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## State Water Resources Control Board

November 10, 2025

Ann Carroll  
General Counsel  
Department of Water Resources  
[ann.carroll@water.ca.gov](mailto:ann.carroll@water.ca.gov)

**Re: Procedural Ruling on Request for Additional Information to Supplement the Administrative Record in the Hearing on the Proposed Delta Conveyance Project**

Dear Ms. Carroll,

By this letter, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (State Water Board or Board) clarifies the AHO's October 10, 2025 letter to the Department of Water Resources (DWR) directing DWR to submit additional information to clarify and supplement the administrative record for the hearing on the proceeding on the pending petitions to change water right Permits 18478, 16479, 16481, and 16482, for the proposed Delta Conveyance Project (DCP).

The AHO's October 10, 2025 letter directed DWR to submit, by the deadline for submission of rebuttal exhibits, CalSim 3 and DSM2 model runs and summaries of model results, with and without DCP, including technical model files, for three specified scenarios (referred to as Requests 1, 2, and 3, respectively) (hereinafter, the "October 10 directive," or "directive"). This letter provides clarification regarding the AHO's Request 1 in the October 10 directive after considering DWR, SWC, and Protestants' comments and responses to that request and the discussion between modelers that occurred during the hearing on October 27, and addresses Protestants' objections to the request. (See 2025-10-17 DWR Response to 10.10.2025 Request; 2025-10-20 Protestants' Ltr to DCP AHO; 2025-10-21 SWC Response to AHO Modeling Request; 2025-10-24 Baykeeper et al. Response re Modelling Request; 2025-11-03 DWR Response to Supp. Info.)

The AHO also requests data files from DWR for the underlying model runs relied upon in the Final Environmental Impact Report (FEIR), which have been referenced by one or more of the protestants' witnesses.

***Request 1 (Model Runs Incorporating a Percentage of Unimpaired Delta Outflow)***

*Unimpaired Flow Timeseries:* The AHO has reviewed and accepts DWR's proposal to complete Request 1 using SacWAM to produce an unimpaired flow (UIF) timeseries for use in the UIF bypass flow analyses in CalSim 3 as described in DWR's November 3, 2025 letter, based in part on DWR's representation that the analysis can be done in a technically robust manner and is the most efficient approach. The AHO understands that DWR is not yet able to determine whether linear interpolation of data is appropriate, and thus whether five or ten percent increments would be necessary to satisfy this request.

*Deadlines for Submittal of SacWAM UIF Timeseries and Updated Model:* On or before the deadline for submittal of DWR's rebuttal testimony on December 22, 2025, DWR shall provide the updated SacWAM model to be used to generate a UIF timeseries, the UIF timeseries, and a technical memo detailing the methods and approach used for the analyses, for review by the AHO. DWR may contact the Hearing Team by email, with a copy to the service list, if any questions arise during the development of the updated SacWAM model, and shall do so as necessary to ensure that the analyses are conducted in a technically robust way that will be useful to the Board's consideration.

On or before December 22, 2025, DWR shall provide a recommendation regarding the use of five or ten percent increments for the UIF analysis, and a proposed deadline for submitting the CalSim 3 model runs, and accompanying technical documents.

The AHO will consider whether to schedule additional hearing days to receive testimony related to the model runs submitted in response to the AHO's Requests 1, 2, or 3, after receiving the additional information from DWR to be submitted on December 22.

***FEIR Model Runs***

The AHO directs DWR to upload the modeling data files for the FEIR modeling runs to the AHO-FTP site by December 22, 2025. These modeling data files have been referenced by the parties and used to support the parties' exhibits and testimonies. It is the AHO's understanding that these files are readily available and have already been made available to some or all of the protestants.

***Protestants' Objections to the October 10 Directive***

The AHO received letters from some of the protestants objecting to the AHO's request for additional information in the October 10 directive to address gaps in the evidentiary

record for this change petition proceeding.<sup>1</sup> These protestants contend that if the parties' own submissions do not provide a sufficient evidentiary basis for the Board to approve the change petitions, then the Board must deny the petitions. The protestants do not address the possibility in which the evidentiary record supports approval of a petition for change, but the Board would be assisted by additional information to develop appropriate terms and conditions to limit or prevent potential impacts of the project. Absent the requested information in the October 10 directive, as modified, the Board may be impaired in its ability to identify and impose appropriate terms and conditions on any approval of the petitions for change so as to avoid or limit impacts to other legal users of water and public trust resources, and to further the public interest in the development of the water resources of the state.

More fundamentally, the protestants' arguments misconstrue the Board's legal authorities and responsibilities, as well as the AHO's role in this proceeding. Although an evidentiary hearing before the AHO is in part an adversarial process, as neutral decision makers, the AHO and the Board are by no means relegated to a passive role that consists solely of reviewing the parties' own submissions. In addition to its role in resolving disputes between adversaries, the Board has the affirmative duty and obligation, independent of the positions of the parties to any particular proceeding, to protect the interests of the public in the development of the state's water resources and to ensure that the public trust is protected whenever feasible. (See *Nat'l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434; State Water Board Order WR 2009-0033, p. 6, fn. 4; see also Wat. Code § 105.) In part to meet these obligations, the Board has the statutory authority to proactively require additional information of petitioners and protestants. (Wat. Code, §§ 1701.3 & 1703.3.) When conducting an evidentiary hearing on behalf of the Board, the AHO is charged with developing a record that is complete and adequate under the circumstances of the particular proceeding to support the Board's evaluation of the proposed project and make required findings. (Notice of Assignment and Pre-hearing Conference, Att. 1 (June 19, 2024); see also Cal. Code of Regs., tit. 23, § 648.5.) In that context, the October 10 directive to DWR is entirely proper and consistent with the AHO's purpose and legal authorities in furtherance of the Board's responsibilities.

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<sup>1</sup> The AHO received objections from South Delta Water Agency, Central Delta Water Agency, City of Stockton, County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, Byron-Bethany Irrigation District, County of San Joaquin, County of Contra Costa and Contra Costa County Water Agency, County of Solano, and Local Agencies of the North Delta jointly on October 20, 2025; from the State Water Contractors on October 21, 2025; and from San Francisco Baykeeper, California Sportfishing Protection Alliance, Friends of the River, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta jointly on October 24, 2025.

For these reasons, I overrule the protesting parties' objections to the October 10 directive to DWR.

Sincerely,

A handwritten signature in dark ink, reading "Nicole L. Kuenzi". The signature is written in a cursive, flowing style.

Nicole L. Kuenzi  
Presiding Hearing Officer  
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State Water Resources Control Board

Attachments:

- Attachment 1 – Service List

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