
State Water Resources Control Board

NOTICE OF ASSIGNMENT AND PRE-HEARING CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Pre-Hearing Conference on the
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 Pre-Hearing Conference will begin on August 13, 2024, at 9 a.m.
and will be held by Zoom teleconference.

Representatives of parties and other people who want to participate in this pre-hearing conference may access these Zoom teleconferences by using the following link and call-in information:

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/96961808415?pwd=Qiq4b0CpFuKRaybCBNq3ZwrWjmDZhU.1> with Meeting ID: 969 6180 8415 and Passcode: 750159

or by calling in at:

+16699009128,,96961808415#,,,,*750159# US (San Jose)

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: <https://www.youtube.com/@swrcadministrativehearing728/featured>

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

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

PURPOSE OF THIS NOTICE

The purpose of this notice is to inform the petitioner, protestants, and other interested persons, that the above matter has been assigned to the State Water Resources Control Board's (State Water Board or Board) Administrative Hearings Office (AHO) and to inform interested persons and parties of the date and time of the first pre-hearing conference scheduled by the hearing officer in this matter. The pre-hearing conference will address the hearing schedule and participation deadlines that will be set forth in a hearing notice to be issued by the AHO in late July 2024.

The purpose of the forthcoming hearing will be to determine whether the State Water Board should approve the petitions for change filed by the California Department of Water Resources (DWR) to add two new points of diversion (PODs) and rediversion (PORDs) to water right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively), and, if so, what specific terms or conditions should be included in any approval. The State Water Board anticipates that it will be necessary to conduct an evidentiary hearing in accordance with chapter 4.5 of the Administrative Procedure Act (Gov. Code, §§ 11400, et seq.) to resolve material issues of fact concerning DWR's petitions. (See Wat. Code, §§ 1350-1352.)

Additional background information about DWR's petitions, the process for protestants and interested persons to participate in the hearing, hearing procedures, key hearing issues, and the proposed hearing schedule, will be included in the notice of hearing to be issued by the AHO in late July 2024.

BACKGROUND

On February 22, 2024,¹ the State Water Board's Division of Water Rights (Division) received petitions for change from DWR to add two new PODs and PORDs to water right Permits 16478, 16479, 16481, and 16482, which are associated with the State Water Project (SWP). The proposed new PODs and PORDs 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 and convey the water through a tunnel to existing water distribution facilities in the southern Delta.

DWR's change petition is available on the State Water Boards's FTP website at: <https://ftp.waterboards.ca.gov/>. To access the Delta Conveyance Project folder, please follow the instructions below in the section for "Administrative Record and FTP Site."

On February 29, 2024, the Division issued a public notice of DWR's petitions to change its water right permits for the SWP, which provided instructions for filing a protest to the

¹ DWR submitted a revision to its petitions on February 27, 2024, with minor corrections.

petitions. The Water Board's February 29 Notice of Petition and other related materials can be found at the State Water Board's Delta Conveyance Project webpage at: https://waterboards.ca.gov/bay_delta/delta_conveyance.html. The deadline to file a protest to DWR's petitions was May 13, 2024. Attachment 3 to this notice is a list of the protestants who timely filed protests.

ASSIGNMENT TO ADMINISTRATIVE HEARINGS OFFICE FOR PUBLIC HEARING

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board, effective July 1, 2019. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. On June 14, 2024, Eric Oppenheimer, Executive Director of the State Water Board, transmitted a memorandum to Nicole Kuenzi, Presiding Hearing Officer of the AHO, assigning to the AHO the petitions submitted by DWR for further proceedings and an adjudicative hearing pursuant to Water Code section 1112, subdivision (c)(2). (Attachment 1.)

HEARING OFFICER AND HEARING TEAM

Presiding Hearing Officer Nicole Kuenzi will preside over the hearing in this matter. The hearing team will include State Water Board staff from the AHO, the Division of Water Rights, the Office of Chief Counsel, and the executive management of the State Water Board. Members of the hearing team may assist and meet with the hearing officer and State Water Board members throughout these proceedings to discuss or deliberate on relevant matters. State Water Board members may be present during the pre-hearing conference or hearing; however, the State Water Board will not act on DWR's petitions until after the hearing and preparation of the recommended decision or order by the hearing officer.

ADMINISTRATIVE RECORD AND FTP SITE

The AHO will maintain the administrative record for this proceeding on the State Water Board's FTP site. The AHO has moved documents maintained by the Division for DWR's petitions and saved them in a folder for this proceeding. The AHO will save in this folder all future communications and documents submitted by the parties; any notices and rulings issued by the AHO; recordings of any pre-hearing conferences and days of hearing; and any other materials received by the AHO that are relevant to this proceeding. The folder on the State Water Board's FTP site for this proceeding is named "Delta Conveyance Hearing" and may be accessed at <https://ftp.waterboards.ca.gov/>.

Anyone may view and download documents from the AHO-FTP site. To access the Delta Conveyance folder, please send an e-mail to DCP-WR-Petition@waterboards.ca.gov with "Request for Delta Conveyance-ftp login credentials" in the subject line. After receiving the e-mail request, the AHO will send a reply e-mail with a username and password to access the folder. It is not necessary to carbon copy ("cc") the service list for such an e-mail request. Please be aware that the login

credentials to access the Delta Conveyance Project Hearing download folder differ from the login credentials to access the administrative record folders for other AHO proceedings.

PROHIBITION ON EX PARTE COMMUNICATIONS

Parties and interested persons are prohibited from having any ex parte communications (i.e., off-the-record communications) with any members of the hearing team, including executive management of the State Water Board and State Water Board members. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For additional information about ex parte communications, see the response to FAQ No.16 of the AHO FAQs, which are posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2022/aho-faq.pdf.

If any party or interested person wants to communicate with the AHO or any member of the hearing team regarding a procedural or substantive issue related to this proceeding, with the limited exception for communications about non-controversial procedural matters described below, the party or interested person shall make the communication in writing, shall serve all parties listed on the service list for this proceeding with copies of the communication, and include a proof of service demonstrating such service with the written communication to the AHO. Any such communication shall be sent to the AHO by e-mail to DCP-WR-Petition@waterboards.ca.gov or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
RE: Delta Conveyance Project Hearing
P.O. Box 100
Sacramento, CA 95814-0100

A party or interested person may provide the proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail “cc” (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter. Until the AHO issues an updated service list, parties should use the initial service list attached to this notice (Attachment 4).

Communications concerning non-controversial procedural issues are not subject to the prohibition on ex parte communications. (Gov. Code, § 11430.20, subd. (b).) Parties and interested persons may communicate with members of the hearing team about non-controversial procedural matters such as requests for log-in credentials, assistance accessing documents or uploading documents to the FTP site, or requests to update the service list. These communications should be sent to the AHO using the e-mail address or physical address listed above and may be sent without serving all parties on

the service list with copies of the communication.

Please do not attempt to communicate by telephone or in person with AHO staff or any member of the hearing team about these proceedings. If oral communications with members of the hearing team are necessary to discuss a procedural or substantive issue, the AHO may set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above with a copy to the service list.

PRE-HEARING CONFERENCE DEADLINES

Deadlines / Schedule	Date and Time
Deadline to file Pre-Hearing Conference NOIs (optional)	August 6, 2024
Pre-Hearing Conference	August 13, 2024, at 9:00 a.m.
Deadline to file written comments on hearing issues as identified in the Notice of Public Hearing (forthcoming July 2024) (optional)	September 5, 2024, by 11:59 p.m.

PRE-HEARING CONFERENCE ISSUES

The pre-hearing conference will **not** include discussion of the merits of any hearing issues other than procedural matters.

The initial pre-hearing conference will address the following issues:

1. Should the hearing officer change any of the deadlines or hearing dates listed in the Notice of Public Hearing (forthcoming in July 2024) or make other changes to the hearing schedule?
2. Should the hearing officer conduct a site visit, which may include participation of members of the hearing team and State Water Board members? If so, given the proposed schedule as identified in the Notice of Public Hearing, when should the site visit occur?
3. Who will retain the court reporter and how will the transcripts be shared with the AHO and all parties?
4. Any other scheduling issues concerning the forthcoming hearing that the participants raise.

The hearing officer may schedule additional pre-hearing conferences to address other procedural issues, including for example, the ordering and grouping of parties for

presentation of cases-in-chief and cross-examination, time limits on summaries of written testimony, time limits on cross-examination, and other matters.

HOW TO PARTICIPATE IN THE PRE-HEARING CONFERENCE

1. Submit Pre-Hearing Conference NOI by the Deadline

If a party or interested person intends to participate in the pre-hearing conference, the AHO requests that the party or interested person submit a Notice of Intent to Appear at Pre-Hearing Conference (Attachment 2) by the deadline above. Filing an NOI is not required, but it is requested to facilitate the pre-hearing conference.

Participants do not need to file pre-hearing conference statements. If any participant wants to file a pre-hearing conference statement, then the participant shall file the pre-hearing conference statement with the AHO and serve copies of it on the other parties listed in the attached service list.

The NOI to participate in the pre-hearing conference is not the same document as the NOI to participate in the public hearing. There will be a future opportunity to submit an NOI to participate in the public hearing. The deadline for submitting the NOI to participate in the public hearing will be included in the forthcoming Notice of Public Hearing.

2. Log Onto Zoom Platform on Day of Pre-Hearing Conference

On the date of the pre-hearing conference, participants should use the Zoom teleconference information provided on the first page of this notice. No in-person appearances will be allowed for this pre-hearing conference.

WRITTEN COMMENTS ON HEARING ISSUES

The AHO intends to issue its Notice of Public Hearing in late July 2024. After it issues this notice, the AHO will accept written comments on the hearing issues identified in the forthcoming July 2024 Notice of Public Hearing submitted by the end of the day on **September 5, 2024**. Written comments on the hearing issues shall be no longer than 8 pages, double-spaced and shall be transmitted to the AHO using the methods identified below.

The AHO will include this information about submission of written comments on the hearing issues in the forthcoming July 2024 Notice of Public Hearing.

SUBMISSION OF DOCUMENTS TO AHO AND OTHER PARTIES

If a party wishes to submit an NOI to speak at the pre-hearing conference, submit an optional pre-hearing conference statement, or submit written comments on hearing issues, documents submitted to the AHO shall be addressed and submitted by one of the following methods:

Method	Address
By e-mail (preferred method for NOIs and to file optional pre-hearing conference statement and written comments on hearing issues):	DCP-WR-Petition@waterboards.ca.gov
By Mail:	State Water Resources Control Board Administrative Hearings Office P.O. Box 100 Sacramento, CA 95812-0100
By Hand-Delivery:	Joe Serna Jr. CalEPA Building Administrative Hearings Office 1001 I Street Sacramento, CA 95814

UPDATES TO SERVICE LIST

The AHO prepared the attached service list using information from the Division’s files on the applicant, the protests received, and other communications by interested parties during the protest period. If any party or interested person on the service list wants to change any of their information included in the current service list, the party or interested person should submit this information by e-mail to DCP-WR-Petition@waterboards.ca.gov. The party or interested person does not need to send copies of the e-mail to the service list.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO’s Internet webpage at www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person may sign up to receive all AHO notices related to this proceeding at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html by selecting “Delta Conveyance Project Public Hearing” in the Administrative Hearings Office subscription topic group.

LIVE-STREAM AND RECORDING

The pre-hearing conference will be live-streamed through the AHO’s YouTube channel, accessible by clicking on the link provided below. At the conclusion of the pre-hearing conference, a recording of the YouTube live-stream session will be available on the AHO’s YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link by clicking on Live and Videos, respectively:

<https://www.youtube.com/@swrcbadministrativehearing728/featured>.

The AHO is conducting this pre-hearing conference by Zoom teleconference. The AHO will record this pre-hearing conference and will post an audio-plus-video file and a Zoom-generated transcript of each such proceeding, if available, in the administrative record for this proceeding.

New users of Zoom may want to review Zoom's support guide:

<https://support.zoom.us/hc/en-us/categories/200101697>. Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled pre-hearing conference time to ensure you can resolve any technical issues before the pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the conference, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the conference, AHO staff may add designations of participants' names to the Zoom display.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify themselves as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participation.

If the device you are using freezes, please notify staff at DCP-WR-Petition@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the conference using the phone number provided with the Zoom meeting information on the first page of this notice.

In lieu of participating by Zoom, anyone may watch past or present AHO hearings at the following link: www.youtube.com/@swrcbadministrativehearing728/. Parties watching

AHO hearings by this method will not be able to participate in the pre-hearing conference and will not be identified to anyone else.

Date: June 19, 2024

/s/ Nicole L. Kuenzi
Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

Attachments:

- Attachment 1 – 2024-06-14 Assignment Memorandum
- Attachment 2 – Notice of Intent to Appear at Pre-Hearing Conference
- Attachment 3 – List of Protests and Protestants
- Attachment 4 – Initial Service List

Attachment 1



State Water Resources Control Board

TO: Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

FROM: Eric Oppenheimer
Executive Director
STATE WATER RESOURCES CONTROL BOARD

A handwritten signature of Eric Oppenheimer in black ink.

DATE: June 14, 2024

SUBJECT: ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE OF PETITION REQUESTING CHANGES IN WATER RIGHTS OF THE DEPARTMENT OF WATER RESOURCES FOR THE DELTA CONVEYANCE PROJECT

On February 22, 2024, the State Water Resources Control Board (State Water Board or Board) received a Petition for Change from the Department of Water Resources (DWR) to add two new points of diversion (POD) and rediversion (PORD) to the water right permits associated with the State Water Project (SWP). If approved, water right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) would be changed to authorize the use of two new intakes 2.3 miles apart from one another 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 northern Sacramento-San Joaquin Delta Estuary and convey the water through a tunnel to existing water distribution facilities in the southern Delta.

The Division of Water Rights (Division) reviewed the petition for completeness, accepted it for filing, and, on February 29, 2024, issued a public notice of the petition with a deadline of April 29, 2024, for filing protests to the petition. The Division subsequently extended the period for filing protests until May 13, 2024. The Water Code requires protestants and the petitioner to make a good faith effort to resolve protests within a 180-day protest resolution period. The protest resolution period will conclude on November 12, 2024.

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

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An evidentiary hearing will likely be necessary to resolve contested material issues of fact raised by protestants. In an abundance of caution, the State Water Board has considered an adjudicative proceeding on the subject petition to be impending commencing with the issuance of the public notice of the petition, and as such, a prohibition on ex parte communications has been in effect since February 29, 2024.

I assign the subject petition to the Administrative Hearings Office (AHO) to conduct an adjudicative hearing and prepare a draft water right order for consideration by the State Water Board pursuant to Water Code section 1112, subdivision (c)(2). The draft water right order to be prepared by the AHO shall not be a proposed order under Water Code section 1114 and shall not be deemed adopted or otherwise become a final order absent formal action by the State Water Board. Staff from the Division and the Office of Chief Counsel (OCC) will be part of the hearing team for this project and will provide expertise on matters related to, but not limited to, protest resolution, Delta flow criteria, water quality, environmental analysis, and water right petition and permitting requirements. The hearing team will prepare and issue public notice of the adjudicative hearing, conduct the hearing, and facilitate voluntary protest negotiations up until the time the hearing begins. The assigned hearing officer from the AHO, working with the Division and OCC, is authorized to issue rulings on procedural and other matters necessary to conduct the hearing and prepare a draft water right order for the State Water Board's consideration.

The Division, AHO, and OCC, will brief the Executive Office and Board Members regarding significant substantive and procedural issues that arise during the course of the hearing. The Board Members may provide direction to the hearing team concerning disposition of significant hearing issues, as appropriate. In addition, at their discretion, individual Members may attend all or part of the hearing, or otherwise monitor its progress.

cc: Erik Ekdahl, Deputy Director for Water Rights
Michael Lauffer, Chief Counsel
Diane Riddle, Assistant Deputy Director for Water Rights

Attachment 2

**NOTICE OF INTENT TO APPEAR at DELTA CONVEYANCE PROJECT
PRE-HEARING CONFERENCE**

August 13, 2024, 9:00 a.m.

_____ plans to participate in the pre-hearing conference for the public hearing on the pending petitions for change of water right Permits 16478, 16479, 16481, and 16482 filed by the Department of Water Resources (Delta Conveyance Project).

Please fill in the following information of the participant, party, attorney, or other representative:

Name (type or print):

Represented party (if applicable):

E-mail address:

Optional:

I/we decline electronic service of hearing-related materials. Please fill out this section **ONLY** if you decline electronic (e-mail) service of hearing-related materials.

Represented party (if applicable):

Mailing Address:

Telephone Number:

Attachment 3

List of Protests and Protestants

1. Armistad Ranches
2. Buena Vista Rancheria of Me-Wuk Indians
Shingle Springs Band of Miwok Indians
Winnemem Wintu Tribe
Little Manila Rising, California Indian Environmental Alliance
Restore the Delta
Golden State Salmon Association
Institute for Fisheries' Resources
Pacific Coast Federation of Fishermen's Associations
San Francisco Baykeeper
3. Byron-Bethany Irrigation District
4. California Sportfishing Protection Alliance
AquAlliance
San Joaquin Audubon Society
5. California Water Impact Network
6. Camp Lotus
Friends of the River
All-Outdoors California Whitewater Rafting
American River Touring Association
American Whitewater, California Canoe and Kayak
California Outdoors
Foothill Conservancy
Mother Lode River Center
OARS California Rafting
Restoring the Stanislaus River
Sierra Mac River Trips, South Yuba River Citizens League
Tuolumne River Trust
Upper Merced River Watershed Council
7. Central Delta Water Agency
South Delta Water Agency
Heritage Land Co., Inc.

- Rudy M. Mussi Investment L.P.
8. City of Antioch
 9. City of Sacramento
 10. City of Stockton
 11. County of Contra Costa
Contra Costa County Water Agency
 12. David J. Elliot & Sons
Stillwater Orchards
 13. Delta Legacy Communities
 14. Diablo Water District
 15. Dierdre Des Jardins
 16. East Bay Municipal Utility District
 17. East Contra Costa Irrigation District
 18. El Dorado Irrigation District
 19. Farm Bureau Delta Caucus
 20. Frank Loretz
 21. Friends of Stone Lake National Wildlife Refuge
 22. Hood Community Council
 23. Local Agencies of the North Delta
 24. Naglee Birk Irrigation District
 25. North Delta Water Agency and Reclamation Districts
 26. Pescadero Reclamation District
 27. Placer County Water Agency

28. Sacramento Area Sewer District
29. Sacramento County
30. Sacramento County Farm Bureau
31. Sacramento County Water Agency
32. San Joaquin County
33. Save the California Delta Alliance
34. Sierra Club California
 - Center for Biological Diversity
 - North Coast Rivers Alliance
 - Friends of the River
 - Planning and Conservation League
 - Save California Salmon
35. Solano County
36. Steamboat Resort
37. Wurster Ranches, LP
38. Yolo County

Attachment 4

INITIAL SERVICE LIST

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