

**Joint Request for Stay of Proceedings
Petitions for Change of Water Right Permits 16478, 16479, 16481, and 16482
(Applications 5630, 14443, 14445A, and 17512, respectively)**

January 29, 2026

State Water Resources Control Board
Administrative Hearings Office
DCP-WR-Petition@Waterboards.ca.gov

**RE: Joint Request for Stay of Hearing Due to DWR's Belated Motion to
Disqualify Somach, Simmons & Dunn**

Dear Presiding Hearing Officer Kuenzi:

The undersigned protestants (Joining Protestants) join in the stay motion filed on January 28, 2026, by Somach, Simmons & Dunn (SSD), counsel to protestants County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, City of Stockton, Byron-Bethany Irrigation District, Naglee-Burk Irrigation District, and Pescadero Reclamation District 2058 (SSD Motion to Stay Hearing).

BACKGROUND UNDERLYING THIS JOINDER

The severe disruption which prompted the stay motion is entirely of the Department of Water Resources' (DWR) making. As explained in the Administrative Hearing Officer's (AHO's) May 2, 2025 Procedural Ruling on Alleged Conflict of Interest and Conditional Waiver (Conflict Ruling), DWR had notice of attorney Casey Shorrock's participation in this Change in Point of Diversion (CPOD) proceeding no later than August 5, 2024, when SSD filed three notices of intent to appear identifying Ms. Shorrock as one of the SSD attorneys who would be participating in this proceeding. Thereafter, Ms. Shorrock was included in the service list used by all parties, including DWR.

Not until April 2025, after Ms. Shorrock had cross-examined a panel of DWR witnesses, did DWR assert, without citing any evidence, that SSD has a conflict because of Ms. Shorrock's participation in this proceeding. On May 2, 2025, the AHO issued its Conflict Ruling, stating:

. . . **I . . . conclude that DWR will have waived its right to object in any forum to SSD's participation in this proceeding, if DWR elects not to file a motion or other statement of intent to seek some remedy before this hearing reconvenes.** DWR has been at least constructively on notice of Ms. Shorrock's intended participation in this proceeding on behalf of protesting parties since August 5, 2024. . . . DWR has been on actual notice of her participation since April 9 [2025], when Ms. Shorrock conducted cross-examination, and has to date declined to file any motion either with the AHO or, to my knowledge, any court, seeking to disqualify SSD from participation in this proceeding.

(Conflict Ruling at p. 3, emphasis added.)

With respect to maintaining the integrity of the Hearing, the AHO further explained:

. . . DWR must choose between a temporary delay of the substantive portion of this hearing while it pursues a remedy or waive its right to do so. **Given the substantial number of parties and the complexity of this hearing process, I cannot permit DWR to defer any objection that it may have to SSD's participation until after the AHO has conducted additional hearing days. Such a future objection would threaten to nullify significant resources invested by the many parties and the State Water Board in this highly complex hearing and further disrupt the orderly hearing process. In addition, and without any intent to impugn the professionalism of DWR's management or legal team, allowing DWR to maintain an inchoate right to object to the validity of the hearing and its outcome would invite future gamesmanship. The appropriate time for DWR to file a motion for disqualification, if it elects to do so, is now, before the hearing reconvenes.**

(*Id.*, emphasis added.)

Notwithstanding the AHO's Ruling, not until January 23, 2026, long after waiving its right to object to SSD's participation in the Hearing, did DWR move to disqualify SSD from representing its clients in three of the 10 consolidated Sacramento County Superior Court cases challenging the DCP approvals.¹ Knowing that the AHO had set February 20, 2025 as the date for the commencement of DWR's rebuttal testimony, DWR nonetheless scheduled the hearing on its Disqualification Motion for that same day.

WHY A STAY IS NEEDED TO PROTECT JOINING PROTESTANTS' INTERESTS

DWR's attempt to disqualify SSD in the related state court cases threatens to unduly prejudice the Joining Protestants' rights and interests not only in the court cases but in this proceeding as well.

The Joining Protestants are among the many parties which have fully complied with requests from both the AHO in this Hearing and the trial judge in the related state court cases to coordinate efforts wherever possible to avoid duplication, inefficiencies, and delay. In this proceeding, those efforts have included joint witness preparation and

¹ Notably, DWR did nothing regarding the alleged conflict in any other proceeding during the time period from April 2025 to January 2026. These proceedings included DCP matters before the Delta Stewardship Council, in the Superior Court of the County of Sacramento, as well as the Third District Court of Appeal where SSD continued to represent the same/similar Delta parties as in the CPOD Hearing.

presentation,² jointly prepared examinations and cross-examinations, joint strategy sessions, and sharing of information and research under the protection of the common interest doctrine, among other things. In the court cases, the Joining Protestants' coordination with SSD has included joint briefing (at both the trial and appellate levels), joint strategy sessions, joint in-court presentations, and extensive and necessary sharing of information, legal theory, and research, again under the protection of the common interest doctrine.

Moreover, the Joining Protestants share a common interest with the SSD clients in protecting the Delta, other impacted regions, and ratepayers and resources throughout the state from the harms posed by the DCP, the latest in DWR's long line of isolated conveyance schemes. That common interest lies at the heart of the parties' coordinated efforts in multiple overlapping proceedings, including among others this Hearing, the Sacramento County Superior Court cases in which DWR seeks to disqualify SSD, the pending consistency appeals before the Delta Stewardship Council, and DWR's Validation actions relating to Delta conveyance bond financing. As the moving parties have noted, the Third District Court of Appeal recently rejected DWR's claimed authority to issue and pledge revenue for Delta conveyance revenue bonds, and DWR's sequel validation action has been stayed following that decision. (See SSD Motion to Stay Hearing, p. 8, fn. 3, and Exhs. E, H and I.)

Given the Joining Protestants' shared objectives with respect to protection of the Delta, their extensive sharing of information, legal theories, and strategic and tactical thinking under the common interest doctrine, not to mention their joint briefing and witness preparation and examination, the chaos and prejudice posed by DWR's belated Disqualification Motion at this stage is immense. For example, SSD and some of the Joining Protestants have been working in coordination to prepare for cross-examination of DWR's Rebuttal witnesses and in coordination with respect to Protestants' Rebuttal witnesses (e.g., Dr. Susan Paulsen, Dr. Jeff Michael, Dr. Gary Ivey, and Gilbert Cosio).

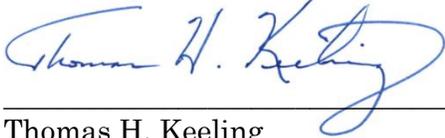
Although DWR's belated motion was filed in Sacramento County Superior Court, and DWR waived its objections for this proceeding, there is no way that this Hearing will not be profoundly affected by the pending motion. While the Joining Protestants believe DWR's belatedly asserted conflict of interest motion is tactically-motivated and spurious, it creates unacceptable uncertainty going forward in both venues, as well as in the pending appeals before the Delta Stewardship Council. If DWR were to succeed, which is doubtful, that would necessitate very substantial delays in all of these proceedings because SSD could potentially be required to withdraw as counsel, among other reasons. The prejudice to resource-challenged public entities and non-governmental organizations of proceeding with the Hearing under these circumstances is self-evident and substantial.

² Some Joining Protestants have jointly presented case in chief witnesses, including: Dr. Susan Paulsen (DPWA-2), Dr. Jeff Michael (SOL-1), Dr. Gary Ivey (FSL-21), and Gilbert Cosio (LAND-1).

CONCLUSION

DWR's decision to waive its objection and proceed with the change petition hearing on May 5, 2025, should have been the end of the matter, but that turns out not to be the case. Thus, for the foregoing reasons, the Joining Protestants join in SSD's request for a stay and in SSD's rationale underlying that request. Continuing in this proceeding under the shadow of uncertainty cast by DWR's belated effort to disqualify SSD is not practical and would seriously and unfairly prejudice the Joining Protestants. Equally important, doing so would threaten the integrity of this Hearing, which the AHO has diligently worked to protect.

Respectfully submitted,

<p>County of Contra Costa and Contra Costa County Water Agency County of Solano Local Agencies of the North Delta Frank Loretz, David J. Elliot & Sons/Stillwater Orchards, and Wurster Ranches, LP, Friends of Stone Lakes National Wildlife Refuge</p>  <hr/> <p>Osha R. Meserve</p>	<p>County of San Joaquin</p>  <hr/> <p>Thomas H. Keeling</p>
<p>North Delta Water Agency, Reclamation District 999, Reclamation District 2060, and Reclamation District 2068</p>  <hr/> <p>Austin C. Cho</p>	<p>California Water Impact Network</p>  <hr/> <p>Roger Moore</p>
<p>South Delta Water Agency, Central Delta Water Agency, Heritage Land Co., and Rudy Mussi Investments L.P.</p>  <hr/> <p>Dean Ruiz</p>	