

**CALIFORNIA WATERFIX
WATER RIGHT CHANGE PETITION, HEARING
AND CLEAN WATER ACT (CWA) SECTION 401
WATER QUALITY CERTIFICATION**



CALIFORNIA

Water Boards

STATE WATER RESOURCES CONTROL BOARD

REGIONAL WATER QUALITY CONTROL BOARDS

**DELTA PROTECTION COMMISSION MEETING
JANUARY 21, 2016**

Prohibition Against Ex Parte Communication

- For a pending evidentiary hearing:
 - Board and hearing team staff are subject to prohibition against Ex Parte or “off-the-record” communications to ensure a fair process
 - Inquiries regarding non-substantive and non-controversial procedural issues are allowed
 - Information on substantive and controversial procedural matters must be addressed through the hearing process

www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf

Water Right Change Petition

- **August 26, 2015:** Department of Water Resources (DWR) and U.S. Bureau of Reclamation (USBR) filed Change Petition
 - 4 DWR and 11 USBR water right permits
 - Requests 3 new points of water diversion/ rediversion on the Sacramento River
- **September 16** Addendum and Errata
 - Corrected errors/provided additional information

Processing the Change Petition

- To approve, Petitioner must:
 - Demonstrate change will not initiate a new water right or injure any legal user of water
 - Provide information on fish & wildlife effects and identify proposed measures to protect against unreasonable impacts
 - Comply with federal and state endangered species act (ESA) requirement and the California Environmental Quality (CEQA)

Additional Delta Reform Act Requirements

- Prohibits any construction until the State Water Board approves petition
- Requires that any approval include “appropriate Delta flow criteria”
 - Flow Criteria for WaterFix must be informed by the Delta Flow Criteria the State Water Board was required to develop in 2010

Public Notice of Water Right Petition, Hearing, Pre-Hearing Conference

- **October 30 Notice**
 - Protests: opportunity to protest but protests will be dismissed if no hearing participation
 - Hearing: Receive evidence to determine whether Board should approve petition subject to terms and conditions
 - Pre-Hearing Conference: only for parties to the hearing to organize the conduct of the hearing and discuss procedural matters

Protests

- Protest may be based on allegation that the proposed change would:
 - cause injury to a legal user of water
 - have an adverse environmental impact
 - not best conserve the public interest or public trust uses
 - be contrary to law
 - not be within the Board's jurisdiction

Hearing Participants

- Interested Persons:
 - Non-evidentiary policy statements
- Hearing Parties:
 - Direct presentation of evidence and/or
 - Cross examination and rebuttal
- Pre-Hearing Conference:
 - January 15 letter on procedural issues for discussion at conference, with additional input by January 22

Hearing Parts

- Part I:
 - Injury to other legal users of water
 - Conditions placed on any approval
- Part II:
 - Effects on fish & wildlife and recreational uses, public interest considerations
 - Conditions placed on any approval, including “Appropriate Delta Flow Criteria”
 - Consideration of admission of final CEQA document in record

Hearing Schedule

- **January 5:** Protests and Notices of Intent to Appear at hearing for Parts I & II due
- **January 28, 29, February 1:** Pre-Hearing Conference
- **March 1:** Deadline for receipt of testimony and exhibits for Part I
- **April 7:** Start of Part I of the hearing
- **TBA:** Deadlines and Start for Part II
 - Part II will not start until the CEQA and ESA/CESA processes are complete

Application for CWA 401 Water Quality Certification

- **September 24 Application from DWR:**
 - Construction involves discharge into waters of U.S. requiring CWA section 404 from U.S. Army Corps of Engineers
 - CWA 401 requires applicant for federal license/permit that may result in discharge to obtain certification from state that discharge will comply with applicable water quality standards
 - State Water Board responsible for WaterFix certification

Notice of CWA 401 Application

- **October 30** Notice of 401 Application:
 - Provides opportunity to comment (no specified time limit for comments)
 - State Water Board Executive Director intends to act on application no sooner than late 2016 and after CEQA/ESA compliance complete
 - Petition hearing information will inform the consideration of the 401 decision along with other information unless process modified

For Additional Information

- **Web:** www.waterboards.ca.gov/waterrights/
- **Email:** CWFhearing@waterboards.ca.gov
- **Phone:** 916-319-0960
- **Email List:** www.waterboards.ca.gov/resources/email_subscriptions/
- **Webcasts:** www.calepa.ca.gov/broadcast/

The background features several thick, light blue wavy lines that flow across the slide, creating a sense of movement and depth. The lines are layered, with some appearing in front of others, and they curve and undulate across the lower half of the page.

Questions?

Additional Slides



DWR & USBR WaterFix Permits

Petitioner	App No.	Permit No.	Source(s)	Direct Diversion Amount (cfs)	Direct Diversion Season	Diversion to Storage Amount (TAF)	Diversion to Storage Season	Combination Export Amounts (cfs)	Complete Use Date	Petition Request to Add:
DWR	5630	16478	Feather R.	1,400	Year-Round	380	9/1 - 7/31	10,350	12/31/09	PORD
DWR	14443	16479	Feather R.	1,360	Year-Round	3,500	9/1 - 7/31	10,350	12/31/09	PORD
			Delta Channels	6,185	Year-Round	42.1	Year-Round			POD
DWR	14445A	16481	Old River & Delta Channels	2,115	Year-Round	44.0	Year-Round	10,350	12/31/09	POD
DWR	17512	16482	Old River, Delta Channels, & San Luis Cr.	--	--	1,100	Year-Round	10,350	12/31/09	POD
USBR	5626	12721	Sacramento R.	8,000	9/1 - 6/30	3,190	10/1 - 6/30	--	12/1/90	POD and PORD
USBR	9363	12722	Sacramento R.	1,000	Year-Round	310	10/1 - 6/30	--	12/1/90	POD and PORD
USBR	9364	12723	Sacramento R.	9,000	Year-Round	1,303	10/1 - 7/1	--	12/1/90	POD and PORD
USBR	13370	11315	American R.	8,000	11/1 - 8/1	1,000	11/1 - 7/1	--	12/1/90	PORD
USBR	13371	11316	American R.	700	11/1 - 8/1	300	11/1 - 7/1	--	12/1/90	PORD
USBR	5628	11967	Trinity R.	2,500	Year-Round	1,540	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
USBR	15374	11968	Trinity R.	300	Year-Round	200	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
USBR	15375	11969	Trinity R.	1,700	Year-Round	1,800	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
USBR	16767	11971	Trinity R.	--	--	700	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
USBR	17374	11973	Trinity R.	1,500	Year-Round	--	--	3,200 cfs / 2,500 TAF	12/1/90	PORD
USBR	17376	12364	Clear Cr.	3,600	11/1 - 4/1	250	11/1 - 4/1	--	12/1/90	PORD

California WaterFix Delta Overview

Map 5 of 5 from the Petition Notice



Distribution of Petition and Hearing Notice

- 2,500 emailed to Board Distribution Lists
 - WaterFix, Bay-Delta, Petitions, Hearings, 401 Cert
- 1,083 mailed to Delta diverters (2,725 rights/claims)
- 214 mailed to standard petition mailing list
- 24 mailed to land owners at proposed PODs/PORDs
- >20 notices placed in newspapers in counties within which SWP/CVP operate