

## CALIFORNIA WATERFIX PETITION NOTICED BY STATE WATER BOARD

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The State Water Board has been asked to approve a water right change petition to allow the construction of the California WaterFix Project. The California WaterFix Project includes water conveyance facilities consisting of three new water diversion intakes along the Sacramento River between Clarksburg and Courtland and two 30-mile-long, 40-foot-diameter tunnels to convey water to the Projects' existing pumping facilities near Tracy. Water would be diverted from the Sacramento River through three fish-screened intakes, each with a capacity of 3,000 cubic feet per second (cfs). Each intake would be between approximately 1,400 to 1,670 feet in length along the east bank of the Sacramento River, depending on location, and would consist of a reinforced concrete structure subdivided into individual bays that would be isolated and managed separately. The water would travel by gravity to the south Delta where the water will be conveyed to a new separate north cell of a redesigned Clifton Court Forebay.

As part of the California WaterFix Project, DWR plans to dredge, expand and bifurcate its existing Clifton Court Forebay in order to isolate water flowing from the new north Delta facilities from water entering Clifton Court Forebay from the existing south Delta diversion facilities. Clifton Court Forebay will be connected to Jones Pumping Plant to provide water to the CVP. The California WaterFix Project would provide for the continued use of the existing SWP and CVP south Delta export facilities as well as the new diversion facilities. The diversions at the proposed north Delta intakes would be greatest in wetter years and lowest in drier years, when south Delta diversions would provide the majority of the CVP and SWP south-of-Delta exports. On average, approximately half of the combined diversion would occur at the proposed north Delta intakes while the other half would occur at the existing south Delta facilities. The new water conveyance facilities would become part of the SWP and would be operated in coordination with Reclamation and its operation of the CVP.

For the State Water Board to approve a water right change petition, the petitioner must (1) establish that the proposed change will neither in effect initiate a new right nor injure any other legal user of the water; (2) provide information concerning the extent to which fish and wildlife will be affected by the change; and (3) identify proposed measures to protect fish and wildlife from any unreasonable impacts of the change. The petitioner also must demonstrate that the proposed change will comply with any applicable requirements of the Fish and Game Code, including CESA, and the federal ESA, and demonstrate compliance with CEQA.

The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) also imposes requirements on the processing of a water right change petition for the California WaterFix Project. Specifically, the Delta Reform Act prohibits construction of any diversion or conveyance facility to begin until the State Water Board has approved a change in the POD of the SWP and CVP from the southern Delta to a point on the Sacramento River. In addition, the Delta Reform Act requires that any State Water Board order approving the change in POD must include "appropriate Delta flow criteria." Those flow criteria must be informed by flow criteria to protect the Delta ecosystem, which the State Water Board was required to develop in 2010, although the flow criteria are not to be considered pre-decisional with respect to any subsequent State Water Board consideration of a permit.

State Water Board staff will begin the hearing process for the California WaterFix Project before the final CEQA document is completed. During the first part of the hearing, State Water Board staff will offer the draft CEQA document and associated comments on that

document into the record as an exhibit by reference. The State Water Board staff will not begin the second part of the hearing on until the ESA, CESA and CEQA processes are complete. If there are any issues that arise out of the ESA and CESA processes that have a material bearing on the issues addressed in the first part of the hearing, those issues also may be revisited in the second part of the hearing. The State Water Board's order on the petition will be based upon evidence in the record developed at the hearing.

Issues that will be considered at the hearing include:

1. Will the proposed changes initiate a new water right?
2. Will the proposed changes cause injury to any municipal, industrial or agricultural uses of water, including associated legal users of water?
3. Will the changes proposed in the Petition unreasonably affect fish and wildlife or recreational uses of water, or other public trust resources, including changes in points of diversion that may alter water flows and/or water quality?
4. Are the proposed changes in the public interest and are any specific conditions necessary to ensure that the changes are in the public interest?
5. Should the Final Environmental Impact Report be entered into the administrative record for the Petition?

A Pre-hearing Conference will commence on Thursday, January 28, 2016 at 9:00 a.m. and continue, if necessary, on Friday, January 29, 2016 at Joe Serna Jr.-Cal EPA Building, Byron Sher Auditorium 1001 I Street, Second Floor, Sacramento. The Part I Hearing will commence on Thursday, April 7, 2016 at 9:00 a.m. The Part II Hearing will commence following completion of environmental and endangered species act compliance for the project with dates to be noticed in the future.

Separate from the petition, the State Water Board is processing an application for water quality certification pursuant to Clean Water Act section 401 for the California WaterFix Project. In addition, the State Water Board is developing updates to the Bay-Delta Plan and will subsequently be making changes to water rights and other measures to implement those updates. The State Water Board also completed a report on the Delta flow criteria that will inform the California WaterFix Project.

In July 2015, DWR and Reclamation released a RDEIR/SDEIS pursuant to CEQA and NEPA that analyzed the California WaterFix portion of the former BDCP. CEQA requires the State Water Board, as a responsible agency with jurisdiction over the water rights and water quality in the Bay-Delta, to consider the environmental effects of the project identified in the Final EIR certified by the lead agency prior to reaching a decision on whether and under what conditions to approve a project. Water right permits issued by the State Water Board specify a development schedule to complete construction and beneficial use of water. When a permit development schedule has elapsed, no further development of water use may occur. The permittee is limited to the maximum annual quantity put to use during the permit development schedule unless the permittee is granted an extension of time to extend the development schedule. Reclamation's time to complete construction for the subject permits elapsed on a range of dates from December 1, 1964 through December 1, 1985. Reclamation's time to complete beneficial use of water for its subject permits elapsed on December 1, 1990. On September 19, 1985, Reclamation filed a petition for an extension of time to the year 2030. On June 26, 2009, Reclamation filed a petition to extend the development schedule until December 1, 2030, for the subject 11 permits and 21 other Reclamation permits. The June 26, 2009 petition superseded the September 19, 1985 petition. The State Water Board noticed all 32 Reclamation petitions on September 3, 2009, and received 17 protests, of which 11 were accepted, in whole or in part, as valid protests. The protests have not been resolved and the petitions requesting time extensions are still pending.

Petition protests must be submitted to both the State Water Board and both of the petitioners, and must be received no later than 12:00 noon on Tuesday, January 5, 2016. The petition and other material related to this project can be found on the State Water Board, Division of Water Rights' website at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/).

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