
State Water Resources Control Board

May 22, 2024¹

To Enclosed Service List

PETITIONER AND PROTESTANT DIRECTIVES FOR PROTESTS TIMELY FILED AGAINST THE DEPARTMENT OF WATER RESOURCES' WATER RIGHT CHANGE PETITION FOR THE DELTA CONVEYANCE PROJECT

This letter is directed to the Department of Water Resources (DWR or Petitioner) and parties who filed protests against the approval of the subject petition (Protestants) within the timeframe allowed by the State Water Resources Control Board (State Water Board).

The purpose of this letter is to acknowledge the receipt of timely filed protests and provide instructions to engage in good faith negotiation to resolve them. It is important to read the following instructions closely and respond accordingly. Failure to follow these instructions or respond to related requests for information from the State Water Board within the timeframes stated below or as otherwise allowed may result in cancellation of the subject petition or rejection, dismissal, or cancellation of protests. (Wat. Code, § 1703.6; Cal. Code Regs., tit. 23, §§ 749, 750, 796.)

The State Water Board has not yet evaluated protests to determine if they are based on issues within the State Water Board's jurisdiction, state valid grounds of protest, and substantially comply with protest filing requirements other than the filing deadline. (Wat. Code, § 1703.2; Cal. Code Regs., tit. 23, §§ 745, 746, 796.) The State Water Board may do so at any time during the proceeding on the subject petition and request additional information necessary to satisfy these requirements or to clarify, amplify, or otherwise supplement required information. The State Water Board may reject or cancel protests if the requested information is not received within the timeframe given. (Wat. Code, §§ 1703.2, 1703.5, 1703.6; Cal. Code Regs., tit. 23, § 749, 796.) This letter should not be construed as making a determination whether protests are acceptable.

Instructions for Petitioner (Department of Water Resources)

The Petitioner must file with the State Water Board a written answer to each protest by July 12, 2024. Answers must be responsive to the allegations made, indicate the intended line of defense, and indicate any possibilities for settlement. (Cal. Code Regs., tit. 23, §§ 751, 752, 796.)

¹ On June 5, 2024, a revised version of this letter was released to correct several typographical errors in the service list, shown in red font and strike-out below.

The Petitioner may request additional time to answer protests in order to enable negotiation of contested issues. Such requests must be submitted to the State Water Board and accompanied by a showing of diligent good faith efforts to reach an agreement between the parties with reasonable prospects of success. (Cal. Code Regs., tit. 23, § 753, 796.)

Instructions for Petitioner and Protestants

The Water Code requires Protestants and the Petitioner to make a good faith effort to resolve the protests within a 180-day protest resolution period for all petitions to change water right applications, permits, or licenses. Based on this timeline, Protestants and the Petitioner must make a good faith effort to resolve protests by November 12, 2024, the first business day following the 180-day period. The State Water Board may allow additional time for protest negotiation for good cause shown. Requests for additional time should be submitted in writing prior to the close of the initial 180-day protest resolution period noted above. (Wat. Code, § 1703.4.)

By December 12, 2024, each Protestant must file with the State Water Board a written status report for their protest, and the Petitioner must file a written status report for all protests. The status reports must describe the actions that have been taken to resolve the protest(s), the status of negotiations on each aspect of the protest(s), and any related settlement terms or conditions that have been proposed or agreed to by the protestant(s) and Petitioner. (Wat. Code, § 1703.5.) The State Water Board may allow additional time for filing protest status reports for good cause shown. (Wat. Code, § 1703.5.)

The State Water Board anticipates that it will be necessary to conduct an evidentiary hearing in accordance with chapter 4.5 of the California Administrative Procedure Act (Gov. Code, § 11400 et seq.) (APA) to resolve material issues of fact concerning the petition. The Board plans to issue a hearing notice in late July of this year. The issuance of a hearing notice, however, will not shorten the protest resolution period. Petitioner and any Protestants whose protests have not been resolved when the notice is issued should continue to negotiate in good faith to resolve the protests. Successful resolution of issues raised by Protestants to the parties' mutual satisfaction during the protest resolution period may serve to narrow the scope of the hearing and would be more efficient for both the parties and the Board.

The State Water Board has determined that an adjudicative proceeding on the subject petition is now impending, and therefore the APA prohibits ex parte communications. (Gov. Code, §§ 11430.10-11430.80.) Accordingly, any communications to the presiding officer, Board Members, or Board staff concerning substantive or controversial procedural issues related to the Department of Water Resources' petition or the Delta Conveyance Project must be sent as an email "cc" (carbon copy) to all of the other parties on the attached service list, or must state or clearly indicate the manner in which a duplicate copy of the communication was otherwise served upon the parties. This includes, but is not limited to, answers to protests, requests for additional time, and protest status reports.

Substantive and potentially controversial communications concerning the subject petition, including protests, will also be included in the administrative record and made

available via the State Water Board's File Transfer Protocol (FTP) site. Prior to the receipt of protests and the compilation of the attached service list, the Board received correspondence regarding DWR's 2009 Petition for Extension of Time and requests to vacate or extend the protest period for the change petition. These communications and the Board's April 17, 2024 response are available on the Board's FTP site. To request access to the FTP site, please email DCP-WR-Petition@waterboards.ca.gov with "Request for DCP FTP access" in the subject line.

For questions related to this letter, please communicate by email to DCP-WR-Petition@Waterboards.ca.gov or by mail to:

Attn: Delta Conveyance Project Change Petition Staff
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA, 95812-2000

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik Ekdahl", with a long horizontal flourish extending to the right.

Erik Ekdahl, Deputy Director
Division of Water Rights

Enclosure: Service List

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05/22/2024**

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