

State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office will hold
a Public Hearing on the pending Petitions for Change of Water Right
Permits 16478, 16479, 16481, and 16482
(Applications 5630, 14443, 14445A, and 17512, respectively) of the

Department of Water Resources.

**The Public Hearing will begin on January 16, 2025 at 9:00 a.m. and
continue on January 30, and additional dates to be scheduled,**

and will be held by Zoom teleconference.

Representatives of parties and other people participating in the hearing may access the
hearing by using the following link and call-in information:

Zoom teleconference (join link: bit.ly/aho-dcp-zoom)

Call-in number: 1-669-900-9128

Meeting ID: 969 6180 8415 (Passcode: 750159)

**Interested members of the public who would like to watch this hearing without
participating may do so through the Administrative Hearings Office YouTube
channel at: bit.ly/aho-youtube**

LANGUAGE SERVICES AND ACCESSIBILITY:

This hearing will be offered in English. To request translation of a written document,
interpretation services for the hearing or sign language services, please use one of the
following options by **January 2, 2025**:

- Submit a [Language Services Request online](#)
- Call (916) 341-5254
- E-mail languageservices@waterboards.ca.gov

Users of a Telecommunications Device for the Deaf (TDD) may contact the California
Relay Service at (800) 735-2929 or the teletype (TTY) voice line at (800) 735-2922.

PURPOSE OF HEARING

The State Water Resources Control Board (State Water Board or Board) Administrative Hearings Office (AHO) will hold a public hearing about the Delta Conveyance Project (DCP) beginning on **January 16, 2025**. The hearing will address the water right change petitions filed by the Department of Water Resources (DWR or Petitioner) to add two new points of diversion (PODs) and rediversion (PORDs) to water right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively).

The purpose of the hearing is to gather evidence to determine whether to approve these petitions and, if so, what specific terms and conditions should be included in the amended permits for the State Water Project.

BACKGROUND

On February 22, 2024,¹ the State Water Board's Division of Water Rights (Division) received petitions for change from DWR to add two new PODs and PORDs to water right Permits 16478, 16479, 16481, and 16482, which are associated with the State Water Project (SWP). The proposed new PODs and PORDs would consist of screened intakes 2.3 miles apart located on the lower Sacramento River between Freeport and Sutter Slough. The proposed new intakes are part of the Delta Conveyance Project, which would allow DWR to divert water from the Sacramento River in the northern portion of the Sacramento-San Joaquin Delta Estuary (Delta) and convey the water through a tunnel to existing water distribution facilities in the southern Delta.²

The petitions do not request any other changes to the permits. DWR proposes to leave the existing places of use, purposes of use, other existing PODs and PORDs, quantities and rates of diversion, and other water rights terms and conditions unchanged.

Project Description

The SWP is one of the state's two largest inter-basin water storage and delivery systems. It includes Oroville Reservoir, the Harvey O. Banks Pumping Plant in the southern Delta, Clifton Court Forebay, Bethany Reservoir, the California Aqueduct, and San Luis Reservoir, as well as a series of reservoirs in southern California where water is stored after it has been diverted from the southern Delta. The SWP presently

¹ DWR submitted a revision to its petitions on February 27, 2024, with minor corrections.

² The counties in which DWR operates the SWP that could be affected by the petition are: Alameda, Butte, Colusa, Contra Costa, Glenn, Imperial, Kern, Kings, Los Angeles, Napa, Orange, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Stanislaus, Shasta, Sutter, Tulare, Ventura, Yolo, and Yuba. The stream systems that could be affected by the petition are streams within the Sacramento/San Joaquin River Delta Watershed, including the Feather River downstream of Oroville Dam, the Sacramento River downstream of the confluence with the Feather River, and waterways within the legal Delta.

pumps both natural and abandoned flows and water released from storage in Oroville Reservoir into Clifton Court Forebay at the Harvey O. Banks Pumping Plant. Water is then lifted 244 feet into the 444-mile California Aqueduct and delivered for immediate use or stored in San Luis Reservoir or other reservoirs south of the Delta for later use. Subject to certain restrictions, existing SWP export facilities are also used by the U.S. Bureau of Reclamation (Reclamation) to convey Central Valley Project (CVP) water and by other water diverters for water transfers and exchanges.

The proposed Delta Conveyance Project consists of the construction, operation, and maintenance of new SWP water diversion and conveyance facilities on the Sacramento River and in the Delta that would be operated in coordination with the existing SWP facilities. The proposed new PODs include two new intakes located along the eastern bank of the Sacramento River between Freeport and the confluence of the Sacramento River with Sutter Slough, each with a maximum capacity of 3,000 cubic feet per second (cfs) (up to a combined maximum rate of 6,000 cfs). DWR states the intakes would be 1,574 and 1,528 feet in length along the riverbank, respectively, and would include cylindrical tee fish screens, intake structures, sedimentation basins, sediment drying lagoons, flow control structures, intake outlet channel and intake outlet shafts, embankments, and other appurtenant structures. The proposed new water conveyance facilities would divert water through fish screens and convey the water through a single tunnel to a new pumping plant and aqueduct complex between Byron Highway and Mountain House Road near Mountain House in the southern Delta, discharging the water to the Bethany Reservoir near the beginning of the California Aqueduct.

DWR is the lead agency for the project under the California Environmental Quality Act (CEQA), and the U.S. Army Corps of Engineers (USACE) is the lead agency for the project under the National Environmental Policy Act. In July 2022, DWR released a Draft Environmental Impact Report (EIR) for the project and in December 2022, USACE released a Draft Environmental Impact Statement. DWR released the Final EIR for the project on December 8, 2023, and certified it on December 21, 2023. The proposed project is identified as Alternative 5 in the Final EIR.

Summary of Petitions for Change

DWR seeks to add the following points of diversion (or redirection) to Permit 16478 (Application 5630), Permit 16479 (Application 14443), Permit 16481 (Application 14445A), and Permit 16482 (Application 17512):

- **DCP Intake B:** Fish screen beginning at N. 1,901,506 feet and E. 6,699,561 feet extending downstream along the left bank Sacramento River 954 feet to N. 1,900,950 feet and E. 6,698,786 feet within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 10, T6N, R4E, MDB&M.
- **DCP Intake C:** Fish screen beginning at N. 1,890,209 feet and E. 6,695,905 feet extending downstream along the left bank Sacramento River 955 feet to N. 1,889,469 feet and E. 6,695,302 feet within S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 22 and NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 27, T6N, R4E, MDB&M.

Proceedings by the Division of Water Rights

On February 29, 2024, the Division issued a public notice of DWR's petitions to change its water right permits for the SWP, which provided instructions for filing a protest to the petitions. On April 18, 2024, the Division issued a revised notice extending the deadline to file a protest until May 13, 2024.

The Division received protests against DWR's petitions from the individuals and entities listed in Attachment 3 of this notice (Protestants). The Water Code requires Protestants and the Petitioner to make a good faith effort to resolve the protests within a 180-day protest resolution period. While the protest resolution period will not conclude until November 12, 2024, the Division anticipates that there will be unresolved protests that will require a hearing. In order to inform the hearing process and in accordance with the Division's May 22, 2024 letter, each Protestant must file a written status report for their protest and the Petitioner must file a written status report for all protests with the State Water Board by December 12, 2024.

The issuance of this hearing notice does not shorten the protest resolution period. Petitioner and any Protestants whose protests have not been resolved should continue to negotiate in good faith to resolve the protests. Successful resolution of issues raised by Protestants to the parties' mutual satisfaction during the protest resolution period may narrow the scope of the hearing.

Assignment to the Administrative Hearings Office

Although the protest resolution period has not concluded, the State Water Board anticipates that an evidentiary hearing will be necessary to resolve material issues of fact concerning DWR's petitions. (See Wat. Code, §§ 1350-1352.) Water Code section 1110 established the AHO within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. On June 14, 2024, the State Water Board's Executive Director issued a memorandum to the AHO, assigning DWR's petitions for change to the AHO to conduct an adjudicative hearing and prepare a recommended water right order for consideration by the State Water Board.

Legal Standard for Petitions for Change

Water Code sections 1701 through 1705 govern changes to a water right permit or license. To approve a water right change petition, the Board must find that the proposed change will neither in effect initiate a new right nor injure any other legal user of water. (Wat. Code, § 1702; Cal. Code Regs., tit. 23, § 791, subd. (a).) As used in Water Code section 1702, the term "injury" means invasion of a legally protected interest. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 738-743.) "An injury occurs when the change [would] materially diminish [] the quantity of water or deteriorate [] the quality for the intended uses" of other legal users. (State Water Board Order WR 79-22, p. 7.)

The Board also considers whether approval of the petition will unreasonably affect fish, wildlife, or other instream beneficial uses, whether any impacts to public trust resources can feasibly be avoided, and whether approval of the petition is in the public interest. (Order WR 2009-0033, p. 6, fn. 4, citing *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The Board may also require the petitioner to submit information to demonstrate that the proposed change will comply with any applicable requirements of the Fish and Game Code, including the California Endangered Species Act, and the federal Endangered Species Act, and demonstrate compliance with CEQA. (Wat. Code, § 1701.3, subd. (b)(2) & (3).)

Delta Reform Act

The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) declares the Delta to be a “critically important natural resource for California and the nation ... serv[ing] Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.” (Wat. Code, § 85002.) The objectives of the Act are defined as two overarching coequal goals: (1) to provide a more reliable water supply for California, and (2) to protect, restore, and enhance the Delta ecosystem. (*Id.* at § 85054.) In pursuing these coequal goals, the Act declares that it is the policy of the State of California to achieve restoration of the Delta ecosystem; protect the unique cultural, recreational, and agricultural values of the Delta as an evolving place; improve water quality; and improve the state’s water conveyance system. (*Id.* at § 85020.)

The Delta Reform Act required the State Water Board to develop non-regulatory Delta flow criteria to protect public trust resources in the Delta. (*Id.*, at § 85086.) After reviewing the available scientific literature and conducting a public informational process in 2010, the Board approved the Final Report on Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (2010 Delta Flow Criteria Report). In the report, the Board found that “[r]ecent Delta flows are insufficient to support native Delta fishes,” and that restoration of the Delta ecosystem would require enhanced flows. (2010 Flow Criteria Report, p. 5.) The report included flow criteria for Delta outflow, Sacramento River inflow, San Joaquin River inflow, hydrodynamics (i.e., constraints on reverse flows and Delta exports), and inflow from other Eastside rivers and streams. As explained in the report, the flow criteria are based solely on the needs of public trust resources and do not incorporate the comprehensive consideration of impacts to other beneficial uses and the public interest that is required of the Board when acting pursuant to its other authorities.

Though not pre-decisional, the flow criteria developed by the Board in the 2010 Flow Criteria Report must inform the Board’s consideration of any petition to change the point of diversion of the SWP (or CVP) from the southern Delta to the Sacramento River. (Wat. Code, § 85086, sub. (c)(1).) Any order approving such a petition must be conditioned upon “appropriate” flow criteria. (Wat. Code, § 85086, sub. (c)(2).)

Water Quality Control Plans

The State Water Board and Regional Water Quality Control Boards are required to adopt water quality control plans to reasonably protect beneficial uses of water. These plans identify the beneficial uses of specific water bodies, water quality objectives to protect those uses, a program of implementation to achieve the objectives, and monitoring and other provisions to evaluate the effectiveness of implementation measures.

There are two water quality control plans that cover areas that may be affected by the Delta Conveyance Project. The Central Valley Regional Water Quality Control Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins sets water quality objectives for those watersheds. The Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta watershed (Bay-Delta Plan) is a separate water quality control plan developed by the State Water Board that establishes primarily flow-based water quality objectives and implementation measures. The Bay-Delta Plan includes Sacramento River flow and Delta salinity and outflow objectives, which were implemented by State Water Board Decision 1641 (D-1641). D-1641, which was adopted in 1999 and revised in 2000, placed interim responsibility on DWR and Reclamation for meeting the flow, salinity, and outflow objectives pursuant to agreements between DWR, Reclamation, and other water users.

Any approval by the State Water Board of DWR's petitions for change must be consistent with the applicable water quality control plans, including any flow requirements established by the Bay-Delta Plan.

Since D-1641 was adopted, populations of native aquatic species have significantly declined. In 2017, the State Water Board completed a Scientific Basis Report that concluded that existing flows and regulatory requirements in the Bay-Delta Plan for the Sacramento River and Delta are insufficient to reasonably protect fish and wildlife beneficial uses. (Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows (Exh. AHO-1).) As a result, the State Water Board is in the process of considering updates to the portions of the Bay-Delta Plan covering the Sacramento River watershed, Delta eastside tributaries (including the Cosumnes, Mokelumne, and Calaveras Rivers), and Delta (collectively referred to as the Sacramento/Delta watershed). In 2023, the Board completed a draft Staff Report in support of Sacramento/Delta updates to the Bay-Delta Plan (Exh. AHO-2) that assesses a range of alternatives for updating the Sacramento/Delta portions of the Bay-Delta Plan. The draft Staff Report evaluates: (1) an alternative based on the State Water Board staff July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan (Exh. AHO-3) that includes a 55 percent of unimpaired flow objective (within an adaptive range from 45 to 65 percent) from Sacramento/Delta tributaries and associated Delta outflows, as well as other provisions; and (2) a proposed voluntary agreements alternative that includes voluntary water contributions and physical habitat restoration on major tributaries to the Delta.

The Board has not yet decided how to proceed with the Sacramento/Delta updates to the Bay-Delta Plan. Key documents related to the Sacramento/Delta updates to the Bay-Delta Plan will be identified as AHO Exhibits and offered into the evidentiary record during this proceeding. The AHO Exhibits will be available on the State Water Board's FTP site in the folder for this proceeding (see Document Availability section below).

California Environmental Quality Act Compliance

As a responsible agency under CEQA, the State Water Board must consider the Final EIR prepared by DWR in determining whether to approve DWR's water right change petitions for the Delta Conveyance Project. The Final EIR will be identified as an AHO Exhibit (or Exhibits) and will be offered into evidence.

For each significant environmental effect identified in a Final EIR that is within the Board's area of responsibility, the Board must make one or more of the following findings: (1) changes have been required in the project that mitigate or avoid the significant effect, (2) such changes are within the responsibility and jurisdiction of another public agency and have been or can and should be adopted by that agency, or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or project alternatives identified in the Final EIR infeasible. (Pub. Res. Code, §§ 21002.1, 21081; Cal. Code Regs, tit. 14, §§ 15091, 15093.)

The adequacy of the Final EIR for the Delta Conveyance Project for purposes of CEQA compliance is not a hearing issue. (See Cal. Code Regs., tit. 14, § 15096, subd. (e).) The parties will be permitted, however, to submit evidence and argument concerning the Final EIR to the extent that the evidence or argument relates to the hearing issues in this notice, or any amended notice that may be issued.

Related Permitting Processes for the Delta Conveyance Project

There are several other pending permitting processes that are related to the Delta Conveyance Project.

Water Quality Certification

DWR is required to file an application for water quality certification with the State Water Board for the Delta Conveyance Project under section 401 of the Clean Water Act. Construction of the project would involve the discharge of dredged or fill material into waters of the United States, which requires a permit from the USACE under Section 404 of the Clean Water Act (33 U.S.C. § 1344). Section 401 of the Clean Water Act specifies that any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall obtain certification from the state that the activity will comply with the applicable water quality standards. (*Id.*, § 1341(a) & (d).) Because the water quality certification for the proposed Delta Conveyance Project is associated with water right actions, the Division will be responsible for acting on the application for water quality certification. (Cal. Code Regs., tit. 23, § 3855, subd. (b)(1)(B).)

Incidental Take Permit

The California Endangered Species Act prohibits the take of any species of wildlife designated by the California Fish and Game Commission as endangered or threatened. (Fish & Game Code, § 2080.) The California Department of Fish and Wildlife (CDFW) may authorize the take of any such species if that take is incidental to otherwise lawful activities and if certain conditions are met and permittees minimize and fully mitigate the impacts of the project. (*Id.* at § 2081.) These authorizations are referred to as incidental take permits (ITP). DWR applied to CDFW for an ITP for the Delta Conveyance Project on April 9, 2024.

Petitions for Extension of Time for State Water Project Water Right Permits

In 2009, DWR submitted petitions to extend the current 2009 deadline to maximize the beneficial use of water under permits for the SWP to December 31, 2015. Pending identification by DWR of CEQA documentation to support the time extension petitions, the State Water Board has not processed the petition and in the intervening time, the time period requested in the petitions has lapsed and several of DWR's stated reasons for that time extension petitions similarly are now moot or have been superseded by subsequent developments. Accordingly, the Board does not plan to continue processing the 2009 petitions.

Should DWR amend the 2009 petitions or 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.

HEARING ISSUES

The State Water Board will decide whether to approve DWR's petitions to add two new PODs and PORDs to water right Permits 16478, 16479, 16481, and 16482, based upon the evidentiary record developed during the hearing. Parties to the proceeding may submit exhibits and testimony relevant to the following issues and sub-issues to be considered during the hearing:

Should the State Water Board approve the petitions to change water right Permits 16478, 16479, 16481, and 16482? If so, what conditions, if any, including conditions to address the issues identified below, should the Board include in the amended permits?

1. Would approval of the petitions effectively initiate a new water right?
 - a. To avoid initiation of a new water right, as a condition of any approval of the petitions, should the Board limit the amount of water that may be diverted and used under the amended permits unless and until the Board approves an extension of the 2009 deadline to complete beneficial use under those permits?

- b. If so, what limitation should the Board impose?
2. Would approval of the petitions result in injury to any legal users of water?
 - a. Will approval of the proposed changes in points of diversion alter water flows or impact groundwater availability in a manner that causes injury to legal users of water?
 - b. Will approval of the proposed changes in points of diversion alter surface or groundwater quality in a manner that causes injury to other legal users of water?
3. Would approval of the petitions unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - a. Will approval of the proposed changes in points of diversion alter water flows in a manner that will unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - b. Will approval of the proposed changes in points of diversion alter water quality in a manner that will unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - c. What Delta flow criteria are appropriate and should be included in any approval of the petitions, taking into consideration the 2010 Delta flow criteria, competing beneficial uses of water, and the relative responsibility of DWR and other water right holders for meeting water quality objectives?
 - d. What conditions, if any, should the Board impose on any approval of the petitions in anticipation of the updates to the Bay-Delta Plan and the possible inclusion of voluntary agreements in those updates?
 - i. Should the effective date of any approval of the petitions be contingent upon adoption and implementation of the update to the Bay-Delta Plan, and a determination by the Board of the conditions on diversions that are necessary to meet updated Bay-Delta Plan requirements?
 - ii. Alternatively, should any approval of the petitions be subject to interim requirements to ensure reasonable protection of beneficial uses pending the adoption and implementation of the update to Bay-Delta Plan?
 - iii. Should any approval of the petitions include conditions to protect proposed voluntary agreement flows or the flows to which proposed voluntary agreement flows are intended to be additive, in the event the Bay-Delta Plan is updated to include voluntary agreements?
4. Would approval of the petitions be in the public interest? If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permits to protect the public interest?
5. Would approval of the petitions impact tribal lands, tribal interests, or tribal cultural resources? If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permits to protect these interests?

6. Would approval of the petitions be consistent with applicable policies and regulatory requirements concerning racial equity and environmental justice? If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permits to be consistent with applicable racial equity and environmental justice policies and requirements?
7. Is there a feasible alternative or are there feasible mitigation measures within the State Water Board's authority that would substantially lessen or avoid any significant effect of the project identified in the Final EIR? If approved, what terms and conditions, if any, within the Board's authorities should be included in the amended permits to mitigate or avoid significant environmental impacts identified in the Final EIR?

PROPOSED CONDITIONS OF APPROVAL

Each party to the proceeding shall either: (1) submit proposed conditions that would resolve any protest filed by the party to DWR's water right change petitions or that the party believes is necessary to satisfy the legal requirements for the State Water Board to approve DWR's petitions, or (2) submit a statement that no conditions would resolve the party's protest or satisfy the legal requirements for the Board to approve the petitions. These proposed permit conditions or statement that there are no appropriate conditions of approval shall be submitted to the AHO by the deadline for submittal of case-in-chief exhibits.

This request for proposed permit conditions or statement of no appropriate conditions of approval is a request for additional information that the Board has determined is reasonably necessary to attempt to resolve the protests to DWR's petitions for change under Water Code section 1703.5. Failure of a party to comply with this request may result in cancellation of the party's protest by the Board under Water Code section 1703.6.

HEARING OFFICER AND HEARING TEAM

Presiding Hearing Officer Nicole Kuenzi will preside over the hearing in this matter. The hearing team will include State Water Board staff from the AHO, the Division of Water Rights, the Office of Chief Counsel, and the executive management of the State Water Board. Consistent with the separation of functions described below, the hearing team will not include any staff in the Division's Water Quality Certification Section, the Chief Deputy Director who oversees the Division of Water Rights, or staff from the Office of Chief Counsel assigned to provide legal advice to staff of the Water Quality Certification Section and the Chief Deputy Director about any application for a water quality certification submitted by DWR for the Delta Conveyance Project.

Members of the hearing team may assist and meet with the hearing officer and State Water Board members throughout these proceedings to discuss or deliberate on relevant matters. State Water Board members may be present during the pre-hearing conference, site visit, or hearing; however, the State Water Board will not act on DWR's

petitions until after the hearing and preparation of the recommended decision or order by the hearing officer.

PROHIBITION ON EX PARTE COMMUNICATIONS

While this proceeding is pending, ex parte communications between any party, party representative, or interested person and the hearing officer, any member of the hearing team, or any State Water Board member are prohibited. Ex parte communications include any type of communication regarding this proceeding that occurs between a party or interested person and the hearing officer, a member of the hearing team, or a State Water Board member without notice and an opportunity for all parties to participate. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) Additional information about ex parte communications is in response number 16 of the AHO's FAQ posted at bit.ly/aho-faq. (See response to FAQ 16.)

If any party wants to communicate with any member of the hearing team, the hearing officer, or any Board member, at any time while this proceeding is pending regarding any potentially controversial procedural or substantive issue then that party shall make such communication in writing (by e-mail or letter) and serve all other parties with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. A party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

If the AHO receives any substantive or potentially controversial procedural communication regarding this proceeding that is addressed to the AHO, a Board member, the hearing officer, or any other member of the hearing team, but not copied to the hearing parties, then the AHO will file a copy of the communication in the "Misc. Correspondence" folder within the State Water Board's FTP folder for this proceeding. Parties should plan to regularly check this folder for such communications.

Please do not attempt to communicate by telephone or in person with AHO staff or any hearing team member regarding this proceeding, because other parties would not be able to participate in such communications. If oral communications with any members of the hearing team are necessary to discuss any potentially controversial procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

SEPARATION OF FUNCTIONS

DWR has not yet filed an application for water quality certification for the Delta Conveyance Project. The Water Quality Certification Section of the Division of Water Rights will process the application, once received. The State Water Board's Executive Director will delegate to the Chief Deputy Director who oversees the Division of Water

Rights the authority to act on DWR's application for water quality certification. The Water Quality Certification Section will advise the Chief Deputy Director and shall report directly to the Chief Deputy Director for this purpose. The Chief Deputy Director and staff of the Water Quality Certification Section are separated from the hearing team and are subject to the prohibition against ex parte communications about this proceeding with any member of the hearing team, the hearing officer, or State Water Board members. The separation of functions and prohibition on ex parte communications also extends to the attorneys at the Office of Chief Counsel assigned to advise the Chief Deputy Director and staff of the Water Quality Certification Section about DWR's application for a water quality certification.

PRE-HEARING CONFERENCE

The hearing officer will hold an initial pre-hearing conference on **August 13, 2024, starting at 9:00 a.m.**, as indicated in the June 19, 2024 Notice of Pre-Hearing Conference. This notice is available on the AHO webpage and includes information about how to participate in the conference. All parties intending to participate in the evidentiary portion of this hearing are strongly encouraged to participate in the pre-hearing conference.

The purpose of this initial pre-hearing conference is to address the pre-hearing deadlines and hearing schedule set in this notice. The hearing officer will also ask DWR to identify the approximate date on which it expects to receive an ITP for construction and operation of the proposed Delta Conveyance Project. The pre-hearing conference will **not** include discussion of the merits of any hearing issues or any matters other than procedural matters. The hearing officer will conduct additional pre-hearing conferences on October 17 and December 16, 2024, to address other procedural issues.

Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO by **August 9, 2024**,³ and serve copies of it on the other parties listed in the attached service list.

Following the pre-hearing conference, the hearing officer may issue a procedural ruling letter or amended hearing notice.

WRITTEN COMMENTS ON HEARING ISSUES

The AHO will accept written comments on or requests to modify the hearing issues identified in this notice until the deadline identified below. The purpose of these comments is to inform the hearing officer as to any changes that should be made to the hearing issues and the reason for those changes. Written comments on the hearing

³ Unless otherwise stated, the deadline for submission of documents is 11:59 p.m. on the date identified in this notice as the deadline.

issues shall be no longer than 8 pages, double-spaced, in 12-point font, and shall be transmitted to the AHO using one of the methods identified below.

Following the written comment period, the hearing officer may issue a procedural ruling letter or amended hearing notice with revised hearing issues.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Deadline to file optional pre-hearing conference statements.	August 9, 2024
Initial Pre-Hearing Conference.	August 13, 2024, at 9:00 a.m.
Deadline to submit written comments on hearing issues.	September 5, 2024
Second Pre-Hearing Conference.	October 17, 2024, at 9:00 a.m.
Deadline for all parties to file initial NOIs, including witness lists, and deadline for any interested person who intends to give a policy statement to file an NOI.	November 4, 2024
Deadline for parties to file case-in-chief exhibits, exhibit identification indices, and proposed permit terms.	December 4, 2024
Third Pre-Hearing Conference.	December 16, 2024, at 9:00 a.m.
Hearing begins with policy statements.	January 16, 2025, at 9:00 a.m.
Evidentiary portion of hearing begins.	January 30, 2025, at 9:00 a.m.

At this time, the hearing officer is scheduling only the pre-hearing deadlines, the first hearing day for policy statements, and the first day of the evidentiary portion of the hearing. **This schedule may be modified and is contingent in part upon the date of issuance of a final ITP for the project and other concurrent State Water Board proceedings concerning the Bay-Delta watershed.**

UPDATES TO SERVICE LIST

The AHO prepared the attached service list using information from the Division’s files about the petitions, the protests received, and other communications by interested persons during the protest period. If any party or interested person on the service list wants to change any of their information in the current service list, the party or interested person should submit this information by e-mail to DCP-WR-Petition@waterboards.ca.gov. The party or interested person does not need to send copies of the e-mail to the service list.

SUBMISSION OF DOCUMENTS TO THE AHO

All documents submitted to the AHO shall be addressed and submitted by one of the following methods:

E-mail (preferred method for documents other than exhibits):

DCP-WR-Petition@waterboards.ca.gov

By Mail:

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

Hand Delivery or Overnight Delivery:

Joe Serna Jr. CalEPA Building
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

By uploading to FTP (Preferred method for exhibits): All participants must submit exhibits by uploading them to the State Water Board's FTP site.

Please see the part of this notice below titled "PROCEDURES FOR THIS WATER RIGHT HEARING" for more information regarding hearing procedures, submission of documents, and proofs of service.

DOCUMENT AVAILABILITY

The AHO has moved documents maintained by the Division for DWR's petitions for the Delta Conveyance Project to a folder on the State Water Board's FTP site. The FTP folder for this proceeding may be accessed at <https://ftp.waterboards.ca.gov/>. Anyone may view and download documents from the FTP site. To access the FTP folder for this proceeding, please send an email to DCP-WR-Petition@waterboards.ca.gov with "Request for DCP-ftp login credentials" in the subject line.

The AHO has included documents in the initial administrative record for this proceeding. The AHO has marked some of the documents that it has filed in the FTP folder for this hearing as exhibits and created an exhibit identification list for these AHO exhibits which is also available in the FTP folder for this hearing. The AHO will continue to update the AHO exhibit list.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices for these proceedings on the AHO's Internet webpage at bit.ly/aho-dcp.

HEARING LIVE-STREAM AND RECORDING

The pre-hearing conference and hearing will be live-streamed through the AHO's YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. To view the morning session, click the link identified as "am." The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as "pm." The afternoon session will begin after the lunch break.

After the conclusion of the hearing, a recording of the morning and afternoon YouTube live-stream sessions will be available on the AHO's YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link by clicking on "Live" and then clicking on the name of this proceeding: bit.ly/aho-youtube.

MORE INFORMATION

Frequently Asked Questions

For information about the AHO and general hearing procedures, refer to the AHO Frequently Asked Questions, available at bit.ly/aho-faq.

E-mail List

Any interested person may sign up to receive communication related to this proceeding at bit.ly/swb-subscribe by selecting "Delta Conveyance Project Public Hearing" in the Administrative Hearings Office subscription topic group.

PROCEDURES FOR THIS WATER RIGHT HEARING

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during, or after the hearing, as appropriate and at the hearing officer's discretion.

1. HEARING PROCEDURES: The AHO will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. Copies of these regulations are posted on the State Water Board's website: www.waterboards.ca.gov/laws_regulations. If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this hearing.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures

are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

2. SETTLEMENTS: The Petitioner and Protestants may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO or hearing team will participate in such settlement discussions. If the parties or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO.

Although the hearing officer may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the petitioner and protestants.

3. PARTIES: As provided in California Code of Regulations, title 23, section 648.1, subdivision (b), parties to this proceeding are the Department of Water Resources and the Protestants listed in Attachment 3 of this notice.

Each person or entity that wants to participate in the hearing must file a Notice of Intent to Appear, as described in section 5. The hearing officer may allow a person or entity not identified as a party in this notice to participate in the hearing as a party if the person or entity timely files a Notice of Intent to Appear and demonstrates good cause. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) Except for parties identified in this notice, a person or entity that wants to participate as a party must include an attachment to the Notice of Intent to Appear demonstrating good cause as to why the hearing officer should allow the person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement. In determining whether the person or entity has demonstrated good cause, the hearing officer will consider, among other potentially relevant factors, whether the person's or entity's legal rights, duties, privileges, or immunities may be substantially affected by the proceeding and whether the interests of justice and the orderly and prompt conduct of the proceeding may be impaired by allowing the intervention.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, the hearing officer will allow only parties to present evidence, make objections, examine witnesses, and file closing briefs.

Although representation is not required, a party without an attorney should consider hiring one if the hearing involves complex legal issues. Some attorneys provide legal services free of charge (“pro bono assistance”). The AHO maintains a list of attorneys who may provide pro bono assistance before, during, and after the hearing on the AHO’s webpage under the heading “AHO Procedures & FAQs.”

4. POLICY STATEMENTS BY INTERESTED PERSONS: As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present or submit non-evidentiary policy statements. Interested persons should submit any written policy statements before the hearing or submit or summarize them orally at the beginning of the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections to parties’ exhibits or testimony, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing. The AHO will only add such persons or entities to the service list for electronic service.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing are requested to file a Notice of Intent to Appear, using the form in this notice (Attachment 1), indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

5. NOTICES OF INTENT TO APPEAR AND WITNESS LISTS: As provided in California Code of Regulations, title 23, section 648.4, all people and entities that want to participate in the hearing as parties must file a Notice of Intent to Appear, using the form in this notice (Attachment 1), with the AHO before the deadline specified in this notice. The AHO may interpret a failure to file a Notice of Intent to Appear by this deadline as a decision not to appear. In matters regarding water right petitions, the requirement to file a Notice of Intent to Appear by the deadline is a request for additional information pursuant to Water Code section 1703.5. In such matters, the Board may cancel a petition or protest if the petitioner or protestant does not file a Notice of Intent to Appear by the deadline.

As discussed in the preceding section, the AHO requests that any interested person who will not be participating as a party and will be presenting only a non-evidentiary oral policy statement or oral summary of a written policy statement file a Notice of Intent to Appear before the deadline and specify in the notice that the person only will be presenting an oral policy statement or summary.

Parties who intend to present case-in-chief or rebuttal testimony must submit, by the deadline specified in this notice, a witness list using the forms in this notice (Attachment 2). (See section 6 for requirements that apply to written testimony.) If a party intends to call any expert witnesses, the party shall designate each expert witness as an expert witness in the party's witness list.

Parties that do not intend to present cases-in-chief but want to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.⁴ A party that decides not to present a case-in-chief after having submitted a witness list should notify the AHO and the other parties as soon as possible.

Parties that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

The AHO will maintain a current service list with the names of parties and their contact information for each person or entity that has submitted a Notice of Intent to Appear or asked to be on the updated service list and will post this service list on the State Water Board's FTP site in the folder for this proceeding. The service list will indicate if any party is not willing to accept electronic service.

6. WRITTEN PROPOSED TESTIMONY AND OTHER EXHIBITS: Exhibits include all written proposed testimony, statements of qualifications of expert witnesses, summary slides, and other documents to be submitted as evidence.

Exhibits also may include copies of Board decisions and orders that parties want to cite in their legal briefs and that are not posted on the Board's website at this link: www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/. Parties should not submit copies of Board decisions and orders that the Board has posted on its website, and parties may cite such decisions and orders in their legal briefs without submitting copies of them as exhibits.

As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written proposed testimony absent good cause. Each party shall designate each of its witness's written proposed testimony as a separate exhibit. A witness does not need to sign their proposed testimony. After each witness takes the oath, the

⁴ A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as cases-in-chief to participate through opening statements, cross-examination, and rebuttal, and to present closing statements or briefs, if the hearing officer allows other parties to present such closing statements or briefs.

hearing officer or legal counsel for the party who called the witness will ask the witness to confirm that their written proposed testimony is their testimony for the hearing.

Each party must submit all of its witnesses' written proposed testimony with the party's other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO strongly encourages each party to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of their written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

The AHO has prepared an initial Excel spreadsheet containing a list of the documents in the administrative record, saved in the State Water Board's FTP folder for this proceeding, that the hearing officer will consider moving into the evidentiary record during the hearing. These documents are AHO exhibits. The AHO has posted this list in the State Water Board's FTP folder for this proceeding. The hearing officer may update or supplement this list during the hearing. Parties should not submit copies of AHO exhibits, and parties may cite such documents in their legal briefs without submitting copies of them as exhibits.

7. EXHIBIT FORMATTING AND ORGANIZATION: A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in a Microsoft Excel format.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, DWR's exhibits should be numbered DWR-1, DWR-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about their written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony but should not number or letter these headings and should not re-start the paragraph numbering in each section.

Each party must submit to the AHO the exhibits and exhibit identification indices for this hearing before the deadline specified in this hearing notice. The AHO may treat a party's failure to submit exhibits before this deadline as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

- a. The AHO requests that documents such as written proposed testimony, motions, written comments, and briefs shall be submitted to the AHO on pleading paper

(with each line numbered in the left margin) using 12-point font and one-inch margins. If pleading paper is not available, the documents described above shall be double-spaced. For either format, the party shall sequentially number the paragraphs in the written testimony.

- b. Parties submitting exhibits based on complex technical analyses also must submit sufficient information so that a qualified independent expert could reproduce the results.

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- c. Documents uploaded by the parties normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel format, slide presentations may be submitted in Microsoft PowerPoint format, and exhibit identification indices must be submitted in Excel format.
- d. If a party wants to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer and serve copies of the request on all other parties on the service list, at least 10 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit in that format, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

8. SUBMISSION OF DOCUMENTS AND FTP FOLDERS: To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents in electronic form unless the hearing officer authorizes submission in different formats.

The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "State Water Board FTP Download Folder." The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the "Parties' Upload Folders."

a. State Water Board FTP Download Folder:

The AHO created a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain all administrative record documents related to this proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. This folder is referred to in this notice as the "State Water Board FTP folder for this proceeding." Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and closing briefs to this folder promptly after each filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings, correspondence, and the AHO's proposed order). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the State Water Board Download Folder for any proceeding, including this proceeding, at any time.

If any party believes that the AHO should add documents to, or remove any documents from, this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the DCP-WR-Petition@waterboards.ca.gov e-mail inbox), and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

b. Upload Folders:

The AHO will create a separate upload account for each party that files a Notice of Intent to Appear as a party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder.

Each party shall upload its exhibits and Exhibit Identification Index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the State Water Board's FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO. When a party has uploaded all of the party's exhibits to the State Water Board's FTP site, the party or party's representative shall e-mail the AHO at DCP-WR-Petition@waterboards.ca.gov, with copies to the other parties on the service list, notifying the AHO and the other parties that the party has uploaded the documents.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' Upload Folders to the State Water Board FTP Download Folder and advise the parties that these documents are available for downloading from that folder. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of unaltered documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the AHO-FTP Download Folder.

If a party cannot upload exhibits to the State Water Board's FTP site, then the party may send two paper copies of all its exhibits to the AHO by mail or overnight delivery to:

By Mail:

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

Hand Delivery or Overnight Delivery:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

The deadline for filing paper copies, in lieu of electronically filing the exhibits, is the same as the exhibit filing deadline specified in this notice.

9. PRE-HEARING CONFERENCE: The hearing officer will conduct one or more pre-hearing conferences before the hearing to discuss the pre-hearing and hearing schedules, the scope of the hearing, the status of protests, time limits, and any other appropriate procedural issues. The hearing officer may issue notices of subsequent pre-hearing conferences. The hearing officer may issue a pre-hearing conference order after each pre-hearing conference.

10. ORDER OF PROCEEDING: The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing.

a. **Policy Statements:** The hearing officer will allow interested persons to present oral policy statements and oral summaries of written policy statements at the start of the hearing before the presentations of cases-in-chief. Each oral policy statement or oral summary of written policy statements shall not exceed 5 minutes. The hearing officer

may impose a shorter time limit based on the number of interested persons who request to make an oral presentation.

- b. **Presentation of Cases-In-Chief:** Each party that so indicates in its Notice of Intent to Appear may present a case-in-chief addressing the key issues in this hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of any witnesses' written proposed testimony. The hearing officer then will allow other parties to cross-examine the witnesses. The hearing officer may allow re-direct examination and re-cross examination of the witnesses. The hearing officer will decide whether to accept the party's exhibits into evidence upon the party's request or motion after completion of all examinations of the party's witnesses.
- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement. Each opening statement shall not exceed 10 minutes.
- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written proposed testimony into the record, but instead may provide a summary if allowed by the hearing officer. A witness provides their direct testimony when they confirm that a designated exhibit is their testimony. The purpose of this part of the hearing is for the witness to briefly summarize their testimony. The hearing officer will not allow witnesses to provide oral direct testimony on matters not in their written proposed testimony. The hearing officer may establish time limits for parties to present oral summaries of their witnesses' written testimony.
- iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters even if they are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness. The hearing officer may establish time limits for the cross-examination of witnesses.

- iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
 - v. **Hearing Officer's Questions:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions, and may cross-examine any witness, at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Parties must submit rebuttal testimony and exhibits to the AHO by the deadline stated in this notice. Written rebuttal testimony must specify the previously submitted testimony that is being rebutted. The hearing officer normally will limit cross-examination of witnesses offering rebuttal evidence to the scope of the rebuttal evidence.

- d. **Closing Briefs:** The hearing officer will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the parties' folders on the State Water Board's FTP site when they upload their closing briefs. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence, or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will file all closing briefs in the State Water Board's FTP folder for this proceeding.

11. RULES OF EVIDENCE: Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

12. COURT REPORTER: The AHO intends to retain a court reporter for the pre-hearing conference in this proceeding. The hearing officer will discuss with the parties during the pre-hearing conference the retention of a court reporter for the hearing in this proceeding.

13. OFFICIAL RECORD: The official administrative record for this proceeding will be all the electronic files that the AHO has saved in the State Water Board's FTP folder for this proceeding. The official record of any part of this proceeding, such as a conference or hearing, is the audio-plus-video recording file of that part of the proceeding. For convenience, citations in written briefs to parts of this proceeding may cite the reporter's transcript rather than the portions of the audio-plus-video recordings of those parts of this proceeding.

14. TELECONFERENCE HEARING: The AHO is conducting this hearing by Zoom teleconference. The AHO may conduct limited portions of the hearing as a hybrid hearing, during which parties, witnesses, or interested persons may appear by Zoom teleconference or in person at a physical location at the CalEPA Headquarters Building at 1001 I Street, Sacramento, California. The AHO will record all status conferences, pre-hearing conferences, and hearings and will post an audio-plus-video file and a Zoom-generated transcript of each such proceeding, if available, in the AHO-FTP folder for this proceeding.

New users of Zoom may want to review Zoom's meeting support guide: <https://support.zoom.us/hc/en-us/categories/200101697>. Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain muted if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants and the public may also see the digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify themselves as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participation.

If the device you are using freezes, please notify staff at DCP-WR-Petition@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the hearing using the phone number provided with the Zoom meeting information on the first page of this notice.

In lieu of participating by Zoom, anyone may watch past or present AHO hearings at the following link: bit.ly/aho-youtube. Parties watching AHO hearings by this method will not be able to participate in the hearing and will not be identified to anyone else.

Date: July 31, 2024



Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

Attachments:

- Attachment 1 - Notice of Intent to Appear (Blank Form)
- Attachment 2 - Witness Lists (Blank Forms)
- Attachment 3 - List of Protests and Protestants
- Attachment 4 - Service List

ATTACHMENT 1

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding the Department of Water Resources' petitions for change of water right Permits 16478, 16479, 16481, and 16482.

1. Check only one of the following boxes:

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party in this hearing by presenting any of the following: an opening statement, case-in-chief or rebuttal testimony, cross-examination, or a closing brief.

[If you select Option 2 and intend to submit case-in-chief or rebuttal testimony, you must submit a witness list to the AHO by the applicable deadline.]

2. Reason for Requesting Party Status. If you are not identified as a party in the Hearing Notice, describe why you should be allowed to participate as a party:

3. Fill in the following information of the participant, party, attorney, or other representative:

Name (type or print):

Represented party (if applicable):

E-mail Address:

Optional:

I/we decline electronic service of hearing-related materials.

Mailing Address (only required if opting out of electronic service):

Signature: _____

Date: _____

ATTACHMENT 2

CASE-IN-CHIEF WITNESS LIST

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Summary of Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional lines or pages.)

REBUTTAL WITNESS LIST

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Summary of Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional lines or pages.)

ATTACHMENT 3

LIST OF PROTESTS AND PROTESTANTS

1. Armistad Ranches
2. Buena Vista Rancheria of Me-Wuk Indians, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, California Indian Environmental Alliance, Restore the Delta, Golden State Salmon Association, Institute for Fisheries' Resources, Pacific Coast Federation of Fishermen's Associations, and San Francisco Baykeeper
3. Byron Bethany Irrigation District
4. California Sportfishing Alliance, AquAlliance, and San Joaquin Audubon Society
5. California Water Impact Network
6. Camp Lotus, Friends of the River, All-Outdoors California Whitewater Rafting, American River Touring Association, American Whitewater, California Canoe and Kayak, California Outdoors, Foothill Conservancy, Mother Lode River Center, OARS California Rafting, Restoring the Stanislaus River, Sierra Mac River Trips, South Yuba River Citizens League, Tuolumne River Trust, and Upper Merced River Watershed Council
7. Central Delta Water Agency, South Delta Water Agency, Heritage Land Co., Inc, and Rudy M. Mussi Investment LP
8. City of Antioch
9. City of Sacramento
10. City of Stockton
11. County of Contra Costa and Contra Costa County Water Agency
12. David J. Elliot & Sons/Stillwater Orchards
13. Delta Legacy Communities
14. Diablo Water District
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18. El Dorado Irrigation District

19. Farm Bureau Delta Caucus
20. Frank Loretz
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27. Placer County Water Agency
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