



State Water Resources Control Board

June 05, 2026

Re: Procedural Ruling on Motion to Quash, in the Hearing on the Petitions to Change Water Right Permits 16478, 16479, 16481, and 16482 of the Department of Water Resources for the proposed Delta Conveyance Project (DCP)

To All Parties,

On April 30, 2026, Local Agencies of the North Delta (LAND) filed subpoenas duces tecum seeking testimony and documents from Brianne Sakata, a senior environmental scientist with the Department of Water Resources (DWR), and the person most knowledgeable at DWR, regarding proposed control measures for golden mussel that DWR may use for the DCP, the potential for the DCP to enhance conditions for golden mussel, and means to control the spread of golden mussel into other water conveyance systems. (See 2026-05-15 Exhibit A to Motion to Quash.)

On May 15, 2026, DWR filed a motion to quash the subpoenas and for issuance of a protective order by the AHO. DWR asserts that the request for production of witnesses and documents is unreasonable or oppressive, seeks evidence outside the scope of rebuttal, and appears to be an improper attempt “to do pre-discovery for an entirely separate proceeding.” (2026-05-15 DWR Mtn to Quash LAND Subpoena, p. 1.) On May 19, 2026, LAND filed an opposition to DWR’s motion to quash. (2026-05-19 LAND Oppn. to Motion to Quash.)

Discussion

Government Code section 11450.30, subdivision (a), provides that a person served with a subpoena or subpoena duces tecum in an adjudicative proceeding “may object to its terms by a motion for a protective order, including a motion to quash.” Subdivision (b) of this section provides that the presiding officer shall resolve the objection “on terms and conditions the presiding officer declares. The presiding officer may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.”

DWR objects that the evidence sought to be produced by the subpoenas is not properly within the scope of rebuttal in this proceeding because DWR did not raise the issue of golden mussel impacts in its case-in-chief. LAND asserts in response that the information it seeks is intended to address statements made by DWR’s witness, Molly White, during cross-examination on May 28, 2025.

As noted by LAND, the Ninth Amended Hearing Notice states that “[r]ebuttal evidence may respond to matters raised during cross-examination of a case-in-chief witness even if the matter was not raised in written case-in-chief testimony.” (December 4, 2025, Ninth Amended Hearing Notice and Procedural Ruling, p. 3.) However, the testimony of Ms. White about golden mussel, which was specifically elicited by LAND’s counsel, is very limited and does not appear to address any disputed issue of material fact subject to rebuttal. Ms. White’s testimony, reproduced in Attachment 1, states little more than her lack of knowledge in response to the questions posed by Ms. Meserve. (See Attachment 1.) Because DWR did not offer any other evidence about golden mussel in its case-in-chief, there is no other evidence to which LAND may properly submit rebuttal evidence on the topic.

Furthermore, the deadline for submission of Protestants’ rebuttal exhibits was April 30, 2026. Even if the Protestants obtained documentary evidence properly within the scope of rebuttal, the submittal of that evidence would at this point in the proceeding be untimely. If LAND intended to pursue additional evidence for purposes of rebuttal, it

should have issued the subpoenas well before the April 30 deadline – and could have done so at any time over the past year after Ms. White’s cross-examination on May 28, 2025.

Because the subpoenas seek the production of evidence that is not properly within the scope of rebuttal in this proceeding and, additionally, could not be timely submitted into the evidentiary record, the subpoenas are hereby quashed as improper and unreasonable in the circumstances.

Sincerely,

A handwritten signature in black 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 – Excerpt, Reporter’s Transcript, May 28, 2026, pp. 58–60
- Attachment 2 – Service List

ATTACHMENT 1
EXCERPT, REPORTER'S TRANSCRIPT, MAY 28, 2026, pp. 58-60

58

1 describe operation of the DCP if the existing conveyance
2 system became obsolete or was not used anymore?

3 MS. MORRIS: Same objection as to definition of
4 obsolete and existing water system.

5 MS. MESERVE: Existing conveyance system is the
6 three Delta system whereby water flows to get to the South
7 Delta pumps that DWR currently operates.

8 MS. MORRIS: But above we described obsolete in
9 Ms. Meserve's opinion as no longer operating the South
10 Delta pumps.

11 MS. MESERVE: Using my definition, yes, I would
12 like an answer to the question: if any materials have been
13 submitted to your knowledge, Ms. White, with DWR's Change
14 Petition that describe what the operation of the DCP would
15 be in that scenario?

16 MS. WHITE: I'm not aware of that -- of those.

17 MS. MESERVE: Thank you.

18 I wanted to ask a couple of questions about the
19 golden mussel invasive species issue. Are you aware, Ms.
20 White, of the recent reporting in the news regarding
21 invasive golden mussels being found in the Delta?

22 MS. WHITE: Yes. I am.

23 MS. MESERVE: And have you tracked and do you
24 know where within the State Water Project that the golden
25 mussel has been observed thus far?

1 MS. WHITE: I'm aware that they have been
2 observed within the State Water Project south of the Delta,
3 but I don't have the exact locations readily available.

4 MS. MESERVE: And in your capacity as an
5 operator, can you tell us what the operational responses
6 could be for operation of the Proposed DCP intakes if the
7 golden mussel was to become attached to those intakes in
8 the North Delta?

9 MS. WHITE: We have a team of people at DWR that
10 are looking at and that are addressing the golden mussel
11 within the State Water Project system. I myself cannot
12 speak to what could or would be done based upon your
13 question with the mussel being in Delta Conveyance.

14 MS. WHITE: And do you know whether the golden
15 mussel has been identified in the Harvey Banks Pumping
16 Plant facilities or in that vicinity yet?

17 MS. MESERVE: As I mentioned, I know they've been
18 found south of in our system. I don't know exactly where.

19 MS. WHITE: And isn't the problem -- a problem
20 with the golden mussel that the species tend to aggregate
21 on screens of water intakes?

22 That's what I understand, but I'm not a golden
23 mussel expert. But that's what I understand.

24 MS. MESERVE: And just in general, if the
25 mussels -- if something like a golden mussel was to

1 aggregate on a screen, how does that interfere with the
2 screen's operation?

3 MS. WHITE: Again, I am -- I don't -- I can't
4 speak to what the maintenance requirements would be should
5 there be golden mussels in the Delta Conveyance facility.

6 MS. MESERVE: With the fact that the golden
7 mussel was apparently discovered recently, do you know of
8 any design modifications that DWR may be considering to
9 attempt to avoid interference with operation of the new DCP
10 intakes that are proposed?

11 MS. WHITE: I'm not aware of what is being done,
12 again, about the golden mussel with respect to the Delta
13 Conveyance facility.

14 MS. MESERVE: And would it be the same answer
15 with respect to the operation of the Harvey Banks Pumping
16 Plant?

17 MS. WHITE: Correct.

18 MS. MESERVE: And you may have gotten a question
19 about this, but I wanted to ask about the operations and
20 lifespan of the Proposed DCP.

21 Do you know what the planned life of the DCP
22 intakes would be, meaning how long those facilities could
23 operate -- would be designed to operate?

24 MS. WHITE: I'm not familiar with the design and
25 lifespan of the intakes.

ATTACHMENT 2
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