



State Water Resources Control Board

FOURTH AMENDED NOTICE OF PUBLIC HEARING AND PROCEDURAL RULING

The State Water Resources Control Board
Administrative Hearings Office is holding
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 evidentiary portion of the Public Hearing
began on April 3, at 9:00 a.m.,
and will continue on April 7, 8, 9, 14, 17, 22, 23, & 24, and
May 1, 2, 5, 14, & 15, and June 10 & 11, 2025
and additional dates as necessary.

Policy statements will be heard in person
(with the option to participate by Zoom Webinar)
on May 19, 2025, at
Joe Serna Jr. CalEPA Building, Byron Sher Hearing Room,
1001 I Street, Second Floor, Sacramento, California.

The portion of the hearing for presentation of Protestants' cases-in-chief
will begin on **August 12 and will continue on August 13, 14, 18, & 25,**
and September 2, 5, 9, 10, 11, 15, 29, & 30,
and October 1, 6, 9, & 10, 2025.

All hearing days will be held by Zoom Webinar except May 19,
which will be conducted in hybrid format (in person with an option to
participate by Zoom).

Representatives of parties will receive an individual invitation to join the
meeting by e-mail from Zoom.

**Parties or 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**

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Although a quorum of the State Water Resources Control Board is expected to be present during the hearing on May 19, 2025, and some additional Board Members may participate remotely as authorized by Government Code section 11123.2, the Board will not take any final action. For more information, contact the Administrative Hearings Office at DCP-WR-Petition@waterboards.ca.gov or at (916) 341-6940. This meeting notice is available on the State Water Resources Control Board's webpage at: https://waterboards.ca.gov/board_info/calendar/.

LANGUAGE SERVICES AND ACCESSIBILITY:

This hearing will be conducted 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 at least two weeks before the hearing date:

- **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) is conducting a public hearing about the Delta Conveyance Project. The purpose of the hearing is to gather evidence that the State Water Board will consider to determine whether to approve change petitions filed by the Department of Water Resources (DWR or Petitioner) to add two new points of diversion and rediversion to water right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) (SWP Permits) and, if so, terms and conditions the Board should include in the amended permits.

BACKGROUND

On February 22, 2024, the State Water Board's Division of Water Rights (Division) received petitions for change from DWR to add two new points of diversion and points of rediversion to water right Permits 16478, 16479, 16481, and 16482, which are associated with the State Water Project (SWP). The proposed new points of diversion and points of rediversion 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. A more detailed description of the Delta Conveyance Project and the associated petitions for change can be found in the July 31, 2024 Notice of Public Hearing.

AHO PROCEEDING

The AHO issued a Notice of Public Hearing on July 31, 2024, and Amended Hearing Notices on November 18, 2024, and on January 17 and February 28, 2025. The AHO held pre-hearing conferences on August 13, October 17, and December 16, 2024. The AHO began the public hearing on February 18 with the presentation of oral policy statements by interested persons and entities and discussion of outstanding procedural issues. The hearing continued on April 3, with the Petitioner's presentation of case-in-chief testimony. The hearing is being conducted in accordance with the procedural requirements in the July 31, 2024 Notice of Public Hearing as amended by subsequent rulings and notices.

PROCEDURAL RULING

March 10 Request to Adjust the Hearing Schedule

On March 10, the Public Agency Protestants¹ filed a request for the AHO to adjust the hearing schedule in the February 28, 2025 Third Amended Notice of Public Hearing and Procedural Ruling. (2025-03-10 County of Sacramento et al. Hearing Schedule Ltr.) I have addressed the first element of this request, which sought postponement of case-in-chief testimony by witnesses for whom DWR submitted revised written testimony on February 21 — a month after the deadline for DWR to submit case-in-chief exhibits. I granted the request in part and set the following order of witnesses in rulings dated March 14 and March 20:

Tentative Start Date	Panel No.	Subject/Witnesses
April 3, 2025	Panel 1	Modeling Tools: Erik Reyes, Andy Draper, and Eli Ateljevich
April 8, 2025	Panel 5	Engineering Refinements: Adam Murdock, Gwen Buchholz, and Jason Volk
April 17, 2025	Panel 2	Modeling Results and Groundwater: Tyler Hatch, Ellen Preece, Amardeep Singh, and Tom Fitzhugh
TBD	Panel 3	Biological: Marin Greenwood and Rachel Gardiner
TBD	Panel 4	Operations: Molly White and Bryant Giorgi

(2025-03-14 N. Kuenzi Partial Ruling; 2025-03-20 N. Kuenzi Ruling (Service List and Interested Parties.))

The hearing officer may change the order of witnesses as necessary to accommodate scheduling conflicts. In particular, because of the limited availability of at least one of the witnesses on Panel 3, that witness (or both witnesses on Panel 3) may be heard out of the order presented above. I will ask the Protestants for estimates of time to cross-examine the witnesses on Panel 2 approximately a week in advance of hearing

¹ The Public Agency Protestants include Byron-Bethany Irrigation District, Central Delta Water Agency, Contra Costa County Water Agency, the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, North Delta Water Agency, Reclamation District 999, Reclamation District 2060, Reclamation District 2068, Sacramento County Water Agency, Sacramento Area Sewer District, South Delta Water Agency, and the City of Stockton.

testimony from that panel and will request a proposal from DWR about dates for presentation of testimony and cross-examination of the witnesses on Panel 3.

The remaining elements of the Public Agency Protestants' request ask the hearing officer to (1) strike the July 11, 2025, deadline for DWR's supplemental case-in-chief evidence and direct that DWR submit all evidence and written testimony related to DWR's historical water use (Historical Use Information) by May 27, 2025; (2) direct that DWR's witnesses appear to present any testimony concerning the Historical Use Information and be subject to cross-examination thereon no sooner than July 28, 2025; and (3) revise the deadline for Protestants' cases-in-chief to no sooner than September 26, 2025. (2025-03-10 County of Sacramento et al. Hearing Schedule Ltr, pp. 5-6.) I deny these remaining requests for postponement.

The Public Agency Protestants object that parties will have only two weeks from the deadline for DWR to submit information about its historical water use and the date on which DWR must produce a witness or witnesses most knowledgeable about the supplemental information. (*Id.* at p. 4.) This objection will be addressed in part by the AHO's current effort with the Division of Water Rights (Division) to digitize the diversion and use reports for the SWP Permits contained in the State Water Board's water right files. The AHO will make these reports available to the parties by April 28, if not sooner, by uploading the reports to the administrative record for this proceeding.

The Protestants will have approximately six weeks to consider the information in those reports before asking questions of DWR's witness or witnesses. Secondly, I will entertain requests to recall the witness or witnesses who will testify on June 10 and 11, after DWR submits the supplemental information on May 27 and after hearing the witnesses' testimony. At that time, we will all have a better understanding of the relative complexity, and adequacy, of DWR's response to the AHO's request. Finally, the Protestants will have a substantial amount of time to continue to analyze the information about historical use provided by DWR and to address it on rebuttal.

For the same reasons, I deny the Public Agency Protestants' request to postpone the July 11 deadline for submission of case-in-chief exhibits. The Protestants will have an opportunity to respond to DWR's case-in-chief, including the supplemental information submitted by DWR on May 27 and any additional testimony or evidence submitted on July 11, during the rebuttal phase of this proceeding. The purpose of rebuttal is to allow the parties an opportunity to respond to the evidence submitted by the opposing parties. The deadline for submission of rebuttal exhibits will be no sooner than the last quarter of 2025.

March 27 Letter from DTEC et al. Requesting Postponement

Protestants Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta (DTEC et al.) and San Francisco Baykeeper submitted a letter on March 27 to the hearing officer and the members of the State Water Board which requests further investigation of the disruption of the March 24 hearing day and postponement of the hearing. (2025-03-27 Letter re March 24 DCP Hearing Cyberattack.) I have referred the requests and recommendations in Parts I and II of this letter to the Board's Office of Chief Counsel and the Division of Information Technology (DIT). As reflected in the AHO's e-mail of March 28, based on the results of

the investigation conducted by DIT and the California Department of Technology, the procedures that the AHO will use to conduct this hearing going forward would have prevented the disruption that occurred on March 24 and will minimize the risk of any future disruption. (2025-03-28 N. Kuenzi Ruling (Service List).)

I deny the request for further postponement of the hearing contained in Part III of the March 27 letter. DTEC and San Francisco Baykeeper argue that because some members of the public did not appear at the February 18 hearing day, which was the noticed portion of this hearing dedicated to policy statements and which allowed for both in-person and remote appearances, these members of the public have been prejudiced and denied an equal opportunity to participate. (2025-03-27 Letter re March 24 DCP Hearing Cyberattack at p. 4.) In fact, however, all members of the public have had an equal opportunity to submit policy statements, either in writing or orally, through in-person or remote appearance. (See, e.g., 2024-11-18 Amended Hearing Notice, pp. 3 & 16; 2025-01-17 Second Amended Hearing Notice, pp. 4, 17 & 24.) Members of the public who oppose the project had the same opportunity on February 18 as non-parties who support the project to address the Board, in person, about the issues in this hearing in advance of DWR's presentation of its case-in-chief.

I have scheduled **May 19, 2025** as an additional date for presentation of policy statements, either by in-person or remote appearance. The members of the State Water Board and I remain committed to hearing any remaining policy statements not presented on February 18 and will not allow the organized disruption on March 24 to prevent us from doing so. We selected May 19 for policy statements based on logistical considerations for scheduling an in-person location for the hearing and to allow adequate notice to interested persons who planned to speak on March 24. In the meantime, this hearing will proceed as scheduled. Whether, when, and how to receive policy statements by interested members of the public in water right proceedings is within the discretion of the hearing officer; “[t]he Board or presiding officer may provide an opportunity for presentation of policy statements or comments, either orally or in writing, by interested persons who are not participating as parties in the proceeding.” (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

Other Pending Requests and Motions

On March 19, DTEC et al. and San Francisco Baykeeper submitted a motion to the State Water Board which seeks cancelation of the petitions for change at issue in this proceeding. (2025-03-19 DTEC Motion to Cancel DCP Change Petitions.) On March 21, State Water Contractors sent a letter to Governor Newsom and the members of the Board to “express concern” about a procedural ruling in this hearing. (2025-03-21 SWC Letter to the Governor re DCP.) Both the motion and the March 21 letter are directed to the Board and not to this office. Therefore, the AHO does not intend to address those submittals and, unless directed otherwise by a ruling from the Board, will continue to conduct this hearing according to the schedule set by the AHO.

POLICY STATEMENTS

The AHO and members of the Board will hear policy statements from interested members of the public on **May 19, 2025**. This portion of the hearing will be held in person with an option to appear by Zoom Webinar. Advance registration to participate in the Zoom Webinar will be required. The AHO will provide more information about how to register and the conduct of the proceeding at a later date. This information will be circulated to the service list and to all of the interested persons who submitted an intent to make policy statements on March 24.

The AHO will also reserve the morning of **August 12, 2025** for presentation of any remaining policy statements by Zoom Webinar.

As reflected in the July 31 Notice of Hearing, 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.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Hearing continues with Petitioner's case-in-chief.	April 3, 7, 8, 9, 14, 17, 22, 23, & 24, and May 1, 2, 5, 14, & 15, 2025, starting at 9:00 a.m.
Hearing continues with policy statements, in addition to those heard on February 18.	May 19, 2025, starting at 9:00 a.m.
Deadline for Petitioner to submit supplemental information concerning historical diversion and use under SWP permits.	May 27, 2025.
Hearing for DWR's supplemental information witness(es).	June 10 & 11, 2025, starting at 9:00 a.m.
Deadline for Protestants to submit case-in-chief exhibits, exhibit identification indices, and proposed permit terms or statement of no appropriate conditions for approval. Deadline for Petitioner to submit any additional case-in-chief exhibits.	July 11, 2025.
Hearing continues with any remaining policy statements.	August 12, starting at 9:00 a.m.
Hearing continues with Protestants' cases-in-chief.	August 12, starting at 1 p.m., and August 13, 14, 18, & 25, and September 2, 5, 9, 10, 11, 15, 29, & 30, and

**October 1, 6, 9 & 10,
starting at 9:00 a.m.**

NEW PROCEDURES FOR PARTIES TO PARTICIPATE IN THE HEARING

Starting on April 3, this hearing will be conducted by Zoom Webinar. The AHO has registered each person on the service list for the proceeding as an “Attendee” of the AHO hearing using the e-mail address on the service list. The Zoom Webinar service will generate an individual link for each Attendee which will allow the Attendee to join the hearing. The Zoom service will send an e-mail containing the link to the e-mail address used to register the Attendee.

This link is specific to the named person and should not be shared with other users. The same link cannot be used to access the hearing on more than one device. If you are a party representative who is on the service list and you have not received an individual link for the hearing at least 24 hours prior to the start of the hearing, please first check your junk or spam mail folders, and then e-mail the AHO at: dcp-wr-petition@waterboards.ca.gov.

The AHO will also pre-register known witnesses or other persons associated with parties who are expected to participate in the hearing as an Attendee of the AHO hearing if the person’s e-mail address has been submitted to the AHO. The Zoom Webinar service will generate an individual link for the registered Attendee and send an e-mail containing the link to the associated e-mail address.

Parties may identify witnesses or associated persons who will be participating in the hearing who are not on the AHO’s service list, and request that the AHO add them as registered Attendees. Parties should identify any additional witnesses or associated persons at least 24 hours in advance of the start of the hearing day when the person intends to participate, by sending an e-mail with the person’s name, e-mail address, and association with the party to dcp-wr-petition@waterboards.ca.gov.

To join the hearing, participants should click the individual “Join” link sent by e-mail by the Zoom service. Participants will not be able to use a phone line to call in to the hearing but may use the Zoom app to join using a smartphone. AHO staff will admit Attendees into the virtual hearing room, which will be referred to by the Zoom software as a webinar. Attendees will be able to see and hear video tiles of the hearing officer and other AHO staff but will not be able to turn on their own camera or microphone features when the hearing begins. The hearing officer will call for appearances from each of the parties. When the hearing officer calls for the appearance of the representative or representatives of a party, representatives should raise their virtual “Zoom” hand to identify themselves for AHO staff. Representatives may need to agree to a pop-up window from Zoom that asks if they would like to be elevated to Panelist status. Panelists may unmute their own microphone, activate their own video, and take other actions as necessary to participate in the hearing.

During the hearing, AHO staff may change the status of participants who are not actively involved in that portion of the hearing to “Attendee” status. An Attendee may

raise his or her virtual “Zoom” hand to gain the attention of the hearing officer and the hearing officer will call on the representative and unmute the representative’s microphone. If you do not plan to speak during that day’s hearing, please do not attend the Zoom Webinar and instead view the livestream of the hearing on the AHO’s YouTube channel.

Date: April 4, 2025



Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

Attachments:

- Attachment 1 - Service List

ATTACHMENT 1

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