

AGENDA ITEM 7: California WaterFix Permitting

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Requested Action: Receive report on California Water Fix permitting and next steps

Background: California WaterFix is the current iteration of the Governor’s Delta tunnel proposal: isolated conveyance twin tunnels with 9,000 cfs capacity, to be permitted under consultation with State and federal wildlife agencies and their respective endangered species acts. The comment period on the California WaterFix revised environmental documents ended October 30, 2015; the Commission submitted a comment letter under the Executive Director’s signature, as authorized by the Commission at its July 16 meeting. The Commission also submitted letters to the U.S. Army Corps of Engineers on the required Corps permit – the first asking for an extension of the comment period deadline and public meetings in the Delta, and the most recent providing comment on the permit application.

The U.S. Army Corps of Engineers permit (covering both Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act) is one of several permitting processes that California WaterFix must complete, as outlined in the “What Happens Next” brochure provided in the November 2015 Commission meeting packet. In addition, the State Water Resources Control Board must approve both a water quality certification under Section 401 of the Clean Water Act and a change in point of diversion for the State Water Project and Central Valley Project water permits. These permit processes offer opportunity for public comment; the State Water Resources Control Board has already established a hearing schedule beginning on April 7, 2016.

These permitting processes are proceeding on an aggressive schedule. To allow both the Commission and interested Delta citizens to understand these processes, this panel is intended to present information about the different permit processes. The following are questions the Commission might be interested in asking about the actions of the U.S. Army Corps of Engineers and the State Water Resources Control Board:

USACE (Corps)

- What are the Corps' criteria to determine that a project and operations are sufficiently described in order to deem a Section 404 permit complete?
- What is the estimated timeline for the Corps’ decision on DWR's Section 404 permit?
- Are there any other environmental documents or permits (i.e. RDEIR/SDEIS or Section 408) that must be completed/approved before the Corps can issue a Section 404 permit?
- What are the next steps for the Corps’ decision on the Section 404 permit?

- How is the Corps addressing public comments submitted on the Section 404 permit?
- How does the Corps determine terms and conditions for a project permit that is still only at a “conceptual” level of engineering design (such as California WaterFix) and therefore likely to be changed in terms of both design, location, and operations?
- What is the Corps' rationale for accepting a single Section 404 permit for California WaterFix rather than breaking the proposal into three or more Section 404 permits as described in the RDEIR/SDEIS Appendix E “Supplemental Information for USACE Permitting Requirements”?
- How does the Corps inform the public about terms and conditions it is considering adding to its permits prior to issuance? Does the Corps allow the public to comment on the proposed terms and conditions?
- How can the public track the status of the Corps' review?
- What is U.S. EPA's authority to override Corps' approval of the Section 404 permit mentioned in RDEIR/SDEIS Appendix E? How frequently is this authority exercised by U.S. EPA?

SWRCB (Board)

- What are the Board's criteria to determine that a project and operations are sufficiently described in order to accept a Section 401 permit from applicant? Similarly, what are the Board's criteria to determine that a water rights petition is complete and accepted for review?
- What is the Board's process to allow the public to comment on the Section 401 permit? What is the timeline and process for approving the Section 401 permit?
- Are there any other environmental documents or permits (ie: RDEIR/SDEIS, water rights change petition, Section 404 and Section 408 permits) that must be approved before the Board can issue a Section 401 permit?
- How can the public track the status of the Board's review and selection of permit terms and conditions for the Section 401 permit?
- How does the Board inform the public about terms and conditions it is considering adding to the Section 401 permit prior to issuance? Does the Board allow the public to comment on the proposed terms and conditions?

Kenneth Bogdan is Senior Staff Counsel with the California Department of Water Resources. He is the lead attorney for DWR on the California WaterFix Project. Prior to DWR, Mr. Bogdan served as Senior Staff Counsel at the State Water Resources Control Board for two years and Environmental Counsel at ICF International (Jones & Stokes Associates) for 23 years.

Diane Riddle is Environmental Program Manager of the Bay-Delta and Hearings section for the State Water Resources Control Board, Division of Water Rights. Ms. Riddle is responsible for overseeing the State Water Board's processing of the water right change petition for the California WaterFix Project, as well as other Bay-Delta and hearing matters at the State Water Board.

Zachary Simmons is Senior Regulatory Project Manager with the U.S. Army Corps of Engineers, California South Branch. Mr. Simmons works on Clean Water Act and Section 404 permitting and has nine years of experience permitting major residential subdivisions as well as transportation and infrastructure projects. His experience includes conducting and managing NEPA compliance, federal consultation for the Endangered Species and National Historic Preservation Acts, and reviewing and verifying wetlands delineations within the Central Valley. He has also worked on special-status species surveys, biological assessments, and storm water monitoring.