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 (with the option to participate by Zoom)**
on **February 18, 2024**, at
Joe Serna Jr. CalEPA Building, Sierra Hearing Room,
1001 I Street, Second Floor, Sacramento, California.

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 at the hearing on February 18, 2025, and some members in excess of a quorum 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 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 (PODs) and rediversion (PORDs) 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 25, 2025**, with presentation by the Petitioner of case-in-chief testimony. The AHO will conduct a third pre-hearing conference on **December 16, 2024**.

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 (PODs) and points of rediversion (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 (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.

Proceedings by the Division of Water Rights

On February 29, 2024, the Division issued a public notice of DWR's petitions to change the SWP Permits, which provided instructions for filing a protest to the petitions. The Division received protests against DWR's petitions from the individuals and entities listed in Attachment 2 (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, which concluded on November 12, 2024.

Proceedings by the Administrative Hearings Office

Water Code section 1110 established the AHO within the State Water Board. 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, the State Water

Board's Executive Director issued a memorandum to the AHO, assigning DWR's petitions for change to the AHO to conduct an adjudicative hearing and prepare a draft water right order for the State Water Board's consideration.

The AHO held pre-hearing conferences on August 13 and October 17, 2024. This Amended Notice of Public Hearing and Procedural Ruling (Amended Hearing Notice) revises the July 31 Notice of Public Hearing based on the parties' pre-hearing conference statements and the pre-hearing conferences held on August 13 and October 17. All other procedures and information included in the July 31 Notice of Public Hearing not revised by this Amended Hearing Notice remain in effect.

Additional information about the petitions for change at issue in this proceeding and other background information are included in the July 31 Notice of Public Hearing.

Due Diligence Requirements

As described in the AHO's September 17, 2024 Notice of Pre-Hearing Conference, a water right permit issued by the State Water Board is a conditional right authorizing the permit-holder to appropriate water. A permit-holder completes the appropriation of water and perfects the conditional water right by diverting and beneficially using water in accordance with the terms and conditions of the permit and other applicable provisions of law.

A permit-holder must complete an appropriation with due diligence. To meet this requirement, water right permits generally include a deadline for beginning and completing construction work necessary to the appropriation and a deadline for diverting and applying water to beneficial use. Upon expiration of the deadline to apply water to beneficial use, the permit-holder has a right to divert and use no more than the amount of the water right perfected before the deadline. If the amount perfected before the deadline is less than the full amount authorized to be appropriated by the permit, the permittee may not divert water in excess of the perfected amount unless and until the Board approves a petition for extension of time. (See Wat. Code, §§ 1410, 1610.5, & 1611.)

SWP Permits

Term 6 of the SWP Permits set a December 31, 2000 deadline to complete construction work necessary for the appropriation, and Term 7 of the SWP Permits set a December 31, 2009 deadline to apply water to beneficial use.

In a memorandum to the Division of Water Rights dated August 21, 2024, the Petitioner submitted a "Withdrawal of Petitions for Water Rights Extension of Time." (2024-09-03 Joint Obj. to DWR Minor Change Req SJC et al. (September 3 Joint Objection), Exhibit B.) Petitioner thereby withdrew its pending petitions for an extension of time to perfect its conditional water rights under the SWP Permits.

On August 23, 2024, Petitioner submitted to the hearing officer a "Minor Change to Department of Water Resources' Petitions for Change of Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 1443, 14445A, and 17512, respectively)" (August 23 Request). The August 23 Request proposes to amend the change petitions

under Water Code section 1700.4 to modify Term 6 of the referenced permits and extend the permits' deadline for construction work from December 31, 2000, to December 31, 2055. (2024-08-22 DCP_CPOD_Minor Amendment Letter_Term_6, p.1.)

PROCEDURAL RULING

Scope of Hearing

The purpose of this hearing is to develop an evidentiary record on which the State Water Board will rely in acting on the petitions to change the SWP Permits to authorize operation of the proposed Delta Conveyance Project. This hearing will necessarily be highly complex — procedurally, factually, and legally. But the hearing is made even more complex because the time period for the Petitioner to perfect beneficial use of its water rights under the SWP Permits has expired. The Petitioner has not perfected the full amount authorized to be appropriated under the SWP Permits but filed these petitions for change without filing companion petitions to extend the time allowed to complete beneficial use. As a result, the Board must consider and act on the change petitions without knowing whether the Board will, at some future time, grant any petitions for extension of time yet to be filed by the Petitioner or whether the Board will revoke a portion of the SWP Permits.

The Petitioner requests that the Board act on its petitions for change with respect to the full-face value of the SWP Permits. Because the time to achieve beneficial use under those permits has expired, any approval of the petitions for change by the State Water Board could only allow the Petitioner to divert and redivert water through the new diversion and rediversion structures up to the perfected amount of the SWP Permits, unless and until the Board takes further action. Only if and when the State Water Board approves future-filed petitions for extension of time could the Petitioner use the diversion structures to divert and export water in excess of the perfected amount under its rights.

To 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. This alternative decision-making will complicate fact-finding and impose additional evidentiary burdens on the Petitioner and Protestants. In addition, the Board, the Petitioner, and the Protestants will likely need to address many of the same factual and legal issues in any proceeding on the anticipated future-filed petitions for extension of time.

Nonetheless, the Petitioner seeks to proceed in this manner. The Petitioner argues that consideration of an extension of the deadline for beneficial use of water under the SWP Permits in this proceeding would "sweep in broader issues unnecessary to construction and operation of the Delta Conveyance Project — resulting in needless and significant

delay." (2024-10-10 Pre-Hearing Conference Statement – DWR, p. 1.) In addition, the Petitioner asserts that the Final Environmental Impact Report (FEIR) for the Delta Conveyance Project does not address all potential environmental impacts of an approval of petitions for extension of time to divert and beneficially use water under the SWP Permits. (*Id.* at p. 4 [asserting that the Board's consideration of an extension of time "would also require additional facts to be presented, beyond what is described in the Petition and analyzed in the existing Delta Conveyance Project FEIR"]; 2024-10-17 Court Reporter's Transcript, Pre-Hearing Conference, p. 76:9-21 [**Presiding Hearing Officer Kuenzi:** "[I]t's DWR's position that the Final EIR for the Delta Conveyance Project would not cover any action by the State Board with respect to Term 7?" … **Ms. Carroll [DWR]:** "Correct." … **Presiding Hearing Officer Kuenzi:** "And that's because there would be, potentially, additional environmental impacts that would need to be assessed?" **Ms. Carroll [DWR]:** "Correct. And operations — I mean, we would have to put forth additional evidence that we're not prepared to do so for this hearing process"].)

If the Petitioner would need to prepare additional environmental documentation under CEQA and conduct other analyses the Water Code requires for the Board to act on its petitions for extension of time, incorporating those petitions into this proceeding could cause significant delay. As a result, I have the unenviable choice between delaying these proceedings for an unknown period of time or accepting the additional complexity and, in my assessment, inefficiency, of addressing the petitions for change without companion petitions for extension of time. Given these two options, the AHO will proceed with the hearing in its current scope.

The Protestants raised several arguments in their pre-hearing conference statements and during the August 13 and October 17 pre-hearing conference about the validity of the SWP Permits given the expiration of time to complete beneficial use and the absence of any pending petitions for extension of time. (See, e.g., 2024-10-10 Pre-Hearing Conference Statement – Joint Protestants, pp. 5-8; 2024-10-10 Pre-Hearing Conference Statement – DTEC et al., pp. 7-12; 2024-10-10 Pre-Hearing Conference Statement – Save the Delta Alliance and Hood Community Council, p. 1; 2024-10-10 Pre-Hearing Conference Statement – County of Sacramento et al., pp. 5-6.) This procedural ruling and the AHO's decision to proceed with this hearing is made without prejudice to the Protestants raising these and other arguments about the status of the SWP Permits, or any other legal or factual matters relevant to the hearing issues, during the hearing or in closing briefs.

Petitioner's Request to Amend its Change Petitions

I decline to include the Petitioner's request to modify Term 6 of the SWP Permits within the scope of this proceeding, and I recommend that the Division of Water Rights reject the Petitioner's August 23 Request to amend its petitions for change to include extension of the permits' deadline for construction work. The appropriate procedure to seek an extension of a construction or beneficial use deadline in an existing permit is to file a petition for time extension in accordance with Water Code section 1398 and section 844 of the State Water Board's regulations. In addition, if the State Water Board

approves the petitions for change at issue in this proceeding, the Petitioner does not need an extension of Term 6 in the SWP Permits to construct the Delta Conveyance Project and utilize the facilities to divert or redivert water up to the amount of the perfected portion of the rights.

Other Requests to Delay Hearing

Several Protestants argue that the AHO should delay this hearing until the Board has finalized its update of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan).[1] Again, the decision to proceed with this hearing is based on a balancing of factors, including efficiency, timeliness, and the development of a robust evidentiary record. The timeframe for the Board to act on the proposed updates to the Bay-Delta Plan remains uncertain. Although having a final updated regulatory framework for flow and other conditions in the Delta would likely focus the evidence the parties may present in the hearing, that information is not necessary for the Board to act on the petitions. Hearing issue 3.d. addresses what conditions, if any, the Board should impose on any approval of the petitions in anticipation of the updates to the Bay-Delta Plan. The Board also issued a draft update to the Bay-Delta Plan on October 25, 2024, which is available to the parties. Although the Board may revise the current draft, the draft includes detailed information about the proposed scope of the Board's update and the bases for the tentative conclusions in the draft. If the Board adopts updates to the Bay-Delta Plan during the pendency of this hearing, I will further consider how that final action should be incorporated into this proceeding.

Delta Tribal Environmental Coalition (DTEC) argues that the Board must wait until tribal water rights are fully adjudicated before acting on DWR's petition to change the SWP Permits. (2024-10-10 Pre-Hearing Conference Statement – DTEC et al., pp. 14.) Very few California water rights are adjudicated and adjudication is not necessary to establish threat of injury to a water right. The Board must consider in this proceeding whether the proposed changes to the SWP Permits would injure other legal users of water, including any users of water under claimed federally reserved rights. The Board will consider any evidence submitted by the Protestants about water rights that may be injured by the requested change to the SWP Permits when making findings about injury to other legal users.

DTEC also argues that the AHO should delay this hearing pending investigation and ongoing informal dispute resolution by the U.S. Environmental Protection Agency regarding a Title VI civil rights complaint filed against the State Water Board by the Shingle Springs Band of Miwok Indians, Winnemum Wintu Tribe, Little Manila Rising, Restore the Delta, and Save California Salmon. (2024-10-10 Pre-Hearing Conference

[1]See, e.g., 2024-10-10 Pre-Hearing Conference Statement – DTEC et al., p. 12-13; 2024-10-10 Pre-Hearing Conference Statement – CWIN p. 5; 2024-10-10 Pre-Hearing Conference Statement – Sierra Club et al., pp. 1-6.

Statement DETC et al., pp. 12-13.) DTEC does not explain with any specificity why the pending investigation and dispute resolution process should delay this hearing. I am not privy to the ongoing confidential dispute resolution discussions between the parties involved, and absent more information, I decline to postpone this proceeding for an indeterminate period of time so as to await the resolution of a process that may or may not affect this hearing.

Finally, California Water Impact Network (CWIN) argues that this hearing should be postponed pending the availability of additional information about project costs, benefits, and financing; completion of a Final Environmental Impact Statement (EIS); issuance of an Incidental Take Permit from California Department of Fish and Wildlife (CDFW); and consultation under the federal Endangered Species Act. (2024-10-10 Pre-Hearing Conference Statement – CWIN, p. 5.) The Board may require a petitioner to submit information to demonstrate that a proposed change to a water right permit will comply with any applicable requirements of the Fish and Game Code, including the California Endangered Species Act, and the federal Endangered Species Act (ESA), and demonstrate compliance with CEQA. (Wat. Code, § 1701.3, subd. (b)(2) & (3).) The Petitioner represented during the October 17 pre-hearing conference that it expects CDFW to issue an Incidental Take Permit for the construction and operation of the proposed Delta Conveyance Project this month (November 2024). During the August 13, 2024 pre-hearing conference, I understood the Petitioner to represent that it expects to receive a Biological Opinion for construction of the proposed project in late 2024 or early 2025 and a Programmatic Biological Opinion for operation of the project as part of a Programmatic Biological Opinion for operation of the SWP generally, during the same time frame. (2024-08-13 Court Reporter's Transcript, Pre-Hearing Conference, pp. 25:9-26:9.) As this hearing proceeds, I will consider whether and how the hearing schedule should be adapted to incorporate any additional information from the federal ESA consultation process. Similarly, although not directly addressed by the Water Code, I will consider whether and how the hearing schedule should be adapted to incorporate any Final EIS for the project issued by the United States Army Corps of Engineers. Finally, as indicated in the Request for Supplemental Information, below, the AHO expects that the Petitioner will submit additional information about the proposed project as case-in-chief evidence. The AHO may request additional information from the Petitioner after reviewing its case-in-chief evidence.

Staggered Presentation of Cases-in-Chief

In the September 17, 2024 Notice of Pre-Hearing Conference, I asked whether the hearing schedule should stagger the deadline for submission of case-in-chief exhibits and case-in-chief hearing days by the Petitioner and the Protestants, so that the Petitioner would submit and present its case-in-chief before Protestants submit and present their cases-in-chief. I have considered the parties' arguments in their pre-hearing conference statements and arguments made during the October 17 pre-hearing conference and conclude that staggering cases-in-chief for this proceeding will focus the evidence presented and, thereby, is likely to enhance the efficiency of the proceeding.

The Petitioner bears the burden of proof. By requiring the Petitioner to present its evidence first, Protestants can present a focused case-in-chief in direct response to the Petitioner's case. I am not persuaded that Protestants would derive an advantage from this approach other than to avoid the presentation of less relevant evidence in the initial phase of the hearing — which promotes the efficiency of the process for all participants. If, after the rebuttal phase of the hearing, the Petitioner believes that it has not been afforded a fair opportunity to respond to Protestants' evidence (or vice versa), I will entertain requests for surrebuttal. In my experience, the disputed issues of material fact in a hearing become focused through the phases of case-in-chief and rebuttal. At a certain point, there is minimal additional probative evidence to be presented on either side of the issues. By allowing Protestants to respond to Petitioner's case-in-chief in their cases-in-chief, instead of presenting less relevant general evidence, my intent is to reach this point more quickly.

REQUEST FOR SUPPLEMENTAL INFORMATION

Additional information about the Petitioner's diversion and beneficial use under the SWP Permits is necessary for the Board to determine the portion of the SWP Permits that the Petitioner has perfected and the portion that remains unperfected and contingent upon future-filed petitions for extension of time or other action by the Board (such as a licensing or revocation proceeding). The requested quantification is directly relevant to the Board's consideration of whether an approval of the change petitions would effectively initiate a new water right. The information is also relevant to the Board's assessment of the remaining hearing issues because the Board must decide whether to approve the change petitions both with and without approval of future-filed petitions for extension of time.

Pursuant to Water Code section 1701.3, DWR shall submit the following supplemental information to the AHO by **December 9, 2024**:[2]

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[2] The Petitioner represented during the October 17, 2024 pre-hearing conference that information about the pre-2009 maximum diversion and use of water under the SWP Permits is readily available and could be submitted to the AHO within a relatively short period of time:

> **Presiding Hearing Officer Kuenzi:** What is that number? What is the [2009] constraint number? Do you have that number?
>
> **Ms. Carroll [DWR]:** I do not have that number for you today.
>
> **Presiding Hearing Officer Kuenzi:** But it could be acquired in short order, because it's something that DWR has been aware of?
>
> **Ms. Carroll:** Yes, we would calculate based on the water use that we've reported.

(2024-10-17 Court Reporter's Transcript, Pre-Hearing Conference, pp. 93:24-94:7.)

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.

The response shall explain how the Petitioner calculated each volume and rate. If the calculation is based on information not already submitted to the State Water Board, the Petitioner shall submit any other information relied upon.

In addition to the above request for supplemental information, the AHO expects that the Petitioner will present evidence in its case-in-chief that addresses the hearing issues under, at a minimum, the following two scenarios: (A) if future-filed petitions for extension of time are approved up to the face-value of the SWP Permits; and (B) if future-filed petitions for extension of time are not approved, and diversions under the SWP Permits are limited to the perfected portion of the rights based on diversion and beneficial use achieved as of December 31, 2009. The AHO expects that the Petitioner will provide an equivalent level of information and analyses for both scenarios, including quantitative analyses of the volume and rate of water that the Petitioner expects to directly divert, store, and export from the Delta, and impacts from operation of the proposed project on flow and water quality in the Sacramento River and the Delta. The AHO may request additional supplemental information from the Petitioner during the hearing as necessary to develop a complete evidentiary record on the hearing issues for the Board's consideration and final action.

HEARING ISSUES

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:[3]

[3] Additions to the hearing issues as compared to the July 31 Hearing Notice are shown in red text.

(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?

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?

PROPOSED CONDITIONS OF APPROVAL

Each party to the proceeding shall either: (1) submit proposed conditions that would resolve any protest filed by the party to DWR's water right change petitions or that the party believes is necessary to satisfy the legal requirements for the State Water Board to approve DWR's petitions, or (2) submit a statement that no conditions would resolve the party's protest or satisfy the legal requirements for the Board to approve the petitions. **These proposed permit conditions or statement that there are no appropriate conditions of approval shall be submitted to the AHO by the deadline for submittal of case-in-chief exhibits.**

This request for proposed permit conditions or statement of no appropriate conditions of approval is a request for additional information that the Board has determined is reasonably necessary to attempt to resolve the protests to DWR's petitions for change under Water Code section 1703.5. **Failure of a party to comply with this request may result in cancellation of the party's protest by the Board under Water Code section 1703.6.**

PARTIES TO THIS PROCEEDING:

As provided in California Code of Regulations, title 23, section 648.1, subdivision (b), parties to this proceeding are the Department of Water Resources and the Protestants listed in Attachment 2 of this notice. Any party that wants to participate in the hearing must submit a Notice of Intent to Appear to the AHO by **December 9, 2024**.[4]

The hearing officer may allow a person or entity not identified as a party in this notice to participate in the hearing as a party if the person or entity timely submits a Notice of Intent to Appear and demonstrates good cause. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) Except for parties identified in this notice, a person or entity that wants to participate as a party must include an attachment to the Notice of Intent to Appear demonstrating good cause as to why the hearing officer should allow the person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement. In determining whether the person or entity has demonstrated good cause, the hearing officer will consider, among other potentially relevant factors, whether the person's or entity's legal rights, duties, privileges, or immunities may be substantially affected by the proceeding and whether the interests of justice and the orderly and prompt conduct of the proceeding may be impaired by allowing the intervention.

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

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

Board. Consistent with the separation of functions described below, the hearing team will not include any staff in the Division's Water Quality Certification Section, the Chief Deputy Director who oversees the Division of Water Rights, or staff from the Office of Chief Counsel assigned to provide legal advice to staff of the Water Quality Certification Section and the Chief Deputy Director about any application for a water quality certification submitted by DWR for the Delta Conveyance Project.

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 conferences, site visit, or hearing; however, the State Water Board will not act on DWR's petitions until after the hearing and preparation of the recommended order by the hearing officer.

PROHIBITION ON EX PARTE COMMUNICATIONS

While this proceeding is pending, ex parte communications between any party, party representative, or interested person and the hearing officer, any member of the hearing team, or any State Water Board member are prohibited. Ex parte communications include any type of communication regarding this proceeding that occurs between a party or interested person and the hearing officer, a member of the hearing team, or a State Water Board member without notice and an opportunity for all parties to participate. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) Additional information about ex parte communications is in response number 16 of the AHO's FAQ posted at bit.ly/aho-faq. (See response to FAQ 16.)

If, at any time while this proceeding is pending, any party wants to communicate with any member of the hearing team, the hearing officer, or any Board member regarding any potentially controversial procedural or substantive issue, then that party shall make such communication in writing (by e-mail or letter) and serve all other parties with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. A party may provide this 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.

If the AHO receives any substantive or potentially controversial procedural communication regarding this proceeding that is addressed to the AHO, a Board member, the hearing officer, or any other member of the hearing team, but not copied to the hearing parties, then the AHO will file a copy of the communication in the "Misc. Correspondence" folder within the State Water Board's FTP folder for this proceeding. Parties should plan to regularly check this folder for such communications.

Please do not attempt to communicate by telephone or in person with AHO staff or any hearing team member regarding this proceeding, because other parties would not be able to participate in such communications. If oral communications with any members of

the hearing team are necessary to discuss any potentially controversial procedural or substantive issue, then the AHO will 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.

SEPARATION OF FUNCTIONS

DWR has not yet filed an application for water quality certification for the Delta Conveyance Project. The Water Quality Certification Section of the Division of Water Rights will process the application, once received. The State Water Board's Executive Director will delegate to the Chief Deputy Director who oversees the Division of Water Rights the authority to act on DWR's application for water quality certification. The Water Quality Certification Section will advise the Chief Deputy Director and shall report directly to the Chief Deputy Director for this purpose. The Chief Deputy Director and staff of the Water Quality Certification Section are separated from the hearing team and are subject to the prohibition against ex parte communications about this proceeding with any member of the hearing team, the hearing officer, or State Water Board members. The separation of functions and prohibition on ex parte communications also extends to the attorneys at the Office of Chief Counsel assigned to advise the Chief Deputy Director and staff of the Water Quality Certification Section about DWR's application for a water quality certification.

PRE-HEARING CONFERENCE

The hearing officer will hold a third pre-hearing conference on **December 16, 2024, starting at 9:00 a.m.**, as indicated in the July 31 Notice of Hearing. This notice is available on the AHO webpage and includes information about how to participate in the conference. All parties intending to participate in the evidentiary portion of this hearing are strongly encouraged to participate in the pre-hearing conference.

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

1. What time limits should the hearing officer set for oral summaries of written testimony?
2. What time limits should the hearing officer set for cross-examination of witnesses?
3. Should the hearing officer and Board Members conduct a site visit, and if so, when should the site visit or visits occur? What will be the itinerary for the site visit? What procedures will apply to the site visit?
4. Are there any other procedural issues concerning the hearing that the participants would like to raise?

Parties do not need to submit pre-hearing conference statements. If any party wants to submit a pre-hearing conference statement, then the party shall submit the pre-hearing conference statement to the AHO by **December 9, 2024**, and serve copies of it on the other parties listed in the attached service list.

WRITTEN COMMENTS ON HEARING ISSUES

The AHO will accept written comments on, or requests to modify, the hearing issues identified in this notice until the deadline identified below. The purpose of these comments is to inform the hearing officer as to any changes that should be made to the hearing issues and the reason for those changes. Written comments on the hearing issues shall be no longer than 10 pages, double-spaced, in 12-point font. Following the written comment period, the hearing officer may issue a procedural ruling letter or amended hearing notice with revised hearing issues.

HEARING SCHEDULE AND DEADLINES

The January 16 and January 30, 2025 hearing dates included in the July 31, 2024 Notice of Public Hearing are hereby vacated and are replaced with the following hearing schedule and deadlines.

Deadlines / Schedule	Date and Time
Deadline for all parties to submit initial NOIs (witness lists are not required) and optional deadline for any interested person who intends to give a policy statement to submit an NOI.	**December 9, 2024**
Deadline for parties to submit optional pre-hearing conference statements.	**December 9, 2024**
Third Pre-Hearing Conference	**December 16, 2024, at 9:00 a.m.**
Deadline for Petitioner to submit case-in-chief exhibits, exhibit identification indices, and proposed permit terms.	**January 20, 2025**
Deadline for all parties to submit written comments on hearing issues.	**January 20, 2025**
Hearing begins with policy statements and consideration of remaining procedural issues.	**February 18, 2025**
Petitioner case-in-chief presentation begins.	**March 24, 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**

SUBMISSION OF DOCUMENTS TO THE AHO

All documents submitted to the AHO shall be addressed and submitted by one of the following methods:

E-mail (preferred method for documents other than exhibits):

DCP-WR-Petition@waterboards.ca.gov

By Mail:

State Water Resources Control Board
Administrative Hearings Office
P.O. Box 100
Sacramento, CA 95812-0100

Hand Delivery or Overnight Delivery:

Joe Serna Jr. CalEPA Building
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

By uploading to FTP (Preferred method for exhibits): All participants must submit exhibits by uploading them to the State Water Board's FTP site.

Please see the part of the **July 31, 2024 Hearing Notice** titled "PROCEDURES FOR THIS WATER RIGHT HEARING" for more information regarding hearing procedures, submission of documents, and proofs of service.

DOCUMENT AVAILABILITY

The AHO has moved documents maintained by the Division for DWR's petitions for the Delta Conveyance Project to a folder on the State Water Board's FTP site. The FTP folder for this proceeding may be accessed at https://ftp.waterboards.ca.gov/. Anyone may view and download documents from the FTP site. To access the FTP folder for this proceeding, please send an email to DCP-WR-Petition@waterboards.ca.gov with "Request for DCP-ftp login credentials" in the subject line.

The AHO will include background documents in the initial administrative record for this proceeding. The AHO will mark some of the documents that it files in the FTP folder for this hearing as exhibits and created an exhibit identification list for these AHO exhibits which will be available in the FTP folder for this hearing. The AHO will continue to update the AHO exhibit 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 for these proceedings on the AHO's Internet webpage at bit.ly/aho-dcp. https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

HEARING LIVE-STREAM AND RECORDING

The pre-hearing conference and hearing will be live-streamed through the AHO's YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. To view the morning session, click the link identified as "am." The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as "pm." The afternoon session will begin after the lunch break.

After the conclusion of the hearing, a recording of the morning and afternoon YouTube live-stream sessions 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 then clicking on the name of this proceeding: bit.ly/aho-youtube.

MORE INFORMATION

Frequently Asked Questions

For information about the AHO and general hearing procedures, refer to the AHO Frequently Asked Questions, available at bit.ly/aho-faq.

E-mail List

Any interested person may sign up to receive communication related to this proceeding at bit.ly/swb-subscribe by selecting “Delta Conveyance Project Public Hearing” in the Administrative Hearings Office subscription topic group.

PROCEDURES FOR THIS WATER RIGHT HEARING

Detailed information on hearing procedures can be found in the July 31, 2024 Notice of Public Hearing.



Date: November 18, 2024

Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

Attachments:

- Attachment 1 - Notice of Intent to Appear (Blank Form)
- Attachment 2 - List of Protests and Protestants
- Attachment 3 - Service List

ATTACHMENT 1

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding the Department of Water Resources' petitions for change of water right Permits 16478, 16479, 16481, and 16482.

1. **Check only <u>one</u> of the following boxes:**

☐ **Option 1:** I/we intend to present a policy statement only and, therefore, <u>not</u> to participate as a party in this hearing.

☐ **Option 2:** I/we intend to participate as a party in this hearing by presenting any of the following: an opening statement, case-in-chief or rebuttal testimony, cross-examination, or a closing brief.

2. **Reason for Requesting Party Status.** If you are not identified as a party in the Hearing Notice, describe why you should be allowed to participate as a party:

_____

_____

_____

_____

_____

_____

3. **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.

   Mailing Address (only required if opting out of electronic service):

Signature: _____

Date:_____

ATTACHMENT 2

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, and San Francisco Baykeeper
3. Byron Bethany Irrigation District
4. California Sportfishing Alliance, AquAlliance, and 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, and Upper Merced River Watershed Council
7. Central Delta Water Agency, South Delta Water Agency, Heritage Land Co., Inc, and Rudy M. Mussi Investment LP
8. City of Antioch
9. City of Sacramento
10. City of Stockton
11. County of Contra Costa and 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. Environmental Council of Sacramento and Habitat 2020
20. Farm Bureau Delta Caucus
21. Frank Loretz
22. Friends of Stone Lakes National Wildlife Refuge
23. Hood Community Council
24. Local Agencies of the North Delta
25. Naglee Birk Irrigation District
26. North Delta Water Agency and Reclamation Districts
27. Pescadero Reclamation District
28. Placer County Water Agency
29. Sacramento Area Sewer District
30. County of Sacramento
31. Sacramento County Farm Bureau
32. Sacramento County Water Agency
33. San Joaquin County
34. Save our Sandhill Cranes
35. Save the California Delta Alliance
36. Sierra Club California, Center for Biological Diversity, Friends of the River, Planning and Conservation League, Save California Salmon, and North Coast Rivers Alliance
37. Solano County
38. Steamboat Resort
39. Wurster Ranches, LP
40. County of Yolo

ATTACHMENT 3

SERVICE LIST

Ann Carroll
Collin Chandler
Stefanie Morris
Department of Water Resources
Ann.Carroll@water.ca.gov
Collin.Chandler@water.ca.gov
smorris@calnevawaterlaw.com

Russell van Loben Sels
Amistad Ranches
revanlobensels@gmail.com

Michael E. Vergara
Louinda V. Lacey
Alyson E. Ackerman
Ellen M. Moskal
Jennifer Estabrook
Gloria Loomis
Yolanda De La Cruz
Pennie MacPherson
Somach Simmons & Dunn
mvergara@somachlaw.com
llacey@somachlaw.com
aackerman@somachlaw.com
emoskal@somachlaw.com
jestabrook@somachlaw.com
gloomis@somachlaw.com
ydelacruz@somachlaw.com
pmacpherson@somachlaw.com
Attorneys for Byron-Bethany Irrigation District

Chris Shutes
California Sportfishing Protection Alliance (CSPA)
blancapaloma@msn.com

Barbara Vlamis
AquAlliance
barbarav@aqualliance.net

Michael Jackson
mjatty@sbcglobal.net
Attorney for CSPA and AquAlliance

David Fries
San Joaquin Audubon Society
dfries.audubon@gmail.com

Roger B. Moore
LAW OFFICE OF ROGER B. MOORE
rbm@landwater.com
Attorney for California Water Impact Network

Adam Keats
LAW OFFICE OF ADAM KEATS, PC
adam@keatslaw.org
Attorney for California Water Impact Network

S. Dean Ruiz
John Herrick
Dante J. Nomellini, Sr.
Dante J. Nomellini, Jr.
Mohan, Harris, Ruiz LLP
dean@mohanlaw.net
dean@sdeltawater.net
john@sdeltawater.net
ngmplcs@pacbell.net
dantejr@pacbell.net
brettgbaker@gmail.com
Attorneys for Central Delta Water Agency, South Delta Water Agency, Heritage Land Co., and Rudy Mussi Investment L.P.

Matthew Emerick
Law Offices of Matthew Emerick
matthew@mlelaw.com

Wes Miliband
Miliband Water Law
wes.miliband@mwaterlaw.com
Attorney for City of Sacramento

Kelley M. Taber
Louinda V. Lacey
Ellen M. Moskal
Gloria Loomis
Crystal Rivera
Pennie MacPherson
Somach Simmons & Dunn
ktaber@somachlaw.com
llacey@somachlaw.com
emoskal@somachlaw.com
gloomis@somachlaw.com
crivera@somachlaw.com
pmacpherson@somachlaw.com
Attorneys for the City of Stockton

Osha Meserve
Soluri Meserve, A Law Corporation
osha@semlawyers.com
legal@semlawyers.com
Attorney for County of Contra Costa, Contra Costa County Water Agency, David J. Elliot & Sons/Stillwater Orchards, Frank Loretz, Friends of Stone Lakes National Wildlife Refuge, Local Agencies of the North Delta, County of San Joaquin, and County of Solano

Protestant County of San Joaquin
Kirnpreet Kaur Virk
Deputy County Counsel
Office of the County Counsel
County of San Joaquin
kvirk@sjgov.org

Thomas H. Keeling
Freeman Firm
tkeeling@freemanfirm.com
Attorney for San Joaquin County

Jennifer Spaletta
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jennifer.spaletta@stoel.com

Protestant County of Contra Costa and the Contra Costa County Water Agency
Contra Costa County
Contra Costa County Water Agency
c/o Ryan Hernandez
Department of Conservation and Development
Ryan.Hernandez@dcd.cccounty.us

Thomas L. Geiger, County Counsel
Stephen M. Siptroth, Assistant County Counsel
Contra Costa County Counsel's Office
Stephen.Siptroth@cc.cccounty.us

Protestant County of Solano
Bernadette Curry, County Counsel
Holly E. Tokar, Deputy County Counsel
Solano County
BSCurry@SolanoCounty.com
HETokar@SolanoCounty.com

Dan Whaley
Delta Legacy Communities Inc.
Whaley500@yahoo.com

Dan Muelrath
Diablo Water District
dmuelrath@diablowater.org

Deirdre Des Jardins
ddj@cah2oresearch.com

Jon Salmon
East Bay Municipal Utility District
Jon.salmon@ebmud.com

Robert E. Donlan
Ellison, Schneider, Harris & Donlan LLP
red@eslawfirm.com
kwb@eslawfirm.com
Attorney for East Contra Costa Irrigation District

Brian Poulsen
Rachel Sarge
El Dorado Irrigation District
bpoulsen@eid.org
rsarge@eid.org

Amber McDowell
Farm Bureau Delta Caucus
Sacramento County Farm Bureau
executivedirector@sacfarmbureau.org

Michael A. Brodsky
Law Offices of Michael A. Brodsky
michael@brodskylaw.net
Attorney for Hood Community Council and Save the California Delta Alliance

Alexis K. Stevens
Ellen M. Moskal
Crystal Rivera
Pennie MacPherson
Somach Simmons & Dunn
astevens@somachlaw.com
emoskal@somachlaw.com
crivera@somachlaw.com
pmacpherson@somachlaw.com
Attorneys for Naglee Burk Irrigation District and Pescadero Reclamation District No. 2058

Kevin O'Brien
Brian Hamilton
Austin Cho
Downey Brand LLP
bhamilton@downeybrand.com
acho@downeybrand.com
dfillon@downeybrand.com
kobrien@downeybrand.com
Attorneys for North Delta Water Agency and associated Reclamation Districts

Kelley M. Taber
Louinda V. Lacey
Gloria Loomis
Crystal Rivera
Pennie MacPherson
Somach Simmons & Dunn, PC
ktaber@somachlaw.com
llacey@somachlaw.com
gloomis@somachlaw.com
crivera@somachlaw.com
pmacpherson@somachlaw.com
Attorneys for Sacramento Area Sewer District, Sacramento County, and Sacramento County Water Agency

E. Robert Wright
Erin Woolley
Sierra Club California
bwrightatty@gmail.com
erin.woolley@sierraclub.org

John Buse
Center for Biological Diversity
jbuse@biologicaldiversity.org

Jann Dorman
Keiko Mertz
Gary Bobker
Friends of the River
janndorman@friendsoftheriver.org
keiko@friendsoftheriver.org
gbobker@friendsoftheriver.org

Howard Penn
Planning and Conservation League
howard@pcl.org

Regina Chichizola
Save California Salmon
regina@californiasalmon.org

Emily Pappalardo
DCC Engineering Co., Inc
Epappalardo@dcceng.net
Representative for Steamboat Resort

Philip J. Pogledich
County of Yolo
Philip.pogledich@yolocounty.org

Eric Buescher
Christie Ralston
San Francisco Baykeeper
eric@baykeeper.org
christie@baykeeper.org

Stephanie Safdi
Terra Baer
Naji Thompson
Stephanie Prufer
Thomas Peterson
Environmental Justice Law and Advocacy Clinic, Yale Law School
stephanie.safdi@ylsclinics.org
terra.baer@ylsclinics.org
naji.thompson@ylsclinics.org
stephanie.prufer@ylsclinics.org
thomas.peterson@ylsclinics.org

Charles Center
Camp Lotus
charlesmcenter@gmail.com

Scott Armstrong
All-Outdoors California Whitewater Rafting
scott@aorafting.com

Isaac Ingram
American River Touring Association
isaac@arta.org

Theresa Lorejo-Simsiman
American Whitewater
theresa@americanwhitewater.org

Keith Miller
California Canoe and Kayak
cckjefe@gmail.com

Nathan Rangel
California Outdoors
nathanjrangel@gmail.com

Brian Jobson
Foothill Conservancy
jobsonbrian@hotmail.com

Scott Underwood
Mother Lode River Center
scott@malode.com

Clavey Wendt
OARS California Rafting (OARS)
claveywendt@gmail.com

Kevin Wolf
Restoring the Stanislaus River
kevinjwolf@gmail.com

Dan Kelly
Elise M. Nelson
Placer County Water Agency
dkelly@pcwa.net
enelson@pcwa.net

Marty McDonnell
Sierra Mac River Trips
marty@sierramac.com

Aaron Zettler-Mann
South Yuba River Citizens League (SYRCL)
aaron@yubariver.org

Patrick Koepele
Tuolumne River Trust
patrick@tuolumne.org

Stephen Smallcombe
Upper Merced River Watershed Council
kristinarylands@gmail.com

Sean Wirth
ECOS/Habitat 2020
office@ecosacramento.net

Barbara Barrigan-Parrilla
Cintia Cortez
Restore the Delta
barbara@restorethedelta.org
cintia@restorethedelta.org

Sherri Norris
California Indian Environmental Alliance
sherri@cieaweb.org

Rebecca L. Harms
San Luis & Delta-Mendota Water Authority
Rebecca.Harms@sldmwa.org

Glen Spain
Pacific Coast Federation of Fishermen's Associations (PCFFA) and Institute for Fisheries Resources (IFR)
fish1ifr@aol.com

Adam Nickels
Lisa Holm
Ray Sahlberg
Anna Brathwaite
Amy Aufdemberge
Kate Laubach
United States Department of Interior
Bureau of Reclamation
anickels@usbr.gov
lholm@usbr.gov
rsahlberg@usbr.gov
anna.brathwaite@sol.doi.gov
Amy.Aufdemberge@sol.doi.gov
Katharine.Laubach@usdoj.gov

Mike Savino
Save our Sandhill Cranes
yogoombah@yahoo.com

INITIAL SERVICE LIST (CONT'D)

Interested Persons

Scott Slater
Elisabeth Esposito
Benjamin Markham
Mary Loum
Brownstein Hyatt Farber Schreck, LLP
sslater@bhfs.com
eesposito@bhfs.com
bmarkham@bhfs.com
mloum@bhfs.com
Attorneys for Westlands Water District

Allison Febbo
Westlands Water District
afebbo@wwd.ca.gov

Adam Nickels
Ray Sahlberg
United States Department of Interior
Bureau of Reclamation
anickels@usbr.gov
rsahlberg@usbr.gov

Yvonne Perkins
Tribal Historic Preservation Officer
YD0122202005
Yocha Dehe Wintun Nation
THPO@yochadehe.gov

Miles Krieger
Best Best & Krieger
Miles.Krieger@bbklaw.com
heather.mccoy@bbklaw.com
Attorney for State Water Contractors

Janet Lake
Freeport Citizens Community (FCC)
rivercitybrand@gmail.com