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## State Water Resources Control Board

May 26, 2026

Meghan Hertel  
Director  
California Department of Fish and Wildlife  
[meghan.hertel@wildlife.ca.gov](mailto:meghan.hertel@wildlife.ca.gov)

**Re: Greater Sandhill Crane as Fully Protected Species, in the Hearing on the Petitions to Change Water Right Permits 18478, 16479, 16481, and 16482 for the Proposed Delta Conveyance Project (DCP)**

Dear Director Hertel,

The State Water Resources Control Board (State Water Board or Board) is considering whether any approval of the Department of Water Resources' (DWR) proposed change in points of diversion pursuant to the Delta Conveyance Project (DCP) would comply with applicable provisions of the California Fish and Game Code, and whether terms and conditions should be imposed as part of any approval to ensure compliance. (See Wat. Code, § 1701.3, subd. (b)(2) & (3) [authorizing the Board to require a petitioner to submit information to demonstrate that a proposed change will comply with the Fish and Game Code].) Among other objections, Protestants assert that approval of DWR's petitions for change will authorize actions, including both construction and operation of the proposed DCP, that would result in take of greater sandhill crane in violation of the fully protected species statute.

Your agency is the primary state agency charged with implementation and enforcement of the Fish and Game Code. Potential impacts to threatened and endangered species from construction and operation of the proposed DCP, and associated mitigation measures, are addressed in the incidental take permit (DCP ITP). However, Fish and Game Code section 3511 prohibits take of fully protected bird species and disallows the

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E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

issuance of an incidental take permit for those species. The DCP ITP therefore does not address the risk of take of fully protected species, including greater sandhill crane.

Although CDFW is not a party to this proceeding, the State Water Board respectfully invites the opinion and analysis of CDFW as to the following legal and factual questions to assist the Board in determining whether to approve, or approve with conditions, DWR's petitions for change of its water rights:

- (1) Whether construction and operation of the DCP would be consistent with Fish and Game Code section 3511, particularly with respect to potential impacts to greater sandhill crane.
- (2) Whether Fish and Game Code section 2081.15, subdivision (e), prevents CDFW from authorizing take of greater sandhill crane pursuant to Fish and Game Code section 2081.15, subdivision (a).
- (3) Whether "take" as the term is used in Fish and Game Code section 3511 may include modification of habitat.
- (4) Whether the replacement habitat proposed by DWR as described in the FEIR (Delta Conveyance Project Final EIR, Appendix 3F [AHO-1012], Table 3F.1-3), is sufficient to avoid take of greater sandhill crane for purposes of Fish and Game Code section 3511.
- (5) Whether the State Water Board should include terms and conditions on any approval of the proposed change in points of diversion to ensure compliance with Fish and Game Code section 3511, particularly with respect to potential impacts to greater sandhill crane, and if so, the specific terms or conditions that should be included.

The Administrative Hearings Office would appreciate any response to this letter by e-mail sent to [dcp-wr-petition@waterboards.ca.gov](mailto:dcp-wr-petition@waterboards.ca.gov) by June 16, 2026, with a copy sent to the service list attached to this letter. Alternatively, or in addition, a representative from CDFW is invited to join the hearing on any of the scheduled hearing days in June listed in the attached hearing schedule to address the hearing officer directly. Such a discussion may be the most efficient means to discuss options for CDFW's participation.

To obtain a personalized link for a CDFW representative to join the hearing, please submit a request by e-mail to [dcp-wr-petition@waterboards.ca.gov](mailto:dcp-wr-petition@waterboards.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Nicole L. Kuenzi". The signature is written in a cursive, flowing style.

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

cc: Wendy Bogdan  
General Counsel  
California Department of Fish and Wildlife  
[wendy.bogdan@wildlife.ca.gov](mailto:wendy.bogdan@wildlife.ca.gov)

Attachments:

- Attachment 1 – Hearing Schedule
- Attachment 2 – Service List

**ATTACHMENT 1  
HEARING SCHEDULE**

2026		
<i>June 10, 15, 18, 23, 24 &amp; 26</i>	<i>Protestants' rebuttal, cont.</i>	
<i>June 9</i>	<i>Protestants' rebuttal, cont.</i>	
<i>June 8</i>	<i>Protestants' rebuttal, cont.</i>	
<i>June 5</i>	<i>Protestants' rebuttal, cont.</i>	
<i>June 4</i>	<i>Protestants' rebuttal, cont.</i>	
<i>June 1</i>	<i>Protestants' rebuttal portion of the Public Hearing begins.</i>	

**ATTACHMENT 2  
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