

State Water Resources Control Board

**TENTH 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.

Petitioner's rebuttal portion of the Public Hearing will begin on
February 20, 2026, and continue on
February 23, 24, & 25 and March 2, 5, 6, 23, 24, & 25, 2026.

Protestants' rebuttal portion of the Public Hearing
will begin on **June 1, 2026**,
and continue on **June 4, 5, 8, 9, 10, 11, 15, 18, 23, 24, & 26, 2026.**

If necessary, Petitioner's surrebuttal portion of the Public Hearing will
begin on **August 20, 2026**, and continue on **August 21 & 24, 2026.**

All hearing days will begin at 9:00 a.m.
and will be held by Zoom Webinar, unless otherwise indicated.
Representatives of parties will receive an individual invitation to join the hearing
by e-mail from Zoom.

LIVE STREAMING:

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.

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) 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 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. 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.

This 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

Motion to Stay

On January 28, Sacramento County et al., represented by the law firm of Somach Simmons & Dunn (SSD), filed a motion to stay this hearing pending resolution of a motion filed by DWR in Sacramento County Superior Court on January 23, to disqualify SSD as counsel based on an alleged conflict of interest in litigation pending before that court related to the Delta Conveyance Project. (2026-01-28 Sacramento County et al. Motion to Stay [SSD's Motion to Stay].) SSD asserts that a stay in this hearing is necessary while DWR's motion is pending to prevent harm to the parties it represents and other coordinating parties, protect public resources, and preserve the integrity of this hearing. Contra Costa County et al. joined SSD's Motion to Stay and alleges that DWR's "belatedly asserted conflict of interest motion is tactically-motivated and spurious" (2026-01-29 Contra Costa et al. Joinder in Stay Request, p. 3.) Several other protestants joined or otherwise supported SSD's motion: Baykeeper et al. (2026-02-03 Baykeeper et al. Letter to AHO re Motion to Stay), Placer County Water Agency

(PCWA) (2026-02-03 PCWA e-mail to AHO), and Ms. Deirdre Des Jardins (2026-02-04 DDJ Supplemental Briefing).

DWR opposes SSD's motion. DWR asserts that SSD is relying upon DWR's motion for disqualification as a pretense to delay this hearing and argues that the issues raised by SSD were already addressed in the AHO's ruling of May 2, 2025. (2026-02-03 DWR Resp. to Mtn. to Stay.) DWR also filed a response to the e-mail submitted by PCWA's general counsel, Dan Kelly. (2026-02-04 Resp. to D. Kelly PCWA.) SSD filed a reply to DWR's response. (2026-02-04 SSD Response to DWR.)

The AHO's procedural ruling of May 2, 2025, includes additional background about the alleged conflict on which DWR based its motion for disqualification. The ruling found that DWR would waive its right to object to SSD's participation in this proceeding if DWR did not indicate in writing its intent to seek some form of remedy prior to the recommencement of the hearing on May 5. DWR sought no such remedy and this hearing continued. DWR's waiver included "waiver of all objections based on the alleged conflict to SSD's participation in this hearing, evidence offered or elicited during cross-examination in this hearing by SSD, evidence offered or elicited during cross-examination in this hearing by another party coordinating with SSD, evidence developed in this hearing and offered in some other proceeding, and any final order adopted by the Board on the pending change petitions that are the subject of this hearing." (2025-05-02 AHO Procedural Ruling, pp. 4-5.)

The disqualification motion before the Sacramento Superior Court was initially set for hearing on February 20 and then postponed until February 27. Based on papers filed with the AHO, it is my understanding that SSD sought further postponement of that hearing until May — and the result of that motion was postponement of the hearing until March 20. (See 2026-02-03 Baykeeper et al. Letter to AHO re Motion to Stay, Exhibit 2.)

In its motion for stay, SSD describes the harm that would occur to its clients and associated protesting parties with whom SSD has been coordinating if DWR's disqualification motion is granted. (SSD's Motion to Stay, pp. 5–6.) But SSD and the joining parties do not clearly identify why a stay in this proceeding in anticipation of SSD's potential disqualification by a court in a separate lawsuit would materially allay or mitigate the impact on the parties.¹ Whether or not a stay in this hearing is granted, the disruption to the parties upon any such ruling by the court would seem to be the same.

¹ Although SSD asserts that "[a]t a minimum, DWR's motion is a significant distraction, and SSD cannot reasonably be expected to diligently represent its clients in this fast-paced Hearing while simultaneously addressing the Disqualification Motion," I am not

With respect to the potential impact on this hearing, DWR waived any right to object to SSD's participation or to object to evidence developed in this proceeding because of the alleged conflict. (May 2, 2025 AHO Procedural Ruling.) On the basis of that waiver and my understanding of the rules of professional conduct, even if the court grants DWR's motion and disqualifies SSD from participating in the litigation pending in that court, it is unlikely that such a decision would undermine our progress in this hearing at least up to the date of the court's order. There is also a risk of substantial delay if I were to grant a stay pending resolution of DWR's motion. The period of postponement would be indefinite and potentially significant, as illustrated by the moving target of the hearing date for the disqualification motion and SSD's request to postpone that hearing until May. For these reasons, I conclude that a stay is not warranted at this time.

If, however, the court grants DWR's motion, I am likely at that time to grant a stay, upon an appropriate motion, to allow the parties to address the ramifications of the court's ruling. The decision of the court would then be before us, and the parties could brief the AHO on the specific impacts of the decision and request a stay of an appropriate length to address those impacts.

Requests for Extension of Hearing Dates and Rebuttal Deadline

On January 16, DWR informed the AHO by letter that the DSM2 modeling submitted in its rebuttal testimony and the modeling files provided by DWR for 2043 conditions did not include the files with the most up to date sub-daily operation criteria in the Incidental Take Permit (ITP). DWR first became aware of the issue during the week of December 29. Also on January 16, DWR provided updated DSM2 modeling files, testimony (DWR-123R and DWR-508R) and PowerPoint presentations (DWR-124R and DWR-509R) for Dr. Preece and Mr. Singh, and associated exhibits (DWR-510R to 514R). DWR also submitted a sensitivity analysis to show the impact of the changes (DWR-125).

City of Stockton, Sacramento Area Sewer District, Byron-Bethany Irrigation District, County of Sacramento, and Sacramento County Water Agency (Sacramento County et al.) objected to DWR's delay in notifying the AHO and the protestants of the errors in the modeling files, rebuttal testimony, and associated exhibits. Sacramento County et al. assert that the delay in notification by DWR resulted in significant expense and prejudicial delay in reviewing DWR's rebuttal testimony and request (1) DWR witnesses, Dr. Preece and Mr. Singh, be made available for cross-examination no sooner than March 20, and (2) extension of the Protestants' deadline for submission of rebuttal exhibits by 30 days. (2026-01-16 Sacramento County et al. email to AHO.)

persuaded by this argument. (SSD Motion to Stay, p. 7.) SSD has demonstrated before the AHO that the firm is quite capable of handling complex matters and is also capable of retaining outside counsel on its own behalf. Mr. James Banks appeared before the AHO in this proceeding in April 2025 as outside counsel on behalf of SSD respecting the alleged conflict.

North Delta Water Agency, Reclamation District 999, Reclamation District 2060, and Reclamation District 2068, and SDWA, joined the objection and request for relief. (2026-01-21 NDWA email to AHO; 2026-01-22 SDWA email to AHO.)

The Protestants' request is granted in part and denied in part. Dr. Preece and Mr. Singh shall be made available for cross-examination on March 23, 24, and 25. If any Protestant seeks to cross examine these witnesses prior to these dates, I will consider such a request. I deny Protestants' request for an extension of time to submit rebuttal exhibits. The current deadline for submission of rebuttal exhibits is April 30, more than 30 days after the final opportunity for cross-examination of Dr. Preece and Mr. Singh and more than 100 days after DWR's submission of the corrected modeling files and testimony.

Motion Regarding DWR's "Level of Concern" Modeling

On November 21, 2025, Ms. Des Jardins filed a motion challenging the AHO's acceptance of 95th percentile level of concern (LOC) modeling runs for 2043 submitted by DWR. Ms. Des Jardins filed a revised motion on November 23. (2025-11-23 Motion re Level of Concern Modeling Errata.) In an October 31 letter, the AHO found the 95th percentile LOC modeling runs to be adequate to meet the intent of the AHO's October 10 request for modeling of a future climate scenario with lower precipitation or streamflow than existing conditions, representing hotter and drier conditions in the Bay-Delta watershed. (2025-10-31 AHO Response to Supplemental Modeling Part 1.)

Ms. Des Jardins argues that DWR failed to provide adequate information about the WGEN weather generator methodology used in the 95th percentile LOC modeling runs. She alleges that this failure prevented the AHO from considering the validity of the methodology in deciding whether the modeling runs should be accepted in satisfaction of the AHO's request. Ms. Des Jardins also asserts that acceptance of these modeling runs creates an incomplete and misleading record.

Ms. Des Jardins seeks deferral of any determination as to whether the 95th percentile LOC modeling runs satisfy the AHO's request until after completion of rebuttal; direction from the AHO requiring DWR to submit additional documentation about the WGEN weather generator methodology; and permission to conduct discovery of DWR on this issue.

First, the AHO reserves the authority throughout this proceeding to request additional information from the Petitioner or the Protestants as necessary to clarify information in the record and ensure an adequate record on which the State Water Board is to base its decision. The AHO's acceptance of the 95th percentile LOC modeling runs in satisfaction of its October 10 request does not prevent the AHO from requesting additional information at a later date. The AHO declines to request any additional information from DWR related to the modeling runs or the WGEN weather generator methodology at this time.

Secondly, Ms. Des Jardins objection seems to be to the validity of the modeling runs, which would more appropriately be raised either as an evidentiary objection or in Ms. Des Jardins' closing brief. As noted by Ms. Des Jardins, her arguments and any similar arguments that might be raised by other protestants will likely be more fully developed after the parties have had the opportunity to cross-examine DWR's witnesses and present rebuttal evidence. Ms. Des Jardins will have the opportunity to cross-examine DWR's witnesses about these modeling runs and the WGEN weather generator methodology on rebuttal. As described in more detail in the Ninth Amended Hearing Notice, Ms. Des Jardins may seek to conduct discovery on this issue but she should first meet and confer with DWR about the nature and scope of her requests prior to seeking a subpoena from this office. (2025-12-04 Ninth Amended Hearing Notice, pp. 5–6.)

For these reasons, I deny Ms. Des Jardins' motion without prejudice.

Time Limits for Rebuttal

Time limits shall apply in the same manner as for cases-in-chief. Parties may use their allocated time to make opening statements, present direct oral testimony, conduct cross-examination, make evidentiary objections, or otherwise participate in the hearing process as they see fit, subject to the hearing officer's ongoing discretion to manage the hearing. AHO staff will track the party groups' use of their time.

For the phase of the hearing for testimony and cross-examination of DWR and SWC's rebuttal witnesses, the time limits are allocated based on the groups as follows:

1. California Department of Water Resources: 8 hours
2. State Water Contractors: 2 hours
3. County of Contra Costa, Contra Costa County Water Agency, County of San Joaquin, County of Solano, Local Agencies of the North Delta; NDWA & Reclamation Districts 999, 2060, 2068; County of Sacramento & Sacramento County Water Agency; SDWA et al.; Farm Bureau Delta Caucus & Sacramento County Farm Bureau; Byron-Bethany Irrigation District; City of Antioch; City of Stockton; Diablo Water District; El Dorado Irrigation District; Heritage Land Co., Placer County Water Agency; Pescadero Reclamation District; Sacramento Area Sewer District; Yolo County: 12 hours
4. David J. Elliot & Sons/Stillwater Orchards, Frank Loretz, Friends of Stone Lakes National Wildlife Refuge, and Wurster Ranches, LP: 4 hours
5. CSPA, et al.; Sierra Club, et al.; Camp Lotus, et al.; PCFFA & Institute for Fisheries Resources; CWIN; Foothill Conservancy; Save California Salmon; Save Our Sandhill Cranes; Habitat 2020/ECOS: 6 hours

6. DTEC et al.; CIEA; San Francisco Baykeeper; and Golden State Salmon Association: 6 hours
7. SCDA/HCC and Delta Legacy Communities: 4 hours
8. Deirdre Des Jardins: 4 hours
9. Tulare Lake Basin Water Storage District and EBMUD: case-by-case

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Deadline for Petitioner to submit supplemental model runs as directed by the AHO.	February 20, 2026.
Hearing on Petitioner's and aligned parties' rebuttal testimony.	February 20, 23, 24, & 25, and March 2, 5, 6, 23, 24, & 25, 2026, starting at 9:00 a.m.
Deadline for Protestants to submit rebuttal exhibits, updated exhibit identification indices, and proposed order of witness presentation.	April 30, 2026.
Hearing on Protestants' rebuttal testimony.	June 1, 4, 5, 8, 9, 10, 15, 18, 23, 24, & 26, 2026, starting at 9:00 a.m.
Deadline for Petitioner to submit surrebuttal exhibits and updated exhibit identification indices (if requested and approved by hearing officer).	July 24, 2026.
Hearing on Petitioner's surrebuttal testimony (as necessary).	August 20, 21, & 24, 2026, starting at 9:00 a.m.

Date: February 9, 2026



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

Attachments:

- Attachment 1 - Service List

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