

State Water Resources Control Board

August 29, 2025

Re: Procedural Ruling on Cross-Examination (Hearing on Proposed Delta Conveyance Project)

TO ALL PARTIES:

This procedural ruling addresses South Delta Water Agency's (SDWA) intent to cross-examine Dr. Susan Paulsen. Dr. Paulsen is testifying on behalf of the Delta Public Water Agencies. The interests of SDWA and the Delta Public Water Agencies are generally aligned in this proceeding. These parties oppose approval of DWR's petitions to change water right Permits 16478, 16479, 16481, and 16482, to add new points of diversion and rediversion. Absent a showing by SDWA that its interests respecting Dr. Paulsen's testimony are adverse to the interests of the Delta Public Water Agencies, such that there is a disputed issue of material fact relevant to this proceeding, I will not allow SDWA to cross-examine Dr. Paulsen. Similarly, I will not allow SDWA or any other protestant to cross-examine the witness of another protestant (or the petitioner and aligned parties to cross-examine one another's witnesses) absent a showing of adversity.

Although the State Water Resources Control Board (State Water Board or Board) and the Administrative Hearings Office (AHO) may have allowed so-called "friendly" cross-examination on occasion in past proceedings, the practice is inconsistent with the Board's policy against surprise testimony or evidence. This policy is one of the primary principles that govern water right hearings before the Board and the AHO. "It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits." (Cal. Code Regs., tit. 23, § 648.4, subd. (a).) To avoid surprise, the Board and the AHO generally require that testimony be submitted in writing in advance of the hearing, as was required in this proceeding. Cross-examination of "friendly" witnesses avoids the requirement that testimony be submitted in writing in advance and allows introduction of surprise testimony, and therefore should not be

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

permitted. The practice also unnecessarily expends hearing time to elicit testimony that, in most instances, could have been submitted in advance.

If there is a legitimate point of adversity raised by a witness's testimony that is relevant to the issues in the hearing, then cross-examination by the adverse party is likely appropriate, even if the party sponsoring the witness and the party who seeks to conduct cross-examination are aligned with respect to other issues. I will consider requests by protestants to cross-examine other protestants' witnesses on a case-by-case basis, and will require a showing of a disputed issue of material fact. The same rule shall apply to the petitioner and aligned parties with respect to cross-examination of their witnesses.

Sincerely,

A handwritten signature in blue ink that reads "Nicole Kuenzi". The signature is written in a cursive, flowing style.

Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

Attachments:

- Attachment 1 – Service List

**ATTACHMENT 1
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