
State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office will conduct a status conference
on the pending petition for Assignment of State-filed Application 25517
and accompanying water right Application 25517X01 and the Petitions
for Release from priority of State-filed Applications 25513, 25514,
25517 (unassigned portion), 22235, 23780, and 23781 in favor of
water right Application 25517X01 of

Sites Project Authority.

**The status conference will be held
on September 4, 2025, starting at 9:00 a.m.,**
by Zoom Webinar. Representatives of parties will receive an individual
invitation to join the hearing by e-mail from Zoom.

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

BACKGROUND

The State Water Resources Control Board's Administrative Hearings Office (AHO) held numerous public hearing days to receive evidence to be considered in determining whether the State Water Resources Control Board should approve the petition for partial assignment of state-filed Application 25517, accompanying water right Application 25517X01, and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 25517X01 filed by the Sites Project Authority (Applicant or Authority), and, if so, what specific terms or conditions should be included in any approvals.

Additional background information about this proceeding is in the June 5, 2024 Amended Notice of Public Hearing and Pre-Hearing Conference.

PROCEDURAL RULING

On July 23, Friends of the River, California Sportfishing Protection Alliance, Save California Salmon, Sierra Club, San Francisco Baykeeper, Center for Biological Diversity, and Water Climate Trust (collectively, NGO Protestants) filed a motion to admit additional evidence (Exhibits BK-136, -137, and -138) and request that the AHO require the Applicant to produce a witness and any other documents relevant to the costs of the proposed Sites Reservoir Project. (2025-07-23 NGOs' Req to Admit Evidence.)

The exhibits submitted by the NGO Protestants for inclusion in the evidentiary record are as follows:

- Exhibit BK-136 - The Sites Project Authority's June 20, 2025 Memorandum regarding Progress Update on Development of Program Baseline Report.
- Exhibit BK-137 - The California Water Commission's July 16, 2025 Power Point presentation.
- Exhibit BK-138 – The Sites Reservoir Project Overview Power Point presentation by Jerry Brown to California Water Commission on July 16, 2025.

The Authority does not oppose acceptance of Exhibits BK-136, -137, and -138 into the evidentiary record. (2025-07-28 Sites Response to NGO Motion.) Therefore, I grant this portion of NGO Protestants' motion and accept these exhibits into the evidentiary record.

I deny, without prejudice, NGO Protestants request for the hearing officer to direct the Applicant to produce witnesses for cross-examination and to schedule additional hearing days. First, at this point in the hearing process, months after the conclusion of rebuttal, I am very disinclined to conduct additional hearing days. To allow additional testimony upon each public disclosure of new information about the project would potentially delay the conclusion of this hearing indefinitely. Second, the NGO Protestants have not made a showing that cross-examination of the named witnesses

about the contents of Exhibits BK-136, -137, and -138, would be likely to elicit testimony of probative value that is not outweighed by the risk of undue delay, waste of time, or the needless presentation of cumulative evidence, particularly given that Exhibits BK-136, -137, and -138 are accepted into the evidentiary record. Third, the NGO Protestants may attempt to obtain attendance at a hearing of the identified witnesses either by request of the Applicant, or if that fails, by issuance of an administrative subpoena. The NGO Protestants' request for my involvement in obtaining these witnesses' testimony is, therefore, premature. However, given that I am simultaneously inviting comment from the parties about whether additional hearing days would be appropriate to receive evidence relevant to impending updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed, I deny NGO Protestants' request without prejudice. If the AHO schedules additional hearing days, I will consider any renewed request from the NGO Protestants to present testimony related to Exhibits BK-136, -137, and -138.

STATUS CONFERENCE

The AHO will conduct a status conference in this proceeding to discuss (1) the Authority's May 1 request, reiterated on July 28, to close the evidentiary record, and (2) the draft permit terms described in this notice.

Draft Permit Terms

The AHO is considering what terms would be necessary and appropriate conditions on any water right permit issued by the Board for Application 25517X01. The hearing issues identified in the June 5, 2024 Second Amended Hearing Notice, included the following subissues:

- 3.a.iii. What amounts of water are needed to remain instream in the public interest for recreation and the preservation and enhancement of fish and wildlife, or for protection of other beneficial uses? If approved, what terms and conditions should be included in any permit to preserve instream flows needed (1) to ensure consistency with applicable water quality control plans, (2) to keep fish in good condition below the dams, (3) to avoid jeopardy to the continued existence of any endangered or threatened species, and to avoid the destruction or adverse modification of critical habitat, and (4) to protect public trust resources to the extent feasible and in the public interest?
- 3.a.iv. What conditions, if any, should be included in any permit issued on Application 25517X01, in anticipation of the update to the Bay-Delta Plan?

Draft Terms that Incorporate the Bay-Delta Plan:

The AHO is considering the following permit terms (or alternative terms) for inclusion in any permit for Application 25517X01 if the State Water Board adopts updates to the

Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta (Bay-Delta Plan), without material changes to section 4.4 of the July 2025 Draft Bay-Delta Plan, before any permit is issued to the Authority for the Sites Reservoir Project.

Draft Term 1: Diversions authorized under this right shall be consistent with the narrative and numeric requirements of the Sacramento/Delta updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta, as amended on [insert date] (Bay-Delta Plan), including the narrative and numeric requirements for Sacramento River/Delta tributary inflows and cold water habitat, Delta outflows, interior Delta flows, and fish viability [section 4.4 of the July 2025 Draft Bay-Delta Plan], and consistent with any future amendments to the Bay-Delta Plan.

[Insert either Option #1 or Option #2 in permit term.]

Option #1:

The numeric tributary inflow and associated inflow-based Delta outflow requirements shall apply to diversions under this permit without water supply adjustments [section 4.4.2.2 of the July 2025 Draft Bay-Delta Plan].

Option #2:

The numeric tributary inflow and associated inflow-based Delta outflow requirements shall apply to diversions under this permit, incorporating water supply adjustments for existing water rights [section 4.4.2.2 of the July 24, 2025 Draft Amended Bay-Delta Plan]. The following water supply adjustments shall apply to diversions under this permit: [...]

Right holder is on notice that, during some years, water will not be available for diversion during portions or all of the season of diversion authorized herein. No diversion is authorized under this right unless right holder is in compliance with any applicable regulation, order, or other requirement that implements the Bay-Delta Plan.

The Board retains jurisdiction to modify this term as necessary and appropriate to be consistent with the Bay-Delta Plan as it may be amended. Such action will be taken only after notice and opportunity for hearing.

Draft Term 2: This right shall not be considered covered by the Healthy Rivers and Landscapes (HRL) Voluntary Agreements (VAs) unless the State Water Board amends the Bay-Delta Plan in the future to incorporate a VA that specifically addresses this water right, including completion of any needed scientific and environmental analyses.

No diversion under this right is authorized when flow assets that have been made available by the Sacramento River Mainstem HRL parties

(Sacramento River Mainstem HRL flow assets) are present in the Sacramento River at this permits' authorized points of diversion. For all days that Sacramento River Mainstem HRL flow assets are present in the Bay-Delta watershed, the allowable diversions shall be based on flow conditions absent any Sacramento River Mainstem HRL flow assets. During those years when Sacramento River Mainstem HRL flow assets are provided under the HRL Program, Permittee shall provide monthly reports to the Deputy Director for the Division of Water Rights to substantiate Permittee's compliance with this term. Permittee shall comply with this term from the date of adoption of the VAs until the VAs expire, or the State Water Board amends the Bay-Delta Plan such that it does not include VAs.

Related to its consideration of Option #1 or Option #2 for Term 1, the AHO is considering whether to receive additional evidence and conduct additional hearing days to address whether, and to what extent, water supply adjustments should apply to any permit issued on Application 25517X01. (July 2025 Draft Bay-Delta Plan, p. 55.) The AHO invites comment from the parties about the types of evidence that might be relevant to the Board's consideration of this issue.

The July 2025 Draft Bay-Delta Plan would establish a baseline requirement for water rights that are not subject to approved Voluntary Agreements, that "inflows from Sacramento/Delta tributaries shall be maintained at 55 percent of unimpaired flow year-round on a 7-day running average to achieve the narrative inflow objective." (*Ibid.*) For existing water rights, the July 2025 Draft Bay-Delta Plan identifies water supply adjustments to this baseline requirement, but the draft plan does not specify whether those adjustments should apply to new water rights. (*Id.* at pp. 46-47.) The draft plan provides that for new water rights, the Board would determine based on the record in individual adjudicative proceedings what requirements should be imposed "to ensure that the use of water is consistent with and supports the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior Delta flow objectives." (*Id.* at pp. 46, 64.) For purposes of that determination in this proceeding (assuming that this or a similar determination will be required in this proceeding), would evidence such as model runs that show the potential impacts to project yield with and without water supply adjustments to the baseline requirement (and with application of the terms and conditions on operations imposed by the Incidental Take Permit), be relevant? Does the Authority seek to submit this type of evidence to support Option #2, above, or another similar term?

The AHO is considering the following permit term (or alternative terms) for inclusion in any draft permit for Application 25517X01 if the State Water Board has not adopted updates to the Bay-Delta Plan before any permit is issued to the Authority for the Sites Reservoir Project.

Draft Term 3: Prior to the Board's adoption of updates to the Bay-Delta Plan, the right holder shall not divert water under this right unless Sacramento River inflows to the Delta measured at Freeport, and Delta

outflow as measured by the Net Delta Outflow Index (NDOI), are equal to or greater than 55 percent of unimpaired flow.

Upon the Board's adoption of an updated Bay-Delta Plan, the above requirement shall no longer apply, and diversions authorized under this right shall be consistent with the narrative and numeric requirements of the updated Bay-Delta Plan, including the narrative and numeric requirements for Sacramento River/Delta tributary inflows and cold water habitat, Delta outflows, interior Delta flows, and fish viability, and any future amendments to the Bay-Delta Plan.

The Board retains jurisdiction to modify this term as necessary and appropriate to be consistent with the Bay-Delta Plan as it may be amended. Such action will be taken only after notice and opportunity for hearing.

Draft Term that Incorporates Incidental Take Permit:

The AHO is considering the following permit term (or an alternative term) for inclusion in any draft permit for Application 25517X01 to address California Endangered Species Act requirements and avoid harm to listed species.

Draft Term 4: No diversion under this right is authorized unless right holder is in compliance with the Incidental Take Permit for operation of the Sites Reservoir Project issued by the California Department of Fish and Wildlife (CDFW) on October 24, 2024 (2024 ITP). Right holder shall comply with all applicable diversion requirements specified in the 2024 ITP, including but not limited to Conditions of Approval 9.4, and 9.8 through 9.14.

When the 2024 ITP is no longer effective or if it is modified, right holder shall continue to comply with the diversion requirements in the 2024 ITP, unless and until this permit term is modified. Within 30 days of issuance of a new or modified ITP for operations of the Sites Reservoir Project, the right holder shall submit the new or modified ITP and summary of any changes relative to the 2024 ITP to the Deputy Director for the Division of Water Rights. After a minimum 30 day public notice to the right holder and opportunity for a hearing at the request of the right holder to resolve any contested material issues of fact, the Deputy Director for the Division of Water Rights may amend this term based on any new ITP diversion requirements applicable to this right if the Deputy director determines that the amended term would reasonably protect fish and wildlife. Consideration of an amendment to this term does not require right holder to file a petition for change.

Status Conference Statements

The AHO invites comment from the parties on the draft terms included in this notice. The AHO also invites comment about whether to hold open the evidentiary record to allow parties to submit additional evidence relevant to the draft terms. Comments may be submitted in writing in a status conference statement. Any written status conference statements must be submitted to the AHO and served on the other parties listed in the attached service list, by **August 25, 2025**.

NEW PROCEDURES FOR PARTIES TO PARTICIPATE IN THE HEARING

This status conference 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 status conference 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 status conference. 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 status conference 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 status conference at least 24 hours prior to the start of the status conference, please first check your junk or spam mail folders, and then e-mail the AHO at: sites-wr-application@waterboards.ca.gov

To join the status conference, participants should click the individual blue “Join Webinar” link sent by e-mail by the Zoom service. Participants will not be able to use a phone line to call in to the status conference 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 status conference 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 conference, AHO staff may change the status of participants who are not actively involved in that portion of the status conference 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 the status conference, please do not attend the Zoom Webinar and instead view the livestream of the conference on the AHO’s YouTube channel: bit.ly/aho-youtube

Date: August 8, 2025



Nicole L. Kuenzi,
Presiding Hearing Officer
Administrative Hearings Office

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- Service List

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