



State Water Resources Control Board

October 7, 2026

Re: Procedural Ruling and Closing Brief Guidance

Hearing on the Petitions to Change Water Right Permits 16478, 16479, 16481, and 16482 of the Department of Water Resources for the Proposed Delta Conveyance Project

To All Parties,

The surrebuttal phase of the Delta Conveyance Project (DCP) hearing on the change petitions submitted by the Department of Water Resources (DWR) concluded on September 3, 2026. As described below, the Protestants' requests to present additional evidence are denied without prejudice. This letter also addresses Ms. Des Jardins' motion regarding climate modeling, sets page limits and deadlines for the submission of closing briefs, and provides guidance to the parties about preparation of closing and reply briefs.

The Administrative Hearings Office (AHO) will conduct a status conference to address questions or objections by the parties regarding the page limits and deadlines for submission of closing and reply briefs stated in this ruling letter. The status conference will be held on either **October 15, 2026, at 1:00 p.m. or October 19, 2026, at 9:00 a.m.** Please inform the AHO in writing by end of the day on October 9, 2026, if you wish to participate in the status conference and have an irreconcilable conflict with either of these proposed dates and times.

The guidance in this letter for submission of closing briefs is not intended to preclude briefing on other issues nor be an exhaustive list of the sub-issues that are relevant to the Board's consideration. I encourage the parties to address all relevant hearing issues identified in the hearing notices. (See 11-18-2024 Amended Hearing Notice, pp. 10–12.) Insofar as this ruling directs the parties to consider and propose permit terms and conditions, the parties' responses will be considered in the alternative and without prejudice to the parties' right to assert as a primary position that DWR's petitions should be approved or disapproved without the proposed term or condition. The Hearing Team has also identified specific issues that may be suitable for resolution by the parties through negotiated terms that would apply if the Board approves the petitions to add the north Delta points of diversion. This letter directs the identified parties to meet and confer about these specific issues. I strongly urge the parties to pursue agreement to the extent possible, as the parties are better positioned than the Hearing Team to draft

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terms that are tailored to address the parties' particular concerns with the least impact on the intended benefits of the project. Alternatively, if the parties are unable to reach agreement, the parties are directed to consider whether there are underlying facts to which the parties can stipulate that would assist the Hearing Team. Specific issues that the Hearing Team has identified as potentially suitable for full or partial resolution are identified below.

Any settlement discussions amongst the parties or proposed agreements will be construed by the AHO without prejudice to the right to challenge the ultimate decision of the Board and will not be admissible as evidence in this proceeding for any purpose.

I. PROTESTANTS' REQUESTS FOR SURREBUTTAL

In this proceeding, I staggered the submission and presentation of cases-in-chief and rebuttal evidence. As explained in the November 18, 2024 Amended Hearing Notice, "[a]t a certain point, there is minimal additional probative evidence to be presented on either side of the issues. By allowing Protestants to respond to Petitioner's case-in-chief in their cases-in-chief, instead of presenting less relevant general evidence, my intent is to reach this point more quickly." (11-18-2024 Amended Hearing Notice, p. 9.) Because of this staggered approach, Protestants had the opportunity to respond to DWR's case-in-chief with their own case-in-chief evidence, and had the opportunity to respond to DWR and the aligned parties' rebuttal evidence with their own rebuttal evidence.¹ Therefore, the hearing officer did not initially invite requests from the Protestants to submit surrebuttal evidence, as these parties already had the opportunity to submit evidence in response to DWR and aligned parties' rebuttal evidence:

One reason for staggering the rebuttal portion of the hearing and requiring DWR, SWC, and other parties aligned with DWR to submit their rebuttal evidence in advance of protestants, is to avoid, or significantly limit, any surrebuttal portion of the hearing. By requiring DWR, SWC, and any other aligned parties to submit their rebuttal evidence before protestants,

¹ DWR submitted its case-in-chief exhibits on January 20, 2025. The evidentiary hearing on DWR's case-in-chief commenced on April 3 and continued through June 11, 2025. The remaining parties submitted case-in-chief exhibits on July 11, 2025. The evidentiary hearing for the remaining parties' cases-in-chief commenced on August 12 and continued until October 29, 2025, with three additional hearing days ending December 10, 2025, for cross-examination of witnesses who testified during the site visits. DWR and aligned parties submitted rebuttal exhibits on December 22, 2025. The evidentiary hearing for DWR and aligned parties' rebuttal commenced on February 20 and continued until March 25, 2026. Protestants submitted rebuttal exhibits on April 30, 2026. The evidentiary hearing for Protestants' rebuttal commenced on June 1 and continued until July 8, 2026. DWR and aligned parties submitted surrebuttal exhibits on July 24, 2026. The evidentiary hearing for DWR and aligned parties' surrebuttal commenced on August 20 and continued until September 3, 2026. In total, the AHO conducted 75 days of hearing, including 3 days of site visits.

protestants will already have had the opportunity to respond to opposing rebuttal evidence. Therefore, surrebuttal will be limited to any evidence that DWR or aligned parties seek to present in response to protestants' rebuttal evidence.

(12-04-2025 Ninth Amended Hearing Notice, pp. 4–5.)

DWR and aligned parties requested the opportunity to present evidence in response to Protestants' rebuttal evidence, which the hearing officer granted. After the presentation of this evidence, Protestants submitted the following requests to present additional testimony and associated exhibits in response:

- Local Agencies of the North Delta (LAND), Central Delta Water Agency, South Delta Water Agency Parties, and Counties of Solano, Contra Costa, San Joaquin, Yolo, and Sacramento (2026-09-15 LAND et al. Joint Surreb Req Final).
- North Delta Water Agency (2026-09-15 NDWA Request for Surrebuttal).
- Byron-Bethany Irrigation District, City of Stockton, Contra Costa County Water Agency, County of Contra Costa, County of Solano, and Sacramento Area Sewer District (Delta Public Water Agencies) (2026-09-15 Request to Submit DPWA Surrebuttal Testimony).
- Sacramento Area Sewer District (2026-09-15 Request to Submit SASD Surrebuttal Testimony).
- Sacramento County Water Agency (2026-09-15 SCWA Surrebuttal Request).
- Delta Tribal Environmental Coalition Parties (2026-09-15 DTEC Motion to Introduce Surrebuttal Testimony).
- Dierdre Des Jardins (2026-09-15 DDJ Request for Surrebuttal Corr).
- California Water Impact Network (2026-09-15 CWIN Surrebuttal Request).

As described in their requests, these Protestants seek to present additional evidence on the following general topics:

- Adequacy of DWR's groundwater model.
- Potential construction impacts on groundwater.
- Magnitude and importance of change in stream leakage to the groundwater basin.
- Use of seepage meters.
- Use of long-term monthly averages and exceedance plots in presentation of water quality model results.
- Risk of exceedances of water quality objectives with DWR's proposed bypass flows.
- Application of water year types in assessing modeled exceedances of water quality objectives.

- Tidal sloshing and residence time as relevant to the occurrence of HABs.
- Growth rates of cyanobacteria, impacts of clams on cyanobacteria, and relationship between cyanobacteria cell abundance and toxin concentrations.
- Habitat restoration and reverse flows.
- DWR's proposed Permit Term 44, offering a conservation easement at the Twin Cities Complex.
- DWR's benefit-cost analysis for the proposed project.
- Affordability and financial feasibility of the proposed project.
- Recycled water projects as an alternative source of supply.
- Adequacy of DWR's model runs to address possible future climate conditions.

DWR and the State Water Contractors (SWC) filed responses objecting to the requests. (2026-09-22 DWR SWC Response to Protestants' Requests for Surrebuttal; 2026-09-22 SWC Response to Sur Sur Rebuttal Requests.)

Discussion

The parties to this proceeding have already submitted, and had multiple opportunities to submit, voluminous evidence and testimony in response to the hearing issues identified in the hearing notice. (2024-11-18 Amended Notice of Public Hearing, pp. 10–12.) To date in this proceeding, the Administrative Hearings Office has conducted 75 days of hearing (including three days of site visits), heard testimony from 123 witnesses, and received more than 2,600 exhibits.

All parties were on notice of the relevance of all of the general topics identified by the Protestants in their requests for surrebuttal and either did present or could have presented evidence during the hearing relevant to these topics. Although the Protestants have framed their requests for surrebuttal topics relatively narrowly given the broad range of issues in this proceeding, at this point in the hearing, parties will only be allowed to present additional evidence if it is sufficiently probative and helpful to the State Water Board in its decision-making to justify the further expenditure of time and resources to conduct additional hearing days. (See Gov. Code, § 11513, subd. (f) ["The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time."].)

Most of the topics raised by the Protestants have already been the subject of extensive testimony, including, for example, criticism of DWR's groundwater model, the use of averaging and exceedance plots to present model results, modeling of tidal sloshing and residence time, and DWR's benefit-cost analysis. The extensive opportunities to present evidence have well-exceeded procedural due process requirements. (See *Barclay Hollander Corp. v. California Reg'l Water Quality Control Bd.* (2019) 38 Cal. App. 5th 479, 511.) And much of the evidence that Protestants seek to offer in surrebuttal seems intended to demonstrate the uncertainty underlying certain aspects of DWR's analyses of potential effects of the project. Further presentation of evidence on

these topics is not necessary, however, to support a conclusion that additional monitoring, data gathering, and study could better define the scope of effects that may be attributable to project construction and operation, and that such subsequently gathered information could help to develop response actions that appropriately address potential impacts.

A significant source of uncertainty surrounding potential effects of the project are the unknown future conditions in which the project will operate, including, for example, climate, water demands, regulatory requirements, and the condition of potentially affected species and ecosystems.² No amount of additional evidence could fully address this uncertainty, which is most effectively reduced through the passage of time. Other sources of uncertainty include, but certainly are not limited to, the stage of project design, absence of monitoring or other relevant field data, absence of scientific studies and knowledge on certain topics (for example, the causal relationship between environmental factors and the occurrence and extent of HABs), and the regional nature of DWR's DeltaGW Model. The Protestants' offer of surrebuttal evidence would not help to resolve these sources of uncertainty.

Finally, some of the topics raised in the Protestants' requests for surrebuttal seem amenable to being addressed through closing briefs, without the need for additional testimony. Such topics include, for example, criticism of DWR's groundwater model, the application of water year types to model results, and the use of averaging in the presentation of model results.

After carefully reviewing Protestants' requests and considering the scope of the evidentiary record already developed in this proceeding, I deny the requests to submit additional evidence at this time. This denial of Protestants' requests is made without prejudice and without closing the evidentiary record. Given the complexity of the issues presented, the acceptance of some limited additional evidence may still be appropriate to assist the Board as it develops a draft decision.

The guidance in this letter poses questions to the parties to focus the parties' attention on particular types of terms and conditions that would help define and address potential impacts.³ If the Board approves DWR's petitions, a phased or iterative process through reservations of authority could require DWR to refine the project design, gather additional information, and conduct additional studies; allow for further development of scientific knowledge on relevant to topics; and allow for the passage of time that would in itself clarify the future conditions within which the project would operate. This additional information, scientific knowledge, and clarity as to future conditions would

² DWR estimates that the Delta Conveyance Project would not be fully operational until 2045. (Exh. DWR-00012, p. 7.)

³ The identification of specific issues in this letter is not intended to suggest that these topics are the most important to the Board's decision-making, or that other topics are not relevant or being considered by the Board. The issues identified here are those about which more information from the parties may be helpful or where the parties may be able to narrow the issues in dispute.

refine the range of potential effects of project operation and could be adaptively incorporated into the permit to prevent injury to legal users and reduce other impacts of the project as is in the public interest.

The AHO will further consider whether the admission of any additional evidence on focused and defined topics may be appropriate after the parties have submitted their closing briefs. The submission of closing briefs will be the first comprehensive presentation of the parties' evidence and arguments in relation to the legal, factual, and policy issues being considered by the Board. The Hearing Team and the Board will be in a significantly more informed position to assess the need for additional evidence, if any, after review of closing briefs and the parties' responses to the questions posed in this letter.

II. MOTION BY MS. DES JARDINS

On September 3, 2026, Ms. Deirdre Des Jardins filed a motion regarding "climate modeling for determination of appropriate Delta flow criteria." (2026-09-03 DDJ Motion re Modeling for Appropriate Delta Flow Criteria.) Ms. Des Jardins requests that the AHO direct DWR to submit CalSim 3 and DSM2 model runs for a "climate scenario that carries the effect of the observed increase in the frequency of the North Pacific ridge weather regime" (*Id.* at p. 1.) Ms. Des Jardins also requests both in her motion and written request for surrebuttal to present surrebuttal evidence relevant to the "climate basis" for appropriate Delta flow criteria. (*Ibid.*; 2026-09-15 DDR Request for Surrebuttal Corr., p. 6.) Additionally, Ms. Des Jardins seeks to present surrebuttal evidence about DWR's LOC95 model runs and the use of WGEN output in CalSim model runs. (2026-09-15 DDR request for surrebuttal corr., pp. 6–7.)

Substantial evidence has been submitted in this proceeding about modeling of future climate conditions. Ms. Des Jardins was permitted to submit extensive testimony and exhibits during the case-in-chief and rebuttal portions of the hearing relevant to this topic and conducted more than 8 hours of cross-examination of DWR's witnesses on this and other topics.

The well-developed evidentiary record about modeling future climate conditions demonstrates a lack of consensus among experts as to future climate conditions, an array of approaches to construct future climate scenarios for CalSim model runs, and an ongoing evolution of scientific knowledge and tools relevant to the topic. Ultimately, however, the task of identifying the best available approach to climate modeling is not at issue here and is not well-suited for resolution through an adjudicative proceeding. Rather, in this hearing, the Board need only determine whether the evidence submitted by DWR, including DWR's model runs that incorporate potential future climate conditions, is sufficiently reasonable for the Board to rely upon in determining whether to approve DWR's petitions. For purposes of developing appropriate operating criteria for any such approval, including appropriate Delta flow criteria, the Board has the option to reserve its authority to reconsider operating conditions based on future-conducted model runs that incorporate developing scientific information on the topics of climate science and climate modeling.

Therefore, I deny Ms. Des Jardins' requests to direct DWR to conduct additional climate-related model runs and her request to submit additional evidence on this topic. Rather than submitting additional evidence, I encourage Ms. Des Jardins to consider and propose in her closing brief, terms and conditions that, if DWR's petitions are approved, might guide future modeling on which ongoing assessment of operational conditions could be based.

III. ISSUES AFFECTING SPECIFIC PARTIES

The following issues affect specific parties and may be suitable for full or partial resolution by DWR and the identified party through settlement agreements and permit terms or by stipulation to underlying facts. As described further below, the AHO directs DWR and the identified parties to (1) address in their closing briefs the specific questions listed and (2) meet and confer to attempt resolution of the issues.

A. Issues Raised by the City of Stockton

The City of Stockton (Stockton) presented testimony asserting that operation of the DCP may increase chloride and bromide concentrations at Stockton's intake, which could cause harmful byproducts in drinking water, impact taste, increase treatment costs, and affect compliance with Stockton's treated wastewater discharge permit. (Exh. STKN-004, pp. 10–13.) Stockton claims that an operational threshold of 110 milligrams per liter (mg/L) for chloride at its Delta intake avoids these harms. (Exh. STKN-004, p. 10; Exh. STKN-030 R, p. 4.)

DWR's model results show increases in monthly average concentrations for chloride in the San Joaquin River at Empire Tract (Stockton's intake) with DCP operations of up to 4 mg/L. (Exh. DWR-00512R, pp. 49–50, Table CL-2043-CC50-6-1-B, Revised Table CL-2043-CC50-6-2-D) Because DWR presents its model results as long-term monthly average concentrations, the extent of shorter-term fluctuations in salinity, which could be relevant to Stockton's operations, is not evident from these results.

DWR and Stockton are directed to brief and to discuss resolution of the following:

1. What future monitoring, modeling, study, or analysis could identify the effect, if any, of DCP operations on chloride and bromide concentrations at Stockton's intakes under future conditions if and when the DCP is operational?
2. What chloride and bromide concentrations at Stockton's intakes may cause injury to Stockton's water rights or otherwise cause harm to Stockton? Would attainment of the applicable water quality objective for chloride avoid injury? Given that there is a water quality objective for chloride, what evidence, if any, supports a different standard for injury?
3. If the Board imposes a term to address any potential effects of operations of the DCP on chloride and bromide concentrations at Stockton's intake, what thresholds should the Board impose to trigger remedial action by DWR?

4. If a threshold is triggered, what remedial action should DWR be required to take?

B. Issues Raised by Sacramento Area Sewer District

Sacramento Area Sewer District (SASD) alleges that the DCP may cause more frequent or extensive reverse flow events in the Sacramento River at Freeport (SASD's discharge location), requiring SASD to cease discharges of wastewater and divert the effluent to emergency storage basins to comply with their NPDES permit. (Exh. SASD-009, pp. 8–9.) SASD relied on DWR's modeling analyses to quantify impacts on reverse flow events. (Exh. SASD-035c, p. 17.) The modeling shows an increase in total reverse flow events at Freeport with operation of the DCP for the 2043 CC50 and CC95 scenarios⁴ amounting to 69 additional reverse flow events for the 2043 CC50 scenario and 146 additional reverse flow events for the CC95 scenario, over the 99-year record period that DWR modeled. (*Id.* at p. 20, tbls. 2 & 3.)

DWR's proposed Permit Term 04 states that DWR will coordinate with SASD and share projections of tidal reverse flows and anticipated DCP diversions. (Exh. DWR-01101, p. 2.) SASD objects that this permit term is inadequate to prevent adverse impacts to their facility operations and does not include any commitment to modify DCP operations to avoid adverse impacts to SASD. (Exh. SASD-009, p. 10.)

DWR and SASD are directed to brief and to discuss resolution of the following:

1. Under what specific circumstances, if any, might DCP operations contribute to SASD being unable to discharge its effluent in compliance with the waste discharge requirements for the facility?
2. What future monitoring, modeling, study, or analysis could identify the effect, if any, of DCP operations on SASD's ability to comply with its waste discharge requirements using its existing facilities under future conditions if and when the DCP is operational?
3. If the Board imposes a term to address any potential effect of DCP operations on SASD's ability to comply with its waste discharge requirements, what thresholds should the Board impose to trigger remedial action by DWR?
4. If a threshold is triggered, what remedial action should DWR be required to take?

⁴ DWR conducted modeling of DCP operations under different possible future hydrologic conditions resulting from climate change. 2043 CC50 refers to a scenario of hydrologic conditions in 2043 under a 50 percent level of concern. 2043 CC95 refers to a scenario of hydrologic conditions in 2043 under a 95 percent level of concern. (Exh. DWR-00138, p. 14.)

C. Issues Raised by Byron-Bethany Irrigation District

Byron-Bethany Irrigation District (BBID) alleges that DCP operations will increase salinity in Clifton Court Forebay. BBID submitted testimony that electrical conductivity (EC) exceeding approximately 900 microsiemens per centimeter and chloride concentrations exceeding 200 mg/L are “problematic” for BBID’s customers and could cause “negative impacts” to BBID’s contractual relationships with its customers and operating costs as a wholesale water supplier. (Exh. BBID-001, pp. 6–7.)

DWR’s model results for the 2043 CC50 scenario show DCP operations will increase monthly average chloride by up to 8 mg/L and EC levels by up to 23 micromhos per centimeter at BBID’s intake. (Exh. DWR-00511R, pp. 103–104, Revised Table EC-2043-CC50-15-2-A, Revised Table EC-2043-CC50-15-2-D; Exh. DWR-00512R, pp. 61–62, Table CL-2043-CC50-12-1-B, Table CL-2043-CC50-12-2-D.) But the results show infrequent exceedances of the EC and chloride levels identified by BBID as problematic, and most exceedances occur under baseline conditions even without DCP operations. (Exh. DWR-00511R, pp. 102–103, tbls. EC-2043-CC50-15-1-A, EC-2043-CC50-15-2-A, Exh. DWR-00512R, pp. 57–58, tbls. CL-2043-CC50-10-1-A, CL-2043-CC50-10-2-A.)

DWR and BBID are directed to brief and to discuss resolution of the following:

1. What future monitoring, modeling, study, or analysis could identify the effect, if any, of DCP operations on salinity in Clifton Court Forebay under future conditions if and when the DCP is operational?
2. Would attainment of the water quality objectives for EC and chloride that are specific to the West Canal at the mouth of Clifton Court Forebay avoid injury to BBID’s water rights? Given that there are specific water quality objectives at BBID’s point of diversion, what evidence supports a different standard for injury?
3. If the Board imposes a term to address any potential effect of DCP operations on salinity at Clifton Court Forebay, what thresholds should the Board impose to trigger remedial action by DWR?
4. If a threshold is triggered, what remedial action should DWR be required to take?
5. To what extent is the 1964 agreement between DWR and BBID relevant to defining or addressing potential injury to BBID?

D. Issues Raised by North Delta Water Agency

North Delta Water Agency (NDWA), Reclamation District 999, Reclamation District 2060, and Reclamation District 2068 (collectively, the Districts) assert that operation of the DCP will increase salinity and lower water levels in the Sacramento River so as to injure legal users of water within the Districts. (Exh. NDWA-012E, pp. 3–4.) NDWA has

a 1981 contract with DWR — Contract for the Assurance of a Dependable Water Supply of Suitable Quality (1981 Contract) — that addresses the water quality effects of State Water Project (SWP) operations. The 1981 Contract does not address water levels. NDWA proposes a term to incorporate the criteria of the 1981 Contract that address changes in EC but also reserves the option to propose additional conditions concerning other effects of DCP operations. (2025-07-11 NDWA Response re Approval Conditions, p. 1.)

DWR argues in its response to NDWA's protest that certain issues raised by NDWA are related to the 1981 Contract and not to the DCP or its operation. (2024-07-12 DWR Response to North Delta Water Agency, p. 1.) DWR presented evidence that the DCP would have a mixed effect on the maximum monthly average EC at Threemile Slough, a location of compliance under the 1981 Contract. (Exh. DWR-00512R2, p. 28; Exh. DWR-00415, p. 3.)

DWR and NDWA are directed to brief and to discuss resolution of the following:

1. To what extent, if at all, is the 1981 Agreement relevant to defining or addressing potential injury to legal users within the Districts?
2. What future monitoring, modeling, study, or analysis could identify the effect, if any, of DCP operations on EC and water levels at the points of diversion of legal users within the Districts under future conditions when and if the DCP is operational?
3. If the Board imposes a term to address potential effects of DCP operations on water quality or water levels, what thresholds should the Board impose to trigger remedial action by DWR?
4. If a threshold is triggered, what remedial action should DWR be required to take?

E. *Issues Raised by Sacramento County Water Agency (Water Supply for Town of Hood)*

Sacramento County Water Agency (SCWA) is a retail and wholesale water supplier in Sacramento County that delivers water to 75 homes and businesses in the town of Hood. (Exh. SCWA-001, pp. 2 & 6.) Hood does not have interconnections with other water systems and does not have a source of supply other than groundwater. (*Id.* at pp. 6–7.) The main well for Hood is approximately 316 feet from the proposed location of the tunnel and its screened interval is approximately the same depth as proposed for construction of the tunnel. (Exh. SCWA-012, pp. 5–6.) To ensure that DCP construction and operations will not interfere with Hood's water supply, SCWA proposes that DWR be required to install a pipeline between SCWA's "South Service Area" and the Hood Service Area. (Exh. SCWA-001, p. 7.)

DWR's Delta Groundwater Model (DeltaGW Model) did not directly assess localized impacts on Hood's supply well as opposed to regional impacts on the groundwater basin. (Exh. SCWA-012, p. 5.) Additionally, South Delta Water Agency (SDWA) challenged DWR's analytical method for identifying the source area for water flowing to Hood's groundwater well. (Exh. SDWA-105R, p. 12.)

DWR and SCWA are directed to brief and to discuss resolution of the following:

1. Is revised groundwater modeling necessary to adequately evaluate the risk of impacts to Hood's groundwater supply? If so, how should the groundwater model be updated or revised?
2. What, if any, groundwater level monitoring is available or should be implemented in the vicinity of Hood to evaluate the risk of impacts to Hood's groundwater supply?
3. What remedial actions by DWR would ensure DCP construction and operation do not interfere with the drinking water supply for Hood? What are the comparative costs and effectiveness of the options?

F. Issues Raised by South Delta Water Agency

SDWA presented evidence that, based on DWR's DSM2 modeling, DCP operations will cause water levels to decline up to 0.24 ft at six locations in the south and central Delta. (Exh. SDWA-1b, pp. 16–20, tbl. 2; Exh. SDWA-2, pp. 1–8.) SDWA also presents evidence that DCP operations will increase salinity in the south and central Delta. (Exh. SDWA-1b, pp. 21–24, tbl. 4; Exh. SDWA-2, pp. 9–16.)

DWR and SDWA are directed to brief and to discuss resolution of the following:

1. What monitoring, modeling, study, or analysis could identify the effect, if any, of DCP operations on water levels and salinity in the south and central Delta under future conditions if and when the DCP is operational?
2. Would attainment of the water quality objectives avoid water quality-related injury to legal users? Given that there are specific electrical conductivity water quality objectives for protection of agricultural uses in the southern Delta, what evidence, if any, supports a different standard for assessing injury?
3. What amendments to the Water Level Response Plan, if any, are necessary to adequately address the potential effects of DCP operations on water levels?

G. Issues Raised by Delta Tribal Environmental Coalition

The Delta Tribal Environmental Coalition (DTEC) presented evidence addressing the potential effects of DCP construction and operations on Tribal cultural resources and Delta communities, DWR's Tribal consultation process, and consideration of Traditional

Ecological Knowledge in project-related decision-making. (See, e.g., Exhs. DTEC-035; DTEC-041R; DTEC-058; DTEC-083; DTEC-103.)

DWR and DTEC are directed to brief and to discuss resolution of the following:⁵

1. Do Tribal parties seek further consultation with DWR regarding potential effects of construction or operation of the DCP? If so, with respect to which potential effects?
2. If the Board approves DWR's petitions, what plans for monitoring, studies, mitigation, operation, or other activities related to DCP construction or operation, if any, should be subject to consultation with Tribes by DWR?
3. If the Board approves DWR's petitions with conditions that require consultation with Tribes, how should DWR identify and notify interested Tribes of the opportunity to consult?
4. If the Board approves DWR's petitions, should the Board reserve authority to impose terms to address any future-adopted water quality objectives pertaining to Tribal beneficial uses?

IV. DIRECTION TO SPECIFIC PARTIES

DWR and the parties identified above (City of Stockton, SASD, BBID, the Districts, SCWA, SDWA, and DTEC) shall address the above identified questions with their closing briefs. Each identified protestant is allowed 5 additional pages and DWR is allowed 30 additional pages, to respond to these questions.

The parties identified above are directed to meet and confer regarding the listed questions. The parties shall discuss stipulation as to any material facts relevant to these questions and permit terms that may resolve the disputed issues between the parties in whole or in part. The parties are encouraged to meet and confer before the submission of closing briefs but are directed to meet and confer before the deadline for submission of reply briefs.

With their reply briefs, the parties shall submit an initial joint conference statement identifying any underlying facts to which the parties were able to stipulate and permit terms to which the parties agree. The conference statement shall also briefly summarize the remaining areas of dispute relevant to the questions identified above. The conference statement shall not be considered part of the reply brief for purpose of page limits.

The parties shall continue to meet and confer after the submission of reply briefs and submit a supplemental joint conference statement every 6 weeks until the AHO and the Board circulate a draft decision for comment by the parties or the AHO determines that

⁵ In recognition of the sovereign status of Tribes participating in DTEC, the AHO invites but does not purport to direct those sovereign Tribes to meet and confer with DWR.

further conferences are unlikely to be productive or are otherwise unnecessary. The AHO may conduct status conferences to address the contents of these statements, which will be conducted with notice to all parties.

V. GENERAL ISSUES

This section of the guidance for closing briefs addresses issues raised during the hearing that are not specific to individual parties. As with the party-specific issues addressed above, the evidentiary record demonstrates substantial and, in significant part, unavoidable uncertainty about whether and the extent to which construction or operation of the DCP may contribute to these more general concerns.

As reflected in the questions posed for each topic, the Hearing Team asks the parties to focus on developing terms and conditions that include milestones for monitoring, modeling, further studies, or other actions before, during, and after construction, as appropriate. Such milestones should include evaluation of baseline conditions prior to construction and operations so that the effects of construction and operation of the DCP can be identified. Subsequent milestones should include consideration of any newly available information or technologies relevant to determining thresholds for effects attributable to DCP construction or operations, and the remediation of any material impacts once identified. If the parties are unable to reach agreement as to specific terms and conditions, the parties should consider stipulating to any relevant material facts.

Each brief that responds to questions listed below may include 5 additional pages for each topic addressed (General Topics A-E). For example, if DWR addresses all of these topics, DWR may include up to 25 additional pages in its closing brief to respond to the questions.

A. Harmful Algal Blooms

The parties disagree as to whether DCP operations may increase harmful algal blooms (HABs) in the Delta. DWR presented testimony that “there is not enough information... to develop a predictive CHAB model.” (Exh. DWR-00431, p. 63). DWR relies on residence time modeling to assess the impacts of DCP operations on HABs. However, “there are no scientific studies in the Delta that specifically correlate area-specific residence time to cyanobacteria bloom size ... thus there is substantial uncertainty in ... residence time ... needed for a bloom to form in the Delta.” (Exh. DWR-00404, p. 27.) The protesting parties presented evidence disputing DWR’s characterization of residence times but did not present an alternative for evaluating potential increases in HABs occurrence or bloom size.

Parties that presented evidence relevant to HABs are requested to address, to the extent possible, the following issues:

1. What future monitoring, research, study, modeling, or analysis could identify the effect, if any, of DCP operations on the occurrence of HABs under future conditions when and if the DCP is operational?

2. How might the Delta-wide HAB monitoring program and special studies required by the Bay-Delta Plan as part of the Bay-Delta Monitoring and Evaluation Program (BDMEP), or other existing or planned programs, incorporate monitoring to identify potential effects of DCP operations on HABs, including monitoring to develop a baseline of HABs occurrences without DCP operations?
3. Should a permit term incorporate a phased approach, similar to that used by the Incidental Take Permit, that requires information gathering and the development of a response plan for HABs prior to and during the initial period of DCP operation, and, if so, how should those phases be structured?

B. Evaluation of Groundwater Impacts (DWR's Delta Groundwater Model)

DWR presents the DeltaGW model as a regional-scale model suitable for simulating regional groundwater levels and trends; developing regional and subregional water budgets; and performing a regional comparative analysis of alternatives with and without DCP construction and operation. (Exh. AHO-1224, p. 20; Exh. AHO-1056, p. 57.)

Protesting parties challenge DWR's use of the DeltaGW model to assess impacts of DCP construction and operation on groundwater, in part, because the DeltaGW model does not assess local-scale impacts. (Exh. SDWA-105R, pp. 4 & 7.) Further, Protestants assert that a groundwater model uncertainty analysis is necessary to understand the plausible ranges of the effects of DCP construction and operation on groundwater. (Exh. SCWA-022c2, pp. 2–4.) Without understanding the range of changes or uncertainty in groundwater levels and stream-aquifer interactions, it remains unclear if the comparative differences between modeled baseline and with-DCP scenarios are representative, and therefore reliable, for decision-making purposes. (*Ibid.*; 2026-06-18 Zoom Generated Transcript, p. 11.)

Parties that presented evidence relevant to groundwater impacts are requested to address, to the extent possible, the following issues:

1. What revisions or updates to DWR's groundwater model, if any, would enable the model to identify within a reasonable range of quantified uncertainty, potential local-scale and regional-scale impacts from construction and operation of the DCP?
 - a. Please consider the timing, duration, location, and magnitude of any impacts to groundwater wells⁶ and recharge of the groundwater basin.
 - b. Please consider grid element refinement, grid layering refinement, spatial resolution of hydraulic conductivity, and inclusion of pumping (or well) extractions, among other possible revisions.

⁶ Groundwater wells to be considered should include Hood's domestic supply wells, individual domestic wells, agricultural wells, and other wells within the proximity of DCP infrastructure or the Sacramento River downstream of the proposed intakes.

- c. How might the model be confirmed as sufficiently reliable for the above identified purposes?
 - d. How might the model be refined over time to further reduce uncertainty?
 - e. How could the model be updated to address any effects on groundwater quality from construction or operation of the DCP?
 - f. How could the model be updated to address any effects on the Harvest Water Program?
 - g. How should “baseline” conditions, i.e., conditions without construction or operation of the DCP, be defined in the model? What additional information may be necessary to appropriately define baseline conditions?
2. What monitoring, field investigations, or other actions could reduce uncertainty in the model results, including, for example, establishing a “baseline” variance in groundwater levels or groundwater recharge over time?
3. What is the range of costs associated with making these revisions to the model and updating the model over time as new information is available?
4. How might the results of such a model be used to identify and address any injury to groundwater users and unreasonable impacts to the groundwater basins resulting from DCP construction or operation?

C. Effects of Construction and Operation on Groundwater Wells and Groundwater Conditions

DWR acknowledges the potential for localized groundwater impacts during DCP construction in the Final Environmental Impact Report (Final EIR). (Exh. AHO-1055, p. 1.) Among other factors, construction may impact wells and groundwater conditions by release of contaminants, de-watering necessary for construction, placement of infrastructure, or the disposal of excavated tunnel materials. (Exh. SASD-004c, pp. 3-5; Exh. SCWA-012, pp. 6 & 11; Exh. SDWA-105Ra, p. 10.) DWR did not, however, quantitatively evaluate the nature or extent of these potential impacts. (Exh. AHO-1224, p. 24:8–15.)

The DeltaGW Model, on which the Final EIR analysis relies, is a regional-scale model. (Exh. AHO-1224, pp. 20 & 24) DWR acknowledges that the DeltaGW Model is not fit to assess project “construction- and maintenance-related effects ... due to the lack of an available analytical tool at the spatial scale required for the site-specific quantitative analysis.” (Exh. AHO-1055, p. 14.) Instead, DWR presented evidence that changes in groundwater levels from DCP construction will not be significant and relies upon *Mitigation Measure GW-1: Maintain Groundwater Supplies in Affected Areas* (Mitigation Measure GW-1) to address “unforeseen localized impacts.” (Exh. AHO-1055, p. 1.)

Local-scale operational impacts may include reduced groundwater recharge and lowering of groundwater levels. (Exh. SASD-004c, pp. 3-5; Exh. SCWA-012, pp. 6 &

11.) Protestants assert that reduced flows in the Sacramento River will cause decreased groundwater recharge and a corresponding reduction in groundwater levels. (Exh. SCWA-012, p. 9; Exh. SASD-004c, p. 5.) Protestants also argue that the tunnel will act as a flow barrier that will reduce groundwater flow from the river into the aquifer, which could impact water supply to nearby wells and groundwater recharge in nearby areas. (Exh. SCWA-012, pp. 6–7; Exh. SASD-004c, p. 5.)

Parties that presented evidence relevant to impacts on groundwater wells or basin recharge are requested to address, to the extent possible, the following issues:

1. Is the mitigation identified in the Final EIR sufficient to avoid injury to groundwater wells during construction and operation of the DCP? If not, how should the mitigation be amended?
2. In addition to or aside from revised modeling, what monitoring, study, or analysis would further define the risk of potential impacts of DCP construction and operation on groundwater conditions and groundwater wells (including localized reduction in groundwater levels and reduction in groundwater storage)? Are there existing groundwater monitoring programs into which any such monitoring could be incorporated?
3. Does the water right priority system require DWR to provide replacement water or otherwise alter operations of the DCP, if operation reduces the sustainable yield of the groundwater basin on an annual basis or, over time, on a cumulative basis?
4. If the Board imposes a term to address any potential impact of DCP construction and operation on groundwater conditions or groundwater wells, what thresholds should trigger remedial action by DWR? Are minimum thresholds set by the applicable Groundwater Sustainability Plan appropriate to define unreasonable impacts to groundwater conditions? How should appropriate thresholds be updated over time?
5. What monitoring, modeling, study, or analysis could identify whether DCP construction or operation contributed to triggering the threshold condition?
6. If a threshold is triggered, what remedial actions should DWR be required to take? Is a well-replacement program one appropriate remedy? If so, what would be the nature, extent, and estimated cost of such a program? Could DWR bypass sufficient flows to avoid unreasonable impacts to the groundwater basin or injury to legal users? Could DWR provide replacement water to offset any such impacts?
7. How might DWR coordinate with the relevant groundwater sustainability agencies about groundwater conditions, groundwater monitoring, and the development and implementation of any remedial actions?

D. Diversion Criteria for Fisheries

DWR relies on information from the Final EIR and the Incidental Take Permit (ITP) for the DCP to assert that the operational criteria, mitigation measures, adaptive management, and avoidance and minimization measures in the Final EIR and ITP will reasonably protect fisheries. (Exhs. AHO-1099, AHO-065, AHO-078, DWR-00800R, p. 2.) Protesting parties allege that fisheries have already been heavily impacted by water management and that DCP operations will contribute to and exacerbate impacts on fisheries. (Exhs. BK-100R, CSPA-029, FOR-004.)

Parties that presented evidence relevant to effects on fisheries are requested to address, to the extent possible, the following issues:

1. Will the conditions of approval in the ITP avoid unreasonable impacts to fish species not considered in the ITP, such as fall-run Chinook salmon? If not, what other terms and conditions would prevent unreasonable impacts?
2. Are additional terms necessary to address the potential for DCP operations to increase the occurrence of migrating juvenile salmon entering the interior Delta, particularly through Georgiana Slough? If so, what should the terms require with respect to monitoring, additional studies, or diversion criteria?
3. Should the permit include a term requiring the development of pulse flow protections to benefit migrating juvenile salmon, and if so, how should that term incorporate information developed in the Final EIR and required studies under the ITP?
4. Could coordinated operation of diversions from the south and north Delta reduce impacts to fisheries as compared to current operations of the SWP and Central Valley Project (CVP)? If so, should the permit impose operational criteria to achieve these benefits?

E. Coordinated Operations of the SWP and CVP

Operation of the SWP is closely coordinated with the CVP, which is operated pursuant to water rights held by the United States Bureau of Reclamation (Reclamation). The SWP and CVP share export capacity and responsibility for maintaining fishery- and salinity-related conditions in the Delta. (Exh. DWR-00304, p. 65; Exh. AHO-049, pp. 130–132)

The addition of the DCP will create additional capacity for the SWP to export water from the Delta. DWR proposes a term to include DCP exports in the Export-to-Inflow ratio (E:I Ratio) requirement imposed by Decision 1641 (D-1641). (Exh. DWR-01101, p. 2.) The E:I ratio, referred to in D-1641 as the “percent inflow diverted,” is an export limit that relies on an equation for calculating the combined SWP and CVP export rate. (Exh. AHO-049, p. 190, fig. 3.) The combined export rate for purposes of calculating the E:I ratio is the sum of the Clifton Court Forebay (CCF) inflow rate (minus actual BBID

diversions from CCF) plus the Tracy Pumping Plant export pumping rate. (*Id.* at p. 186, fn. 16.)

DWR's proposed Permit Term 03 would modify the equation for calculating the combined export rate in the SWP water right permits. The modified equation would include DCP exports at the new north Delta intakes. DWR's requested change would apply only to the E:I ratio and not to other export-dependent requirements in D-1641. Other export-dependent requirements in D-1641 include Delta outflow and San Joaquin River flows, which are based on the Net Delta Outflow Index (NDOI) and Delta exports. (*Id.* at pp. 184 & 190.) Each project's capacity to export water and the apportionment of export capacity between the projects also depend on other requirements not at issue in this proceeding, such as the ITP and Biological Opinion for Long-Term Operations of the SWP and CVP, and COA.⁷ (Exhs. DWR-00842, DWR-00810, DWR-00304.)

If the Board updates the combined export rate equation for the E:I ratio and other flow requirements in the SWP permits to incorporate exports through the DCP, those updated definitions and equations would not apply to Reclamation's water rights. Because requirements applicable to the projects would differ, Reclamation may be able to increase CVP exports when DWR shifts exports from the south Delta to the north Delta intakes.

The following questions seek to clarify how SWP and CVP operations may change if the DCP is operational, and whether those changes, if any, are addressed in the analyses prepared by DWR. DWR and Reclamation are requested to address (and other parties are invited to address) the following issues:

1. Should the Board revise the equations relied upon to define D-1641 export-related requirements to account for exports through the north Delta intakes and, if so, how?
2. Did DWR's modeling of SWP and CVP operations presented in this hearing include DCP operations in the calculation of Delta exports, combined CVP and SWP exports, Delta outflow, San Joaquin River flows, and reverse flows in the interior Delta? Did DWR's modeling assume the CVP would conduct export operations in accordance with calculations of these requirements that include DCP exports? Where in the record are these assumptions and calculations described?
3. Would approval of DWR's change petitions to add the North Delta points of diversion require DWR and Reclamation to modify COA, and if so, what elements would need to be modified?

⁷ COA refers to the "Agreement Between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated November 24, 1986, and the agreement addendum dated December 12, 2018. (Exh. DWR-00304.)

VI. ADDITIONAL GUIDANCE – PUBLIC INTEREST

The term “public interest,” as is used in the Water Code and in defining the key issues for this hearing, is the interest of the public as related to the development, conservation, and use of waters of the state. (See, e.g., Wat. Code §§ 105, 1243, subd. (a), 1243.5, 1253, 1255, 1256, 1257; Cal. Const., art. X, sec. 2; *National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419; *State Water Res. Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 778, 39 Cal. Rptr. 3d 189, 272.) The Board’s consideration of the public interest encompasses a broad range of issues and facts, but some matters are more directly related than others to the Board’s responsibility to administer the state’s water resources. For example, impacts to water quality or groundwater levels bear a direct relationship to the Board’s role in protecting and administering the waters of the state. In contrast, impacts from activities that are only secondary to the use of water, such as traffic or noise from construction activities, are less likely to be central to the Board’s consideration of the public interest. I recommend that the parties consider focusing their closing brief arguments on those issues that have a direct rather than just a tangential relationship to water resources.

Additionally, if another state or local agency has regulatory authority over or has the responsibility to consider a potential impact that is not directly within the Board’s purview, the Board may defer to the expertise of that agency and the mitigation measures identified in the Final EIR. If a protesting party proposes feasible mitigation measures that would substantially lessen or avoid any significant effect of the project identified in the Final EIR, the party should describe why the proposed mitigation measure is properly within the State Water Board’s purview and why the measure should be imposed by the Board and not by some other agency with responsibility over the subject matter.

VII. CLOSING BRIEFS

The following deadlines shall apply to the submission of closing briefs, reply briefs, joint conference statements, and supplemental joint conference statements (see section IV, above):

Deadlines / Schedule	Date
Deadline for submission of closing briefs.	January 13, 2027.
Deadline for submission of reply briefs and joint conference statements.	February 12, 2027.
Deadline for supplemental joint conference statements.	March 25, 2027.

The following page limits shall apply to the submission of closing briefs and reply briefs:

Party	Closing Brief Page Limit	Reply Brief Page Limit
DWR	120 pages	80 pages
State Water Contractors	30 pages	20 pages
Bureau of Reclamation	18 pages	12 pages
All other parties that submitted evidence.	18 pages	12 pages
All other parties that did not submit evidence.	12 pages	8 pages

These page limits reflect the breadth of evidence and issues to be addressed by each party and the relative number of parties presenting evidence for and against approval of the petitions, the opportunity for parties to combine page allocations and submit joint briefs, and whether the party presented its own evidence to be addressed in the party's closing brief.

Parties may choose to combine their page limit allocations and submit joint closing briefs up to 90 pages in length and reply briefs up to 60 pages in length. Party groups for joint submittals must remain the same for closing briefs and reply briefs. These page limits do not include additional pages granted to the parties to respond to the Hearing Team's questions above.

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 shall be double-spaced.

As previously stated, the AHO will conduct a status conference to address these deadlines and page limits. Parties should be prepared to raise any questions or objections either in writing in advance of the status conference or orally during the status conference.

Sincerely,

A handwritten signature in blue ink, reading "Nicole Kuenzi", is written over a horizontal line.

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

Attachments:

- Attachment 1 – Service List

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