



State Water Resources Control Board

NOTICE OF SUPPLEMENTAL HEARING AND PROCEDURAL RULING

The State Water Resources Control Board Administrative Hearings Office will conduct a supplemental day of hearing on the pending petition for Assignment of State-filed Application 25517 and accompanying water right Application 25517X01 and the Petitions for Release from priority of State-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 25517X01 of

Sites Project Authority.

The supplemental hearing will be held on July 24, 2026, starting at 9:00 a.m., by Zoom Webinar. Representatives of parties will receive an individual invitation to join the hearing by e-mail from Zoom.

Interested members of the public who would like to watch this status conference without participating may do so through the Administrative Hearings Office YouTube channel at: bit.ly/aho-youtube

BACKGROUND

The State Water Resources Control Board's (State Water Board or Board) Administrative Hearings Office (AHO) held a public hearing to receive evidence to be considered in determining whether the State Water Board should approve the petition for partial assignment of state-filed Application 25517, accompanying water right Application 25517X01, and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 25517X01 filed by the Sites Project Authority (Applicant or Authority) for the proposed Sites Reservoir Project, and, if so, what specific terms or conditions should be included in any approvals.

On March 20, 2026, the AHO transmitted to the parties a Draft Decision and associated Draft Water Right Permit prepared on behalf of the State Water Board. With the release of the Draft Decision and Draft Permit, the hearing officer closed the evidentiary record. The Board accepted written comments on the Draft Decision and Draft Permit submitted by May 22, 2026.

PROCEDURAL RULING

Supplemental Evidence of Project Yield Offered by the Authority

Background

With its comments on the Draft Decision and Draft Permit submitted on May 22, 2026, the Authority submitted: (1) a technical memorandum prepared by Jacobs Engineering (2026-05-22 Sites Comments on Draft Decision-Draft Permit, Attachment A, p. 91), associated CalSim 3 model files, and a spreadsheet containing the CalSim 3 model results, and (2) a technical memorandum prepared by MBK Engineers, "Water Supply Effects of Draft Water Right Permit Terms 23, 30, and 31" (Id., Attachment B, p. 111) and an associated Historical WAA Tool spreadsheet.¹

As described in Attachment A, Jacobs Engineering used ten CalSim 3 simulations to analyze the effects on diversion and corresponding yield of the proposed Sites Reservoir Project from limitations on diversion in Draft Permit Terms 23, 30, and 31 as compared to conditions on diversion in the 2024 ITP. Results of these model runs are provided in the CalSim 3 model result spreadsheet.

As described in Attachment B, MBK Engineers incorporated the diversion criteria in Draft Permit Terms 23, 30, and 31 into the "Sites Historical Water Availability Analysis (WAA) Tool" to analyze the effects on diversion and corresponding yield of the proposed Sites Reservoir Project. This tool was initially prepared by MBK and the

¹ The CalSim 3 models and CalSim 3 model result spreadsheet and the Historical WAA Tool spreadsheet is in the administrative record for the proceeding in the Hearing Documents folder, within the subfolder titled "Comments on Draft Decision," and the further subfolder titled "2026-05-22 Term 29, 30 and 31 Analysis."

Authority to estimate water availability with the diversion criteria in the 2024 ITP and was updated to incorporate the limitations on diversion in the draft terms.

In its comments, the Authority relies on results from these additional model runs and analyses in support of changes to the Draft Permit that it asserts are in the public interest. The Authority proposes that the proffered analyses be considered by the Board in conjunction with the Authority's comments and included in the evidentiary record without otherwise reopening the evidentiary record. (2026-05-22 Sites Comments on Draft Decision-Draft Permit, pp. 13-14, fn. 5.)

On June 5, 2026, San Francisco Baykeeper, California Sportfishing Protection Alliance, Friends of the River, and Water and Climate Trust (NGO Protestants), filed an objection seeking to strike Attachments A and B as new evidence, and strike the arguments and assertions in the comments that reference or rely upon the analyses or conclusions contained in the memoranda.

Discussion

The state's water resources shall be put to reasonable and beneficial use to the fullest extent of which they are capable. (Cal. Const., art. X, sec. 2; Wat. Code, §§ 1240 & 1375, subd. (c); Cal. Code Regs., tit. 23, §§ 696 & 698.) In acting on an application to appropriate water, the Board must consider the relative benefit to be derived from all beneficial uses of the water sought to be appropriated. (Wat. Code, § 1257.) This balancing of competing uses includes consideration of instream needs such as preservation of fish and wildlife and protection of water quality necessary to other beneficial uses (see Wat. Code, §§ 1243, 1243.5), and, whenever feasible, avoidance or minimization of harm to public trust resources as consistent with the public interest (National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419, 446-447). The Water Code directs the State Water Board to allow the appropriation of unappropriated water for beneficial purposes under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated. (Wat. Code, §§ 1253, 1257.)

Draft Terms 23, 30, and 31 reflect the Board's consideration of the amount of water required, and in the public interest, to support instream beneficial uses, including the preservation and enhancement of fish and wildlife (Wat. Code, §§ 1243, 1243.5); the effect of approving the application on public trust resources and protection of those resources where feasible and in the public interest (National Audubon Society, *supra*, at pp. 446-447); and terms and conditions that will best develop, conserve, and utilize in the public interest the water sought to be appropriated (Wat. Code, § 1253). These factors require consideration of, among other interests, competing beneficial uses. The likely effect of the draft conditions on the amount of water that could be diverted for the purposes of the proposed appropriation is, therefore, relevant to the Board's determination as to whether the terms appropriately balance the various interests of the public that are at stake.

Attachments A and B, and the associated underlying models and tools, offer important information that would substantially enhance the Board's consideration of appropriate terms and conditions to be included if a water right permit is issued to the Authority. Absent these submissions, the evidentiary record before the Board lacks a quantitative analysis of the likely impact of the terms and conditions being considered by the Board on the yield of the proposed project. Furthermore, before circulation of the Draft Permit, the Authority could not have anticipated with any reasonable precision the content of the terms and conditions that the Board would be likely to impose on the proposed appropriation. Although the NGO Protestants assert otherwise, the evidentiary record and the arguments of the Authority and the Protestants present a broad range of possible terms for which analysis of each iteration would not have been reasonably possible. These considerations – the significance of the information to the decision before the Board and the obstacles to the Authority's submission of the information before circulation of the Draft Permit – weigh in favor of a limited re-opening of the record to admit the additional evidence.

The hearing officer may, as a discretionary matter, re-open the evidentiary record to admit additional relevant and material evidence so as to fully develop the record on which the agency is to base its decision. (See Cal. Code Regs., tit. 23, § 648.5.) A hearing officer has significant discretion to conduct hearings in a manner deemed most suitable to the particular case. Hearing officers conducting administrative hearings have "wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 531, 560, disapproved on other grounds in *Mileikowsky v. West Hills Hospital and Medical Center* (2009) 45 Cal.4th 1259, 1273.)

I conclude that, in these circumstances and given the particular significance of the information being offered, a limited reopening of the evidentiary record to admit the attachments and supporting files may be appropriate. Prior to acceptance of the analyses into the evidentiary record, however, the author or person most knowledgeable about the contents of the technical memoranda shall be made available by the Authority for cross-examination by the opposing parties during a supplemental day of hearing. This opportunity for questioning, limited in scope to the methods and validity of the proffered analyses as described in the technical memoranda, is necessary for procedural fairness, to ensure consistency with the provisions of Government Code section 11513, and to support a robust evaluation of the technical soundness of the analyses.

Supplemental Evidence Offered by South of Delta Sites Reservoir Participants

The South of Delta Sites Reservoir Participants² submitted a comment letter on the Draft Decision and Draft Permit with 427 pages of supporting attachments that include new evidence not previously offered or admitted into the evidentiary record (Attachments B-C).³

- Attachment/Exhibit B – Data and code relied upon by the South of Delta Sites Reservoir Participants to replicate and extend the time period of the analysis described in del Rosario et al. (Exh. BK-21) in support of technical comments related to the Wilkins Slough bypass requirement (Draft Permit Term 23 subdivision (c))
- Attachment/Exhibit C – Testimony about DSM2 modeling submitted by Dr. Amardeep Singh as Exhibit DWR-123R2 in the AHO Public Hearing on the Delta Conveyance Project.

On June 8, 2026, the NGO Protestants filed an objection, seeking to strike Attachments/Exhibits B and C as untimely new evidence among other arguments for exclusion from the evidentiary record. (2026-06-08 Objection to new evidence submitted by South of Delta Project Participants.) The South of Delta Sites Reservoir Participants responded by letter on June 12, 2026. (2026-06-12 SOD Sites' Participant Group Response to BayKeeper Objection.)

The South of Delta Sites Reservoir Participants are not parties to the proceeding. Pursuant to the Hearing Notice, non-parties are not permitted to offer evidence into the record. (2024-03-01 Hearing Notice, p. 21; 2024-06-05 Amended Hearing Notice, p. 21 [“except as specifically provided in this notice or by ruling of the hearing officer, the hearing officer will allow only parties to present evidence, make objections, examine witnesses, and file closing briefs”].) Although this procedural ruling contemplates the possibility of a very limited re-opening of the evidentiary record to admit the Authority’s yield analyses, which would address a gap in the record on which the Board is to base its decision, a broader re-opening of the record to admit Attachment/Exhibits B and C is not warranted. In addition to these entities’ lack of standing to submit evidence in this proceeding, admission of the additional evidence would result in further delay and

² The South of Delta Sites Reservoir Participants are public water agencies located south of the Sacramento-San Joaquin River Delta, and include The Metropolitan Water District of Southern California, Santa Clara Valley Water District, Irvine Ranch Water District, Santa Clarita Valley Water Agency, Coachella Valley Water District, Desert Water Agency, Alameda County Flood Control and Water Conservation District Zone 7, San Bernardino Valley Municipal Water District, Wheeler Ridge-Maricopa Water Storage District, Rosedale-Rio Bravo Water Storage District, and San Geronio Pass Water Agency.

³ Attachment A is a Technical and Legal memorandum in support of the South of Delta Sites Reservoir Participants’ comment letter.

unfairness to those parties who have complied with the procedural rules and deadlines set by the hearing officer.

Therefore, Attachment/Exhibits B and C to the South of Delta Sites Reservoir Participants' comment letter shall not be included within the evidentiary record and may not be relied upon by the Board in making any finding of fact in this proceeding.

SCOPE OF SUPPLEMENTAL HEARING

The AHO will conduct a supplemental hearing day on July 24, 2026. The purpose of this additional hearing day is to conduct questioning by the hearing officer and State Water Board staff, and allow cross-examination by the opposing parties, of the witness or witnesses produced by the Authority with knowledge about the technical memoranda attached to the Authority's comments and the underlying files also submitted to the AHO.

The scope of the supplemental hearing on July 24 shall be limited to the following:

- The contents of the Authority's Attachment A, Attachment B, CalSim 3 model files, CalSim 3 results spreadsheet, and the revised Historical WAA Tool spreadsheet.
- The methodologies and underlying assumptions incorporated into the models and analyses.

The scope of the supplemental hearing shall not include questioning or testimony about the significance of the proffered analyses to the Board's consideration of the public interest and other hearing issues. Arguments addressing any additional evidence admitted into the evidentiary record may be included in a supplemental brief.

SUPPLEMENTAL BRIEFS AND EVIDENTIARY OBJECTIONS

Parties may submit supplemental briefs to the AHO by the end of the day on August 10, 2026, to address additional evidence admitted into the evidentiary record and related arguments. Supplemental briefs shall be limited to 15 pages, double-spaced, in 12-point font.

Additionally, parties may submit objections to the admission of the additional evidence offered by the Authority (Attachment A, Attachment B, CalSim 3 model files, CalSim 3 results spreadsheet, and the revised Historical WAA Tool spreadsheet). Any objections shall be concise (5 pages or less, double-spaced, in 12-point font) and present only arguments not previously raised. The Authority may respond to any objections that are filed.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date
Supplemental hearing day.	July 24, 2026.
Deadline for submission of supplemental briefs and evidentiary objections.	August 10, 2026.
Deadline for Sites Authority to respond to evidentiary objections.	August 17, 2026.

Based on the deadline for submission of supplemental briefs, and contingent on the outcome of the supplemental hearing day and evidentiary objections, the Board intends to circulate a Revised Draft Decision and a Revised Draft Water Right Permit on approximately September 3, 2026, for a 30-day written comment period. At this time, the Board intends to consider adoption of the Revised Draft Decision and Draft Permit either during the regularly scheduled Board Meeting on November 3, 2026 or at a special meeting which may be scheduled on November 2, 2026. These estimated dates are subject to revision.

Date: June 26, 2026



Nicole L. Kuenzi,
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