
State Water Resources Control Board

SECOND AMENDED NOTICE OF PUBLIC HEARING AND PROCEDURAL RULING

The State Water Resources Control Board
Administrative Hearings Office will hold
a Public Hearing on the pending Petitions for Change of Water Right
Permits 16478, 16479, 16481, and 16482
(Applications 5630, 14443, 14445A, and 17512, respectively) of the

Department of Water Resources.

The Public Hearing will begin on **February 18, 2025, at 9:00 a.m., and
continue on March 24 & 25, and
April 1, 4, 7, 8, 9, 14, 17, 22, 23, & 24, 2025,**
and additional dates as necessary.

The hearing will be held by Zoom teleconference on all days
and **will be held in-person from 9:00 a.m. until approximately 12 p.m.
(with the option to participate by Zoom)
on February 18, 2025,** at
Joe Serna Jr. CalEPA Building, Sierra Hearing Room,
1001 I Street, Second Floor, Sacramento, California.

The afternoon of **February 18, 2025, starting no earlier than 1 p.m.,** will
address procedural matters and will be conducted by Zoom
teleconference.

Representatives of parties and other people participating in the hearing
may access the Zoom teleconference by using the following link
and call-in information:

Zoom teleconference (join link: bit.ly/aho-dcp-zoom)

Call-in number: 1-669-900-9128

Meeting ID: 969 6180 8415 (Passcode: 750159)

**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**

Although a quorum of the State Water Resources Control Board is expected to be present during the in-person portion of the hearing on February 18, 2025, and some additional Board members may participate remotely as authorized by Government Code section 11123.2, the Board will not take any final action. For more information, contact the Administrative Hearings Office at DCP-WR-Petition@waterboards.ca.gov or at (916) 341-6940. This meeting notice is available on the State Water Resources Control Board's webpage at: https://waterboards.ca.gov/board_info/calendar/.

LANGUAGE SERVICES AND ACCESSIBILITY:

This hearing will be offered 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 by **February 4, 2025**:

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

The hearing will begin on **February 18, 2025**, with the presentation of oral policy statements by interested persons or entities and discussion of outstanding procedural issues. The hearing will continue on **March 24, 2025**, with any remaining policy statements and presentation by the Petitioner of case-in-chief testimony.

BACKGROUND

On February 22, 2024, the State Water Board's Division of Water Rights (Division) received petitions for change from DWR to add two new points of diversion and points of rediversion to water right Permits 16478, 16479, 16481, and 16482, which are associated with the State Water Project (SWP). The proposed new points of diversion and points of rediversion would consist of screened intakes 2.3 miles apart located on the lower Sacramento River between Freeport and Sutter Slough. The proposed new intakes are part of the Delta Conveyance Project, which would allow DWR to divert water from the Sacramento River in the northern portion of the Sacramento-San Joaquin Delta Estuary (Delta) and convey the water through a tunnel to existing water distribution facilities in the southern Delta. A more detailed description of the Delta Conveyance Project and the associated petitions for change can be found in the July 31, 2024 Notice of Public Hearing (July 31 Hearing Notice).

AHO PROCEEDING

The AHO issued a Notice of Public Hearing on July 31, 2024, and issued an Amended Hearing Notice on November 18, 2024. The AHO held pre-hearing conferences on August 13, October 17, and December 16, 2024.

On December 2, DWR submitted an Objection to and Petition for Reconsideration of the Amended Notice of Public Hearing and Procedural Ruling (DWR Petition for Reconsideration). State Water Contractors (SWC) filed a similar petition on December 6 (SWC Petition for Reconsideration). On December 16, California Sportfishing Protection Alliance (CSPA), Deirdre Des Jardins, and Save the California Delta Alliance and Hood Community Council (SCDA/HCC) submitted supplemental responses to the DWR and SWC Petitions for Reconsideration.

On December 9, Delta Tribal Environmental Coalition et al. (DTEC), SWC, County of Sacramento et al., DWR, California Water Impact Network (CWIN), Sierra Club California et al., and Deirdre Des Jardins, filed pre-hearing conference statements in

advance of the December 16 pre-hearing conference. North Delta Water Agency filed a pre-hearing conference statement on December 15. (2024-12-17 NDWA email to AHO.)

This Amended Notice of Public Hearing and Procedural Ruling (January 2025 Amended Hearing Notice) revises the July 31 Hearing Notice and November 18 Amended Hearing Notice and addresses the DWR and SWC Petitions for Reconsideration and other outstanding requests the parties raised in pre-hearing conference statements. All other procedures and information included in the prior hearing notices not revised by this January 2025 Amended Hearing Notice remain in effect.

PROCEDURAL RULING

DWR and SWC Petitions for Reconsideration

The DWR and SWC Petitions for Reconsideration object to and seek reconsideration of (1) the AHO's request for supplemental information in the November 18 Amended Hearing Notice based on the relevance of that information to this proceeding, (2) the scope of the hearing as described in the November 18 Amended Hearing Notice, and (3) staggered deadlines for presentation of cases-in-chief by the parties. SWC additionally objects that this proceeding on DWR's change petitions is not the appropriate process to "adjudicate" the water rights underlying the SWP Permits.

DWR and SWC submit their Petitions for Reconsideration pursuant to Water Code section 1122 and California Code of Regulations, title 23, section 769. Petitions for reconsideration of a procedural ruling by an AHO hearing officer are not, however, authorized by Water Code section 1122. (State Water Board Order WR 2022-0087, p. 11.) Water Code section 1122 states that any interested person may petition the State Water Board for reconsideration of "all or part of a decision or order" within 30 days after the date on which the Board adopted the order. The November 18 Amended Hearing Notice is not a decision or order as the term is used in Water Code section 1122 and associated regulations (Cal. Code Regs., tit. 23, §§ 768 & 769). A "decision or order," as that term is used in section 1122, is a final Board decision or order adopted after the Board's decision-making process is complete. (Order WR 2022-0087, p. 6.) There are also good policy reasons for not allowing interlocutory appeals of procedural rulings by an AHO hearing officer; "petitions for reconsideration of AHO rulings made during the pendency of a proceeding, before any proposed order has been issued by the AHO or any final order issued by the Board, tend to delay and frustrate the AHO's adjudicatory hearing process" (*Id.*, at p. 8.)

The AHO will instead consider DWR's and SWC's Petitions for Reconsideration as requests for the AHO hearing officer to reconsider certain procedural decisions in the November 18 Amended Hearing Notice rather than as petitions under Water Code section 1122. This procedural ruling responds to the arguments presented by DWR and SWC, as well as other requests raised by Protestants.

1. Request for Supplemental Information

The AHO hearing officer directed DWR to submit the following supplemental information about DWR's diversion and beneficial use of water under the SWP Permits:

1. For water right Permits 16478 and 16479, the maximum volume of water diverted to storage at Oroville Reservoir during one authorized storage period (September 1 through July 31 of the succeeding year) before December 31, 2009, and the first and last day of diversion to storage during that period.
2. For water right Permits 16478, 16479, 16481, and 16482, the maximum volume of water exported from the southern Delta (directly diverted, rediverted, or diverted to offstream storage), during any water year before December 31, 2009.
3. For water right Permits 16478, 16479, 16481, and 16482, the maximum rate of water exported from the southern Delta (directly diverted, rediverted, or diverted to offstream storage), measured in cubic feet per second, before December 31, 2009. Identify the date(s) of the maximum rate of direct diversion, rediversion, and diversion to offstream storage (combined).
4. For water right Permits 16478, 16479, 16481, and 16482, the maximum volume of water beneficially used under each water right during any water year before December 31, 2009.

(2024-11-18 DCP Amended Hearing Notice [November 18 Hearing Notice], p. 10.)

Due Diligence

DWR first objects to the request for supplemental information because due diligence is not an issue raised by DWR's petitions to change the SWP Permits. I agree that DWR's diligence in developing the SWP Permits is not at issue in this proceeding. County of Sacramento, et al., argue that due diligence is relevant, but do not identify a particular hearing issue or factor that the Board must consider to which diligence is related. (2024-12-09 County of Sacramento et al. Pre-Hearing Conference Statement, p. 6.) I will, however, consider any further comment from the County of Sacramento and other parties on this issue submitted by January 21 (the revised deadline for comments on or objections to the hearing issues in the November 18 Amended Hearing Notice).

I intended the description of the due diligence standard in the November 18 Amended Hearing Notice to explain why the Board includes deadlines for construction and beneficial use in its water right permits. I did not intend to suggest that the question of due diligence is presented by DWR's change petitions. To the contrary, I declined to include DWR's request to modify the construction deadline in the SWP Permits in this

proceeding because the appropriate procedure to seek an extension of a construction or beneficial use deadline in an existing permit is to file a petition for extension of time. Such a petition for extension of time would explicitly raise the issue of due diligence.

Relevance of Supplemental Information to this Proceeding

The AHO requested supplemental information from DWR quantifying the maximum historic volumes and rates of diversion under the SWP Permits to ensure that the evidentiary record includes necessary information for the Board to (1) consider whether approval of the change petitions would be in the public interest if the Board does not approve a petition for extension of time for beneficial use under the SWP Permits, and (2) condition any amended permits to ensure that approval of the requested changes will not result in injury to any other legal user or in effect initiate a new right.¹

DWR asserts that because, “by operation of law, there is a legal limitation to DWR’s operation under its Water Rights permits until a time extension petition is heard and granted by the State Water Board ...,” the supplemental information requested by the AHO is neither necessary nor relevant to this proceeding. (DWR Petition for Reconsideration, p. 2.) DWR seems to argue that because the legal limitation on diversion and use under the SWP Permits will apply independently from any decision in this proceeding, further consideration of the limitations is unnecessary.

DWR’s argument does not fully address either of the AHO’s objectives in requesting the information. First, even though the legal limitations will apply regardless of any decision in this proceeding, the Board must consider how these limitations may affect DCP operations, which may, in turn, affect the factors the Board must consider for approval of a change petition. For example, the Environmental Impact Report identifies numerous significant environmental impacts from construction of the project that would likely cause a similar impact whether the Board authorizes DWR to divert and use the full face-value of the SWP Permits or a lesser amount. (Exh. AHO-1000, DCP EIR

¹ SWC argues that the Board is not required to consider whether the proposed changes would in effect initiate a new water right because “the legal standard for granting a change petition is whether legal users of water will be injured,” so there is “no corresponding need to determine the extent to which the SWP Permits have been perfected.” (SWC Petition for Reconsideration, p. 5.) SWC appears to have overlooked section 791 of title 23 of the California Code of Regulations, which requires a petitioner to establish that a proposed change to an application, permit, or license will not in effect initiate a new right. This provision of the Board’s regulations is consistent with the common law rule prohibiting a change in an appropriative right that would allow an increase in the amount of water diverted or used under the right. (See State Water Board Order WR 2009-0061, pp. 5-7, and authority cited therein.)

Executive Summary.)² The balancing of these environmental impacts against the water supply benefits of the project may differ depending on the volume of water that DWR is authorized to divert and use under the SWP Permits. The Board must consider these potential differences when deciding whether to approve the requested changes.

Second, the Board cannot accept DWR's assurance that it will comply with legal limitations on the SWP Permits absent some method for verification. Apparently, not even DWR knows the volumetric limits that currently apply to diversions or beneficial use under its permits. (DWR Petition for Reconsideration, p. 3 ["Items 1, 2, and 4 will require significant data review"].) If those limitations remain unknown both to DWR and the Board, it is unclear how the Board could conclude that other legal users of water would not be injured and DWR would not in effect initiate a new water right by approval of requested changes that would significantly increase diversion capacity for the SWP Permits. Construction of the DCP would increase the physical capacity for diversion and rediversion of water from the Sacramento-San Joaquin Delta by 6,000 cubic feet per second (cfs), when considered in addition to existing facilities. (Exh. AHO-1005, Table 3-13, p. 117.) The DCP may also increase opportunities for DWR to divert water under the SWP Permits by avoiding limitations on diversions at the existing southern Delta intakes, such as Old and Middle River reverse flow limitations. (See *id.* at pp. 145-146 ["The proposed intakes would augment the ability to capture excess flows ... The north delta intakes would be used to capture additional excess flows when the south Delta exports are limited and not able to capture those flows ... [O]peration is expected to result in a more efficient system operation where less water would be required to meet the same water quality standards and result in additional water that could either remain in storage or be exported"].) DWR has not offered any mechanism by which it could assure compliance with its existing legal limitations absent quantification of what those limits are.

DWR submitted to the Board with its Petition for Reconsideration the historic maximum rate at which it has diverted water from the southern Delta under the SWP Permits.³ DWR claims that this maximum rate is the only supplemental information "necessary to implement this requirement" to adhere to limitations on diversion and use under the SWP Permits absent approval of a petition for extension of time. (DWR Petition for Reconsideration, p. 2.) DWR does not explain why the maximum volume of water exported from the southern Delta under the SWP Permits (item 2) and the maximum

² This proposed exhibit and other documents cited here are available on the Water Board's File Transfer Protocol site. For information about accessing this site, please see the instructions in the July 31 Hearing Notice.

³ DWR reports that the maximum rate of water exported from the southern Delta (directly diverted, rediverted, or diverted to offstream storage) pursuant to water right Permits 16478, 16479, 16481, and 16482, was the maximum permitted rate of 10,350 cfs, which occurred in 1993.

volume of water beneficially used under the SWP Permits (item 4) are not similarly necessary, nor does DWR explain how operation of the DCP will not affect the maximum volumes exported or beneficially used. The maximum authorized volume of diversion and beneficial use are also fundamental elements of the scope of an appropriative water right that would be considered in any licensing proceeding, and accordingly relevant to quantify existing limits on DWR's exercise of the permits. DWR also specifically objects to the request for information related to storage in Oroville Reservoir in its objections to the scope of the hearing, which is addressed in a later subsection.

Consideration of Approval Both With and Without Future-Filed Petitions for Extension of Time

DWR objects to the Board's consideration in this proceeding of a future scenario in which the Board does not approve petitions for extension of time for the SWP Permits. DWR asserts that there is no "efficiency or value" in the Board considering "whether approval of the change petitions without approval of a future-filed petition for extension of time will in effect initiate a new right" (DWR Petition for Reconsideration, p. 3), and the "question before the [Board] is whether the addition of two new points of diversion alone, and holding all else constant including the legal boundaries of the existing water rights that are not being changed" will meet the legal requirements for approval of a petition for change (*Ibid.*). DWR does not clearly state whether it proposes (1) that the Board forgo considering, at this time, whether the change petitions should be approved if the petitions for extension of time are denied, or, (2) that the Board assume that the petitions for extension of time will be approved when considering whether the change petitions should be approved.

If a future approval is not presumed, there is a possibility that the SWP Permits will remain limited to diversion and use of no more than the amount of water diverted and used by DWR before December 31, 2009. The portion of the face value of the SWP Permits that was not diverted or put to beneficial use prior to December 31, 2009, is now only a potential future opportunity to appropriate that water. This portion of the SWP Permits is not a conditional right. DWR has no existing approval to divert or use that water. I have considered an appropriate word to describe this portion of the permits. "Dormant" may be applicable, or "latent." The point is that there is no existing right to divert or use this additional water but such a right could be revived, as the potential opportunity has not been revoked, should the Board approve a future-filed time extension. But to presume that the right to divert this additional water under the SWP Permits will become fully vested, and that a decision whether to approve construction⁴

⁴ Although the State Water Board does not in other circumstances directly approve the construction of infrastructure, with respect to the State Water Project, Water Code

and operation of a major infrastructure project of significant importance to the people of the State of California should be made without considering the possibility that any such right cannot be revived, would be contrary to the public interest if not contrary to law.

Although DWR may have absolute confidence in its ability to demonstrate diligence and the interest of the public in allowing increased diversion and use under the SWP Permits – and perhaps DWR’s confidence is warranted based on relevant information in its possession – I have no record before me on which to base any speculation as to the likelihood of a future approval. The AHO’s request for supplemental information is precisely to identify the amount of water that DWR has put to beneficial use and the amount of water that remains dormant under the SWP Permits, so as to better understand the possible outcomes. For the Board to approve DWR’s change petitions, without limitation and without considering the possibility that DWR may not be authorized to exercise the full-face value of the permits, would in my judgment be an abdication of the Board’s responsibilities.

I maintain my conclusion in the November 18 Amended Hearing Notice that, “[t]o act on DWR’s petitions for change absent companion petitions for extension of time, the Board must consider whether approval of the change petitions — either with or without approval of future-filed petitions for extension of time — will in effect initiate a new right; injure any other legal user of water; unreasonably affect fish, wildlife, or other instream beneficial uses; cause impacts to public trust resources that could feasibly be avoided; and be in the public interest.” (November 18 Hearing Notice, p. 5.) Likewise, I decline to revise the request for supplemental information because the information is necessary to the Board’s consideration of the potential impacts of any approval of the change petition and necessary to condition any approval of the project to ensure operation within existing legal limitations.⁵

2. Scope of the Hearing

DWR objects that the AHO enlarged the scope of the hearing by “requiring DWR to present evidence on maximum volumes of water diverted to storage at Oroville

section 85088 prohibits construction by DWR of “any diversion, conveyance, or other facility necessary to divert and convey water pursuant to [a] change in point of diversion,” “[u]ntil the board issues an order approving a change in the point of diversion of the State Water Project ... from the southern Delta to a point on the Sacramento River.”

⁵ The SWP Permits also state that, “[u]pon the request of the Board, Permittee shall make such measurements and maintain and furnish to the Board such records and information as may be necessary to determine compliance with the terms and conditions of this permit including the recognition of vested rights and for the further purpose of determining the quantities of water placed to beneficial use under this permit, both by direct diversion and storage.” (See, e.g., Exh. AHO-45, Amended Permit 16478, p. 10, Term 11.)

Reservoir, the maximum volume and rate of water exported from the South Delta, and the maximum volume of water beneficially used under each water right.” (DWR Petition, p. 5.) DWR also objects that the November 18 Amended Hearing Notice adds hearing issues “relevant to time extension.” (*Id.* at p. 6.)

I conclude that the requested supplemental information and the additional hearing sub-issues in the November 18 Amended Hearing Notice are relevant to the factors that the Board must consider in acting on DWR’s change petitions.

Although DWR’s change petitions do not seek to increase the face value of the permits, approval of the new points of diversion and rediversion could increase the amounts of water that DWR is physically and legally able to divert and store. “Any approval of a change ... must be appropriately conditioned to ensure that the change does not, in fact, result in increased diversions over the amount to which the petitioner would otherwise have been legally entitled and as a practical matter would otherwise have been able to divert, were the permit to have remained unchanged.” (State Water Board Order WR 2009-0061, pp. 6-7.) DWR asserts that the DCP will “not change operational criteria associated with upstream reservoirs,” and therefore, information about the maximum quantity of water that has historically been stored in Oroville Reservoir is not relevant to this proceeding. (DWR Petition, p. 5.) Increases seem possible, however, even without any change in operational criteria, although DWR will have the opportunity to present evidence to the contrary through the hearing process.⁶

The DCP will offer additional capacity to redivert water released from storage in Oroville Reservoir and transport it for export south of the Delta. The ability to move more water through export pumps may create more storage capacity in the reservoir, and, in turn,

⁶ The Operations Plan states that “DWR will not increase storage withdrawal for diversions even though the DCP may provide additional diversion capacity. The exceptions are described in section 2.1” (2024-08-23 Operations Plan_Final [Operations Plan], p. 10.) However, the EIR for the project suggests that additional releases from upstream storage will be possible: “[O]peration is expected to result in a more efficient system operation where less water would be required to meet the same water quality standards and result in additional water that could either remain in storage or be exported.” (Exh. AHO-1005, pp. 145-146.) The Operations Plan does not impose a legally binding limit on the volume or rate of diversions that DWR may make under its SWP Permits, and the plan is intended to change. The Plan describes itself as a “living document [that] will be updated periodically to reflect updates to applicable laws and regulations, permit requirements, and/or regulatory requirements” and is “a tool to inform DCP operations but is not intended to obligate DWR to implement certain operations precisely as dictated by this plan.” (See *id.* at pp. 5, 8, & 19.) I certainly would consider whether the scope of this proceeding could be narrowed if DWR proposed binding operational criteria to be included as a term or condition in any amended permits. Absent such proposed conditions, the Board must consider the possibility that future operations may deviate from the Operations Plan as currently drafted.

allow DWR to store more water in Oroville Reservoir than it has historically. The AHO requested that DWR calculate the maximum annual amount of water that it has stored in Oroville Reservoir under Permits 16478 and 16479 to help the Board determine whether storage in Oroville Reservoir with operation of the DCP could exceed (a) the amount of water that DWR is authorized to store in Oroville Reservoir absent approval of a petition for extension of time, or (b) the amount of water that DWR would have been able to store in Oroville Reservoir absent approval of the change petitions. Because operations of SWP reservoirs, including Oroville, are interconnected with diversions and rediversions from the Delta, the AHO requested supplemental information about maximum amounts of historic diversion for all points of diversion at or upstream of the Delta pumps for the SWP Permits.

SWC similarly asserts that the Board lacks jurisdiction “to cap DWR diversions at SWP facilities that are not part of [this change petition] proceeding and for which DWR is not seeking changes to operational criteria.” (SWC Petition for Reconsideration, p. 6.) SWC does not dispute that the water right permits that authorize diversion, storage, and export of water at the SWP facilities are at issue in this proceeding, that the SWP operates as an integrated single project to deliver water, and that water stored and exported through these SWP facilities could and often would be diverted or re-diverted through the DCP. Because the SWP Permits are the subject of this proceeding and the parties are on notice as to the scope of the issues to be addressed, the Board has the authority to impose terms and conditions on the permits as necessary to any approval of the proposed changes. Absent additional evidence, I cannot conclude that operation of the DCP could not affect the amount of water that DWR would store and export. Therefore, the Board has the authority to consider, and should consider, whether to limit the amount of diversion, storage, or export of water at other SWP facilities with operation of the DCP to prevent an expansion in diversion and use beyond DWR’s existing entitlement or to prevent injury to other legal users.

Finally, DWR asserts that the November 18 Amended Hearing Notice added “two new hearing issues relevant to time extension without allowing for the Hearing Officer to grant an extension of time for DWR’s existing water rights permits.” (DWR Petition for Reconsideration, p. 6.) Sub-Hearing Issues 1.b.i. and ii. identify issues relevant to the Board’s consideration of the current legal limitations on the exercise of the SWP Permits, absent approval of a petition for extension of time. In addition to being relevant to any future-filed petitions for extension of time, these sub-issues are relevant to the petitions for change for the same reasons as the request for supplemental information, as already described in this ruling. Therefore, these sub-issues are properly included as hearing sub-issues.⁷ The overlap of issues is one reason that I strongly suggested that DWR consider submitting companion petitions for extension of time to be addressed in the same hearing process as these petitions for change. (2024-09-17 Notice of Pre-Hearing Conference, p. 5 [“This approach might be lawful but seems likely to cause

⁷ The decision to include these sub-issues is not a final determination of any disputed question of law. The decision reflects only my conclusion that the issues are within the scope of relevant disputed legal and factual issues to be addressed in this proceeding.

inefficiencies and complexity by requiring the Board to conduct two proceedings when the underlying issues are significantly interrelated”].)

3. *Staggered Cases-in-Chief*

For the reasons stated in the November 18 Amended Notice of Hearing, I decline to revisit the staggered deadlines for submission and presentation of case-in-chief evidence by DWR and the remaining parties.

I recognize that DWR is required to submit its case-in-chief exhibits on the same date as the deadline for all parties to submit comments on, or objections to, the hearing issues. This timing is not ideal, but I set the deadlines in this way to allow parties time to consider the revisions to the hearing issues circulated on November 18 while accommodating DWR’s requests to begin the hearing early in 2025. The July 31 Hearing Notice required submission of comments or objections on the hearing issues by September 5, 2024. I vacated that deadline at the request of the Protestants. (2024-08-07 Buena Vista Rancheria et al. Pre-Hearing Conference Statement; p. 3., 2024-08-09 CWIN Pre-Hearing Conference Statement, pp. 1-2; 2024-08-22 N. Kuenzi email to Service List; November 18 Hearing Notice). Notably, DWR has not objected to the January dual deadline – other parties have raised the objection. (See SWC Petition for Reconsideration, p. 1; 2024-12-09 DTEC Pre-Hearing Conference Statement, p. 5.) In my experience, the revision of hearing issues generally does not change the outer bounds of the scope of a proceeding but may clarify the sub-issues relevant to the factors that the Board is required to consider. It is unlikely that any revision to the hearing issues arising out of the parties’ comments will substantially change the scope of this proceeding because the overarching hearing issues are established by statute and the Board’s regulations. But if any amendment to the hearing issues would affect DWR’s case-in-chief evidence, I will modify the schedule accordingly and allow DWR to submit additional exhibits or revisions to its exhibits, as necessary, to address the changes.

4. *Other Issues Raised by SWC*

SWC requests that the AHO reconsider the “conclusion” that DWR “has not perfected the full amount authorized to be appropriated under the SWP Permits” (November 18 Hearing Notice, p. 5.) I intended only to express my understanding that DWR has not diverted, stored, and used water up to the full face-value of the SWP Permits. To the extent this statement raises a disputed issue of law or fact, I will reconsider any conclusion and await the parties’ evidence and argument on the issue.

SWC objects that this hearing is not the appropriate process by which to “adjudicate whether the SWP Permits consist of perfected and unperfected portions.” (SWC Petition for Reconsideration, p. 4.) DTEC raises a similar objection, that the AHO and the Board should not “bootstrap[] a licensing determination into a change petition proceeding” (2024-12-09 DTEC Pre-Hearing Conference Statement, p. 4.) Some preliminary determination as to the amount of water under the SWP Permits that DWR has diverted and beneficially used, and may continue to divert and use absent approval of a petition

for extension of time, may be necessary to appropriately condition any approval of the change petitions. Any such determination would be for the limited purposes of acting on DWR's change petitions, and would not involve licensing, revocation, or consideration of petitions for extension of time for the SWP Permits. I understand that SWC objects to my use of the term "perfected" to describe the portion of the SWP Permits that DWR has beneficially used and that could be licensed if the Board were to take the appropriate procedural steps for licensing. Because it seems to me that the distinction as to whether a right is "perfected" upon beneficial use or upon licensing does not make a functional difference in this proceeding, or at least not with respect to this ruling, I do not address it further.

SWC also argues that the November 18 Amended Hearing Notice is prejudicial to SWC because the AHO ruling "focuses on information the AHO deems relevant to calculating an historical diversion maximum for the SWP, yet additional environmental, regulatory, hydrological, or other information may also be relevant to quantifying historical diversion" (SWC Petition for Reconsideration, p. 7.) The purpose of this hearing is to develop a robust evidentiary record on which the State Water Board will base its decision whether to approve DWR's change petitions, and if so, the conditions to be included in any approval. DWR and SWC will have multiple opportunities to offer evidence into the record that they deem relevant to the issues before the Board and to respond to and clarify the context of the information that DWR submits in response to the AHO's request.

DTEC Outstanding Objections

DTEC et al. filed pre-hearing conference statements that raise what it refers to as "threshold matters" in this proceeding. (2024-10-10 DTEC Pre-Hearing Conference Statement; 2024-12-09 DTEC Pre-Hearing Conference Statement.) DTEC argues that the Board cannot approve a change petition for water right permits that "expired over fifteen years ago," and "[t]he Board cannot lawfully approve a petition to change a water right without confirming a right exists."⁸ (2024-12-09 DTEC Pre-Hearing Conference Statement, p. 2.) DTEC also objects to the "dual scenario" approach as described in the November 18 Amended Hearing Notice, to allow the Board to consider and act on

⁸ DTEC characterizes its argument as "jurisdictional." Division 2 of the Water Code grants to the State Water Board exclusive jurisdiction over the administration of water right applications, permits, and licenses issued by the Board. (Wat. Code, §§ 1000 et seq.; see also *Delta Wetlands Properties v. County of San Joaquin* (2004) 121 Cal.App.4th 128, 142 ["[T]he Water Board is the permitting authority for the appropriation of water, over which it has exclusive jurisdiction".]) The State Water Board shares concurrent jurisdiction with the courts over other aspects of the state's system of water rights, including, for example, administration of the public trust doctrine and the prohibition against the wasteful or unreasonable use of water. (See, e.g., *Nat'l. Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426; *Env't'l Defense Fund v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 197.)

DWR's change petitions without certainty about the Board's decision on any future-filed petitions for extension of time.

Water right permits remain valid even upon expiration of the deadline for beneficial use under the conditional right. After expiration of the deadline for beneficial use, the Board can extend the deadline upon a showing that the extension of time is in the public interest and the petitioner exercised due diligence in the development of the right. (Cal. Code Regs., tit. 23, § 844.)

Water right permits do not expire although the State Water Board can revoke them. Water right permits are not revoked merely because an extension of time to complete beneficial use under the permit has not yet been granted. However, increases in use of water after the permit expires are beyond the rights of the permittee, and cannot be counted for purposes of licensing the water right.

(Decision 1629, p. 36.)

The SWP Permits have not been revoked, either in whole or in part, and remain valid.⁹ There is also evidence in the State Water Board's water right records and findings in precedential orders by the Board that DWR has diverted and used substantial amounts of water under the SWP Permits; to my knowledge, there is no credible factual dispute as to whether DWR has exercised the rights to some extent. (See, e.g., *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 693 [describing SWP operations since 1967]; see also Order WR-2010-32 [noting, *inter alia*, that the transfer of up to 220,000 acre-feet of water between SWP and CVP permits, including Permit 16482, would only involve an amount of water that would have been consumptively used or stored in the absence of the proposed temporary change].) Because the permits have not been revoked and DWR exercised the rights in some amount prior to and up to expiration of the deadline for beneficial use, I am not aware of any basis on which to conclude that DWR currently has no rights under the SWP Permits. There remains, however, an unresolved question as to the amount of water to which DWR has

⁹ Several of the Protestants have referenced the appellate court decision in *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585 (*CalTrout I*), to support the proposition that "an existing permit may be considered expired in certain circumstances." (2024-10-10 Joint Protestants Pre-Hearing Conference Statement, p. 3.) The precedential nature of that portion of the court's decision in the context of a water right proceeding before the Board is questionable to me, in part because the water right licenses at issue remain apparently valid and have retained their original priority dates. I encourage parties who cite *CalTrout I* in future filings to further address the details of that decision, the water rights at issue, and the applicability to this proceeding.

a right to divert and use or may have a right to divert and use in the future under the permits.¹⁰

The Water Code expressly authorizes the State Water Board to approve changes to water right applications, permits, or licenses. (Wat. Code, §§ 1701, 1701.1, & 1701.2.) Accordingly, the Board may approve changes to water right permits that are only partially perfected, or, in the case of applications, prospective rights that are entirely inchoate. By necessity, the State Water Board regularly processes change petitions absent certainty about the validity and scope of the water rights at issue or the water rights that may be injured by the proposed change. The Board has, in other instances, approved petitions to change (or petitions for a long-term transfer of) water right permits for which the deadline to achieve beneficial use under the rights had expired.¹¹ The Board has also approved petitions for extension of time filed after the deadline for beneficial use under the subject water right permits had expired.¹² Until and unless the

¹⁰ DTEC refers in its pre-hearing conference statement to DWR's "1972 permits." (DTEC et al. Pre-Hearing Conference Statement, pp. 2 & 3.) To clarify, although the State Water Board issued the permits in 1972, the priority dates of the permits are the date on which the water right applications were filed. These are, respectively, July 30, 1927 (Permit 16478), August 24, 1951 (Permit 16479), August 25, 1951 (Permit 16481), and March 15, 1957 (Permit 16482).

¹¹ See, e.g., State Water Board Order WR 2022-0152 (approving change in place of use of water right permit held by Garberville Sanitary District for which the beneficial use deadline was December 31, 1999); State Water Board Order WR 2002-0013 (non-precedential order conditionally approving petition to change point of diversion, place of use, and purpose of use for water right permit held by Imperial Irrigation District for which the beneficial use deadline expired on January 6, 2000); State Water Board Decision 1637 (April 17, 1997) (approving change in place of use of water right permit held by Donald R. Eutenier for which the beneficial use deadline expired on December 1, 1987); March 18, 2014 and February 25, 2015 Orders by Deputy Director Approving Petitions to Change Long-Term Transfer under Permit 15026 (approving change to add a point of rediversion for a long-term transfer of water right permit held by Yuba County Water Agency for which the beneficial use deadline was December 1, 2010); see also pending AHO proceeding on the petition for change filed by City of Solvang for water right Permit 15878 (hearing on petition to change points of diversion for a water right permit with a beneficial use deadline of December 1, 1990).

¹² See, e.g., State Water Board Order WR 2000-13 (granting petition for extension of time filed by City of San Luis Obispo on February 11, 1991, to extend beneficial use deadline from December 1, 1981, to December 31, 2010); State Water Board Order WR 2009-0015 (granting petitions submitted for McEvoy Ranch on April 28, 2000, to change

Board *revokes* a permit, the permit holder may seek a petition for extension of time to allow it to revive any remaining portion of the face-value of the permit, although the date of filing of a petition for extension of time may be relevant to a finding of diligence. As I have previously concluded, the Board is not legally required to consider a petition for extension of time before addressing a petition for change, although there generally are efficiencies in considering the two types of petitions in the same proceeding.

DTEC objects that the AHO's "dual scenario approach" to considering the impacts of approval of the proposed change with and without approval of a future-filed petition for extension of time, is "arbitrary and risks producing an arbitrary outcome" because the "assumptions baked into each scenario lack any reasonable basis for their selection" and incorporate "arbitrary selections [by the AHO] of baseline entitlements and prospective changes." (DTEC Pre-Hearing Conference Statement, p. 4.) I believe DTEC has overstated its argument. The assumptions underlying Scenarios A and B – that a petition for extension of time either (A) will or (B) will not be approved – would seem to encompass the full range of possibilities, and therefore are not arbitrary. There is, however, a more fundamental issue to which DTEC is likely alluding: Under either scenario, the amounts of water to which DWR is now or will be in the future entitled to divert pursuant to the SWP Permits is not definite. Such uncertainty is inherent in our system of water rights, however. Even if the Board had already acted upon and, possibly, approved DWR's petitions for extension of time, there would remain uncertainty as to whether DWR would divert and use the full face-value of its rights by the newly imposed deadline.

The Board is presented in almost every decision concerning water right permitting with some uncertainty about existing water right entitlements and future changes to those entitlements. The Board is authorized to consider petitions for changes not only to licensed rights, which enjoy some degree of definition, but to water right permits and applications that may or may not ultimately be developed into perfected rights. If the Board could not act in the face of such uncertainty, administration of the state's system of water rights would come to a halt. The Board can and does make reasonable determinations based on a preponderance of the evidence before it. The Board is not required to definitively resolve the scope of the SWP Permits before or separate from this proceeding on DWR's change petitions.

DTEC raises further objections based on its understanding that DWR requests the Board's approval only of changes to the SWP Permits up to the amount of water that DWR is authorized to divert and use absent approval of petitions for extension of time. I do not understand this to be DWR's request, although if I am mistaken, then an additional conversation about the scope of this proceeding may be appropriate. I

the permitted place of use, purpose of use, and points of re-diversion, and to extend the beneficial use deadline from December 31, 1994, to December 31, 2014); State Water Board Order WR 2012-0037-EXEC (granting petition for extension of time filed by Edwards Ranch, LLC, on August 17, 2004, to extend beneficial use deadline from December 31, 1995, to December 31, 2027).

understand DWR to request that the Board consider and approve its change petitions with respect to the full face-value of the SWP Permits. As I have already stated, I conclude that the hearing issues should include consideration of whether approval of the petitions for change is warranted if the Board denies any future-filed petitions for extension of time.

Miscellaneous Procedural and Other Matters

Deadline for Submittal of DWR Case-in-Chief Exhibits, Comments on Hearing Issues, and Supplemental Information

The deadline for submittal of case-in-chief exhibits by DWR, comments and objections to the hearing issues by all parties, and submission of the supplemental information requested from DWR by the AHO, is amended to January 21, 2025, in recognition of Martin Luther King Jr. Day on January 20.

February 18 Hearing and Policy Statements

The public hearing will begin on February 18, 2025, at 9:00 a.m. with policy statements by interested persons or entities, in the order identified in Attachment 1. Persons who did not submit an NOI but wish to make a policy statement will be heard after the listed order of presentation is complete. This portion of the hearing will be held in-person with an option to appear by Zoom teleconference. The hearing officer will hear policy statements until approximately 12:00 p.m. and then will call a break for lunch. The hearing will reconvene by Zoom teleconference after lunch, no sooner than 1:00 p.m., to address procedural issues for the hearing. Any interested persons or entities who do not have the opportunity to present a policy statement on February 18 because of time limitations, or who would prefer to present a policy statement on March 24, will be allowed to do so.

Time Limits for Summaries of Direct Testimony, Cross-Examination, and Objections

As I stated during the December 17 pre-hearing conference, DWR shall be allowed 16 hours to present oral summaries of its witnesses' written case-in-chief testimony. This time limit does not include objections or responses to objections raised by other parties. Any time DWR does not use for presentation of oral summaries of its witnesses' written case-in-chief testimony will be carried over, and will apply toward time limits for DWR's cross-examination or objections.

I intend to set time limits for cross examination of DWR's witnesses after DWR submits its witnesses' written testimony on January 21.

Party Groupings and Order for Cross-Examination of DWR's Witnesses

The following list is an initial proposal to group parties for setting time limits for cross-examination of witnesses. Time limits would not necessarily be equal for each group but would take into account the breadth of protested issues. Alternative suggestions to these groupings may be submitted by the parties in a hearing management statement submitted to the AHO by **February 11, 2025**.

1. Contra Costa County, et al.; NDWA & Reclamation Districts 999, 2060, 2068; County of Sacramento & Sacramento County Water Agency; SDWA et al.; Farm Bureau Delta Caucus & Sacramento County Farm Bureau; Byran 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
2. CSPA, et al.; Sierra Club, et al.; Camp Lotus, et al.; PCFFA & Institute for Fisheries Resources; CWIN; Foothill Conservancy; Golden State Salmon Association; San Francisco Baykeeper; Save California Salmon; Save Our Sandhill Cranes; Habitat 2020/ECOS
3. DTEC et al. & CIEA; SCDA/HCC; Delta Legacy Communities
4. Deirdre Des Jardins
5. Tulare Lake Basin Water Storage District and EBMUD

Expert Witnesses

DWR requested that an expert witness's "expert qualification be submitted in the written testimony and include enough detail to demonstrate the witnesses' credentials in the testifying area." (2024-12-09 DWR Pre-Hearing Conference Statement, p. 3.) The July 31 Hearing Notice already requires that "[a] party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony." (July 31 Hearing Notice, p. 19.)

Evidentiary Objections

The hearing officer will accept evidentiary objections to testimony and exhibits but is unlikely to rule on any objections in advance of the start of the hearing or while the portion of the hearing for DWR's case-in-chief witnesses is pending. The hearing officer will set a deadline, which will be after the presentation of DWR's case-in-chief witnesses and cross-examination, for submission of evidentiary objections in writing. Parties should be prepared to raise evidentiary objections in summary form orally (if not already submitted in writing), when DWR offers its case-in-chief exhibits into evidence during the hearing, and to file any objections made orally, in writing by the deadline set by the hearing officer. Written objections should be concise and submitted in a table format.

Parties should submit written objections as a PDF document and as a Word document (preferably in landscape orientation) that contains a column for responses to the objection and a column for the hearing officer's ruling. Parties who submit written evidentiary objections before the deadline will be permitted to revise and refile any objections up to the deadline.

Deferral of Hearing

DTEC and other Protestants continue to raise objections to the timing of this proceeding in relation to the Bay-Delta Plan Update and other proceedings affecting the Bay-Delta Watershed. I addressed these arguments in the procedural ruling in the November 18 Amended Hearing Notice.

Two-Part Hearing

Several parties recommended that the hearing be divided into two parts, the first covering injury to water rights and the second covering public interest and environmental issues. (See, e.g., 2024-12-09 Sierra Club California et al. Pre-Hearing Conference Statement, pp. 5-6.) These parties assert that this approach will reduce the burden on hearing participants by allowing parties only interested in either injury to water rights or environmental or public interest issues, to only attend the applicable portions of the hearing. Because of the highly interconnected nature of the issues in this hearing, I conclude that a clear separation of the evidence relevant to injury to water rights and other issues is not feasible. I will, however, attempt to work with the parties to provide information about hearing days in advance so that parties can plan their participation.

Request for Supplemental Information

Several Protestants assert that the AHO's November 18 request for supplemental information from DWR about diversions and use under the SWP Permits is insufficient. (2024-12-09 Sacramento County et al. Pre-Hearing Conference Statement, p. 9; 2024-11-25 Contra Costa County et al., Preliminary Pre-Hearing Statement.) The AHO intends to wait until the deadline for DWR to submit the requested information and its case-in-chief evidence to consider whether an additional or supplemental request would be appropriate. The level of detail and specificity about historic diversion and use under the SWP Permits that would be necessary in a licensing or revocation proceeding is likely unnecessary here. The purpose of the requested information is limited to determining whether approval of the change petitions would be in the public interest if the Board does not approve petitions for extension of time, and to condition any approval to avoid injury or the effective initiation of a new right.

Incidental Take Permit (CDFW)

DWR stated during the December 16 Pre-Hearing Conference that it expected CDFW to issue an incidental take permit (ITP) for the project by the end of the year. (2024-12-16 Court Reporter's Transcript, p. 50:1-2.) DWR shall submit any ITP issued by CDFW for the proposed project to the AHO as soon as practicable after receipt. If CDFW does not issue the ITP before February 18, the hearing officer will consider whether to amend the current hearing schedule.

Site Visit

The hearing officer and the parties discussed a possible site visit during the December 16 Pre-Hearing Conference. The hearing officer requests that parties requesting a site visit meet and confer and submit a joint statement by **February 11, 2025**, describing the status of discussion about any proposal for a site visit, which might include proposed dates, itinerary, method of transportation, and procedural rules.

Court Reporting Services

In AHO hearings, the audio plus visual recording of the proceedings constitutes the official record. However, given the anticipated significant number of hearing days and wide range in the scope of the testimony, timely and reliable court reporting services will benefit all parties to this proceeding, particularly in connection with the submission of closing briefs. The AHO strongly encourages the parties to meet and confer about the retention of a court reporter but will not require any party to bear the cost of securing court reporting services.

The AHO will retain court reporting services for the opening hearing day for policy statements on February 18, 2025, but does not intend to retain court reporting services for any subsequent hearing day. If the parties are unable to reach agreement on this issue, the AHO will expect parties to cite the audio plus video recording when citing oral testimony in motions or closing briefs. Any party may independently obtain court reporting services. A party that cites an independently obtained transcript in a submission to the AHO will, however, be required to submit a complete transcript of the proceedings with that submission, which transcript will be made available to all parties at the time of submission.

OUTSTANDING PROCEDURAL ISSUES AND OPTIONAL HEARING MANAGEMENT STATEMENTS

During the procedural portion of the hearing day on February 18, 2025, the hearing officer intends to discuss the following with the parties:

1. What time limits should apply to cross-examination and oral objections by parties during DWR's case-in-chief?
2. What, if any, modification should be made to the proposed grouping and order of cross-examination included in this Amended Hearing Notice?

3. Discussion of possible site visit based on any joint proposal submitted by the parties.
4. Any other procedural issues raised by the parties.

Parties may file hearing management statements with the AHO to address outstanding procedural issues by **February 11, 2025**.

HEARING ISSUES¹³

The State Water Board will decide whether to approve DWR's petitions to add two new PODs and PORDs to water right Permits 16478, 16479, 16481, and 16482, based upon the evidentiary record developed during the hearing. Parties to the proceeding may submit exhibits, testimony, and argument relevant to the following issues and sub-issues to be considered during the hearing:

- (A) Should the State Water Board approve the petitions to change water right Permits 16478, 16479, 16481, and 16482 if the Board were to approve petitions for extension of time for the Petitioner to achieve additional diversion and beneficial use under the permits? If so, what conditions, if any, including conditions to address the issues identified below, should the Board include in the amended permits?
- (B) Should the State Water Board approve the petitions to change water right Permits 16478, 16479, 16481, and 16482 even if the Board were not to approve petitions for extension of time for the Petitioner to achieve additional diversion and beneficial use under the permits? If so, what conditions, if any, including conditions to address the issues identified below, should the Board include in the amended permits?

Under scenarios (A) and (B):

1. Would approval of the petitions effectively initiate a new water right?
 - a. Should the Board include a term in any amended permits that limits the amount of water that may be directly diverted, diverted to storage, exported from the southern Delta, or beneficially used under the amended permits unless and until the Board approves an extension of the 2009 deadline to complete beneficial use under those permits?
 - b. If so, what limitations should the Board impose?
 - i. What is the maximum historic volume and rate of water that has been directly diverted, diverted to storage, exported from the southern Delta, and beneficially used under each permit?
 - ii. Should the Board impose limitations that are less than the historic maximum volumes or rates?

¹³ The hearing issues are reprinted here for convenience and are the same as included in the November 18 Amended Hearing Notice.

2. Would approval of the petitions result in injury to any legal users of water?
 - a. Will approval of the proposed changes in points of diversion alter water flows or impact groundwater availability in a manner that causes injury to legal users of water?
 - b. Will approval of the proposed changes in points of diversion alter surface or groundwater quality in a manner that causes injury to other legal users of water?
 - c. Would approval of the petitions allow Petitioner to divert and use water in excess of the volumes and rates that Petitioner could otherwise divert and use under the permits absent the approval, so as to injure other legal users of water?

3. Would approval of the petitions unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - a. Will approval of the proposed changes in points of diversion alter water flows in a manner that will unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - b. Will approval of the proposed changes in points of diversion alter water quality in a manner that will unreasonably affect fish and wildlife, recreation, or other uses protected by the public trust?
 - c. What Delta flow criteria are appropriate and should be included in any approval of the petitions, taking into consideration the 2010 Delta flow criteria, competing beneficial uses of water, and the relative responsibility of DWR and other water right holders for meeting water quality objectives?
 - d. What conditions, if any, should the Board impose on any approval of the petitions in anticipation of the updates to the Bay-Delta Plan and the possible inclusion of voluntary agreements in those updates?
 - i. Should the effective date of any approval of the petitions be contingent upon adoption and implementation of the update to the Bay-Delta Plan, and a determination by the Board of the conditions on diversions that are necessary to meet updated Bay-Delta Plan requirements?
 - ii. Alternatively, should any approval of the petitions be subject to interim requirements to ensure reasonable protection of beneficial uses pending the adoption and implementation of the update to Bay-Delta Plan?
 - iii. Should any approval of the petitions include conditions to protect proposed voluntary agreement flows or the flows to which proposed voluntary agreement flows are intended to be additive, in the event the Bay-Delta Plan is updated to include voluntary agreements?

4. Would approval of the petitions be in the public interest? If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permits to protect the public interest?

5. Would approval of the petitions impact tribal lands, tribal interests, or tribal cultural resources? If approved, what terms and conditions, if any, within the

Board's authorities should the Board include in the amended permits to protect these interests?

6. Would approval of the petitions be consistent with applicable policies and regulatory requirements concerning racial equity and environmental justice? If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permits to be consistent with applicable racial equity and environmental justice policies and requirements?
7. Is there a feasible alternative or are there feasible mitigation measures within the State Water Board's authority that would substantially lessen or avoid any significant effect of the project identified in the Final EIR? If approved, what terms and conditions, if any, within the Board's authorities should be included in the amended permits to mitigate or avoid significant environmental impacts identified in the Final EIR?

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date¹⁴
Deadline for Petitioner ¹⁵ to submit case-in-chief exhibits, exhibit identification indices, and proposed permit terms.	January 21, 2025
Deadline for all parties to submit written comments on hearing issues.	January 21, 2025
Deadline for Petitioner to submit response to November 18 Request for Supplemental Information.	January 21, 2025
Deadline for submission of hearing management statement and joint proposal for site visit.	February 11, 2025
Hearing begins with policy statements from 9 a.m. to approximately 12 p.m., and consideration of remaining procedural issues starting at approximately 1 p.m.	February 18, 2025
Hearing continues with remaining policy statements and Petitioner's case-in-chief.	March 24, 2025
Hearing continues with Petitioner's case-in-chief.	March 25, and April 1, 4, 7, 8, 9, 14, 17, 22, 23, & 24, 2025
Deadline for Protestants to submit case-in-chief exhibits, exhibit identification indices, and proposed permit terms or statement of no appropriate conditions for approval. Deadline for Petitioner to submit any additional case-in-chief exhibits based on any revision to hearing issues or newly available information.	Approximately June 2025

Date: January 17, 2025



Nicole L. Kuenzi
 Presiding Hearing Officer
 Administrative Hearings Office

¹⁴ Unless otherwise stated, the deadline for submission of documents is 11:59 p.m. on the date identified in this notice as the deadline.

¹⁵ All other parties, including parties in support of DWR's petitions, are subject to the later deadline for submission of case-in-chief evidence.

Attachments:

- Attachment 1 – Order of Policy Statements
- Attachment 2 – Service List

ATTACHMENT 1

Order of Policy Statements on February 18, 2025

1. California Natural Resource Agency
2. Alameda County Water District
3. Desert Water Agency
4. Kern County Water Agency
5. Merced Irrigation District
6. Metropolitan Water District
7. Mojave Water Agency
8. San Bernardino Valley Municipal Water District
9. Santa Clara Valley Water District
10. Zone 7WA
11. San Geronio Pass Water Agency

ATTACHMENT 2

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