off-stream for later use, maximizing use of existing infrastructure where possible, and providing multiple benefits for both people and the environment. The Sites Authority looks forward to engaging with the State Water Board and Healthy Rivers and Landscapes Parties on assets and resources it can bring to the Bay-Delta Plan Voluntary Agreement/Healthy Rivers and Landscapes Program (VA/HRLP) implementation. However, the Draft Permit treats the Sites Project as if it creates greater risks than other water users in the watershed, which is inconsistent with the Project's design and purpose. The permit conditions are also overly rigid and limit the ability to use adaptive, real-time management based on actual conditions.

Bay-Delta Plan related permit conditions should be directly tied to the actual operations impacts of the Sites Project. The Draft Permit's approach to Bay-Delta Plan compliance is an inflexible overlay of requirements that may be duplicative, outdated, or disconnected from hydrologic conditions at the time the Sites Project would begin diverting to storage (approximately 7-8 years from now). That outcome creates an imbalance; reducing the Sites Project's ability to store water during the high-flow periods when additional capture is needed most. California cannot meet its climate, water supply, and ecosystem objectives if new storage is permitted in theory but functionally restricted from operating even when water is physically and legally available.

Term 31 Would Make it Nearly Impossible for the Project to Store Water

Draft Permit Term 31 should be revised to protect VA/HRLP flows without unnecessarily blocking the Sites Project from diverting water during high-flow periods when water is available and other beneficial uses would not be harmed. The Authority estimates this term in isolation would reduce water yield by approximately 30 percent.

The Authority supports the goals of the VA/HRLP and California's broader efforts to improve river flows and habitat through science-based, cooperative approaches. However, as currently written, Term 31 appears to assume that every increment of flow in the Sacramento River beyond the VA/HRLP requirements must be fully protected from use by the Sites Project's diversions and releases, even when there is no demonstrated benefit nor impact to other legal water users. The record for this proceeding and the Bay-Delta Plan Update does not support that assumption, and the Authority does not believe that was the Board's intent.

The VA/HRLP is intended to advance functional ecosystem outcomes through specified flow and habitat commitments, not create a rigid, untouchable additional block of water that prevents new appropriations from providing public benefits. The Sites Project is exactly the kind of project California needs to complement these efforts. It would capture water during higher-flow conditions, in a manner protective of species and habitat, provide flood control benefits,



and store water for use during dry periods to support wildlife refuges, instream purposes, operational flexibility, recreation, and drought resilience.

The permit conditions should recognize that river flow, habitat protection, water storage, and real-time operations can work together when properly integrated. Treating base flows (including all otherwise unregulated and uncaptured flows in the system) as unavailable to the Sites Project would undermine California's broader goals of integrated and flexible water management.

Term 23 Significantly Reduces Project Water Supply Without Clear Scientific Support

Draft Permit Term 23 should be removed because it is not supported by the best available science, and any actual benefit for species is speculative at best. This term in isolation would reduce the water yield by 12 to 15 percent.

The Board should rely upon the best available science. Stricter flow restrictions do not automatically provide improved environmental protection. In this case, the scientific studies and operational analyses presented by the Authority more credibly show otherwise. The bypass flow requirements already approved in the Project's Operations ITP provide for the Project to divert consistent with the fully-mitigated standard under the California Endangered Species Act during wetter periods and reduce pressure to seek water during drier hydrologic conditions. The Operations ITP also supports California's needs to address climate volatility. California is seeing larger storm runoff in shorter periods of time, along with longer dry periods. The Operations ITP bypass requirements allow the Project to capture water during those short high-flow windows, when diversions can provide the greatest public benefit during drier periods with the least environmental impact.

Restricting Project diversions further without a scientifically supported ecological benefit would reduce real and tangible public benefits in exchange for speculative or marginal ecosystem gain. In addition, the Draft Decision does not include an analysis of the water supply impact of these added restrictions under Term 23, making it impossible for the State Board to determine whether the conditions are in the public interest or to properly balance competing needs as required under Article X section 2 of the California Constitution and the public trust doctrine.

Excluding Funks and Stone Corral Creeks Harms Local Water Supply Benefits and the Project's Local Support

The Draft Permit needs to be revised to allow the Project to divert water from Funks Creek and Stone Corral Creek. The evidence in the record shows that water is available from these creeks after protecting existing water users and downstream needs in the Colusa Basin Drain. Excluding these creeks unnecessarily constrains the Project's operational flexibility and reduces



local and statewide public benefits without providing a corresponding environmental benefit or protections for other water right holders.

The creeks provide important local water supply opportunities, especially during wetter months, and could help meet county-of-origin water needs. Instead of completely prohibiting their use, the Final Permit should allow diversions from January through April under the same protective conditions that apply to the rest of the Project. Doing so would preserve the Board's ability to protect downstream users and environmental resources while allowing the Project to capture available water when it can be diverted without injury and placed to beneficial use.

Conclusion

The Authority respectfully urges the State Water Board to revise the Draft Decision and Draft Permit as described in more detail in its separately submitted detailed comments. The State Water Board's role is not to eliminate every theoretical risk from a new appropriation, especially where the record supports permit terms that can protect senior water rights, water quality, fish and wildlife, and the public interest. Instead, the Board's responsibility is to ensure water is used in a manner that is reasonable, protective, and beneficial.

As currently written, the Draft Permit goes beyond reasonable protection and imposes restrictions that would prevent the Project from achieving its main purposes. California urgently needs modern water infrastructure that can address today's climate and water supply challenges. The State Water Board's Final Permit in this proceeding needs to align with the Sites Project succeeding. Burdening the Project with significant restrictions that reduce benefits without improving outcomes for fish, wildlife, water quality, or the public makes the Sites Project infeasible.

The Authority appreciates your thoughtful consideration of its comments.

Sincerely,



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Executive Director

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