

CALIFORNIA WATERFIX WATER RIGHT CHANGE PETITION STATUS UPDATE

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Highlights:

- The California WaterFix is part of the Governor's Water Action Plan, which seeks, among other goals, to bring reliability and restoration to California's water supply systems.
- On January 28, 2016, the State Water Resources Control Board (State Water Board) held a pre-hearing conference for the Department of Water Resources' and U.S. Bureau of Reclamation's water right change petition to change their water rights as part of the California WaterFix Project.
- On February 11, 2016, the State Water Board issued its pre-hearing conference ruling, which modified and delayed the hearing schedule by splitting Phase 1 into two parts. During Part 1A, the State Water Board will hear the policy statements and petitioners' cases in chief for the water right change petition to allow construction of the California WaterFix project. During Part 1B, the State Water Board will hear from the other non-petitioner parties participating in Phase 1.
- On March 4, 2016, the State Water Board issued another ruling, further delaying the hearing schedule. Part 1A is now set to commence on May 5, 2016, and Part 1B will begin on June 15, 2016.
- Any parties who previously stated that they would participate in Phase 2 only, but who now wish to participate in Phase 1, were required to submit a revised notice of intent no later than 12:00 noon on Wednesday, March 16, 2016.

California WaterFix Change Petition Status Update:

As discussed in our blog post from January 4, 2016, [here](#), the State Water Resources Control Board has been asked to approve a water right change petition to allow the construction of the California WaterFix Project. The California WaterFix is part of the Governor's Water Action Plan, which seeks, among other goals, to bring reliability and restoration to California's water supply systems. In order to do so, the State Water Board will hold a hearing to receive evidence relevant to determining whether it should approve the petition.

The State Water Board staff began the hearing process by holding a pre-hearing conference on January 28, 2016. The purpose of that hearing was procedural in nature, and covered: (1) the timing of the hearing relative to other regulatory processes; and (2) hearing logistics, including the order of proceeding and time limits for direct testimony and cross-examination.

The State Water Board issued its ruling on the pre-hearing conference on February 11, 2016. That ruling modified the hearing schedule by splitting Phase 1 into two parts, Part 1A and Part 1B. During Part 1A, the State Water Board will hear the policy statements and the petitioners' cases in chief. During Part 1B, all other parties participating in Phase 1 will present their cases in chief. The ruling also modified the hearing schedule.

The State Water Board explained that this approach gives the petitioners the opportunity to fully explain their proposed project and also gives the other hearing parties the "ability to better evaluate how their interests may be affected before they begin their cases." Further, if

the petitioners fail to adequately describe their project, the State Water Board has the opportunity to make course corrections. The State Water Board noted that it is in the public interest to resolve without further delay whether and how the WaterFix will be part of the solution to longstanding concerns and problems in the Bay-Delta.

March 4, 2016 Ruling

On March 4, 2016, the State Water Board issued a second ruling that further delayed the Phase 1 hearings. Petitioners' written testimony and exhibits are now due March 30, 2016, and Part 1A of the hearing is scheduled to begin on May 5, 2016. The new deadline for written testimony and exhibits for Part 1B is June 15, 2016, and Part 1B of the hearing is scheduled to begin on July 26, 2016. The ruling also stated that any parties who previously stated that they would participate in Phase 2 only, but who now propose to participate in Phase 1, were required to submit a revised notice of intent no later than 12:00 noon on Wednesday, March 16, 2016.

Both the State Water Contractors (SWC) and the Coalition for a Sustainable Delta (Coalition) objected to this staggered schedule, arguing that this approach is prejudicial to petitioners because the other parties will have additional time to review the petitioners' evidence before preparing their own cases. However, as both SWC and the Coalition acknowledged, the State Water Board has discretion in structuring hearings. The State Water Board maintains that the staggered approach is fair and likely to result in a more efficient hearing. Further, petitioners bear the burden of establishing that the changes proposed in their petition will not injure other legal users of water, so it is not unfair that they must present their cases in chief first. Finally, the approach will allow the parties in Part 1B to present more focused cases in chief and to rely less heavily on the rebuttal phase of the hearing.

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/.