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12/8/2024

State Water Resources Control Board

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MAR 05 2024

**NOTICE OF PETITION
REQUESTING CHANGES IN WATER RIGHTS OF
THE DEPARTMENT OF WATER RESOURCES
FOR THE DELTA CONVEYANCE PROJECT**

Clerk/Board of Supervisors

Notice is hereby given that on February 22, 2024¹, the State Water Resources Control Board (State Water Board or Board) received a Petition for Change from the Department of Water Resources (DWR) to add two new points of diversion (POD) and rediversion (PORD) to the water right permits associated with the State Water Project (SWP). Specifically, the petition seeks to change Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively).² The proposed new PODs/PORDs would consist of screened intakes 2.3 miles apart located on the lower Sacramento River between Freeport and Sutter Slough. The proposed new intakes are part of the Delta Conveyance Project, which would allow DWR to divert water from the northern Sacramento-San Joaquin Delta Estuary (Delta) and convey the water through a tunnel to existing water distribution facilities in the southern Delta.³

The petition does not request any other changes to the permits. DWR proposes to leave the existing places of use, manner of use, other existing PODs and PORDs,

¹ The submittal was followed by a revision on February 27, 2024, that made minor corrections to certain technical details.

² As required by the State Water Board's regulations, DWR filed a separate petition for each permit. (See Cal. Code Regs., tit. 23, § 1064, subd. (a)(1).) The petitions will be processed together, and for ease of reference they will be referred to as a single petition.

³ The counties in which DWR operates the SWP that could be affected by the petition are: Alameda, Butte, Colusa, Contra Costa, Glenn, Imperial, Kern, Kings, Los Angeles, Napa, Orange, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Stanislaus, Shasta, Sutter, Tulare, Ventura, Yolo, and Yuba. The stream systems that could be affected by the petition are streams within the Sacramento/San Joaquin River Delta Watershed, including the Feather River downstream of Oroville Dam, the Sacramento River at and downstream of the new PODs, the legal Delta, and other streams that may convey water using the new facilities.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

quantities and rates of diversion, and other water rights terms and conditions unchanged.

This petition is available on DWR's website at:

https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/Revised_DCP_CPOD_Petition_Package_2024.pdf

This notice and other materials related to this proceeding can be found at the State Water Board's Delta Conveyance Project website at:

https://waterboards.ca.gov/bay_delta/delta_conveyance.html

Background

The SWP is one of the state's two largest inter-basin water storage and delivery systems. It includes Oroville Reservoir, the Harvey O. Banks Pumping Plant in the southern Delta, Clifton Court Forebay, Bethany Reservoir, the California Aqueduct, and San Luis Reservoir, as well as a series of reservoirs in southern California where water is stored after it has been diverted from the southern Delta. Water stored in Oroville Reservoir is used to meet local Feather River contractor demands, SWP export demands, and for hydropower production, subject to federal Endangered Species Act and California Endangered Species Act requirements and water right requirements, including requirements to meet specified water quality and flow objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). The SWP presently pumps both natural and abandoned flows and water released from storage in Oroville Reservoir into Clifton Court Forebay at the Harvey O. Banks Pumping Plant. Water is then lifted 244 feet into the 444-mile California Aqueduct and delivered for immediate use or stored in San Luis Reservoir or other reservoirs south of the Delta for later use. Existing SWP export facilities are also used by the U.S. Bureau of Reclamation to convey Central Valley Project water and by other water diverters for water transfers.

Project Description

The Delta Conveyance Project consists of the construction, operation, and maintenance of new SWP water diversion and conveyance facilities on the Sacramento River and in the Delta that would be operated in coordination with the existing SWP facilities. The proposed new PODs include two new intakes located along the eastern bank of the Sacramento River between Freeport and the confluence of the Sacramento River with Sutter Slough, each with a maximum capacity of 3,000 cubic feet per second (cfs) (up to a combined maximum rate of 6,000 cfs). DWR states the intakes would be 1,574 and 1,528 feet in length along the riverbank, respectively, and would include cylindrical tee fish screens, intake structures, sedimentation basins, sediment drying lagoons, flow control structures, intake outlet channel and intake outlet shafts, embankments, and

other appurtenant structures. The proposed new water conveyance facilities would divert water through fish screens and convey the water via a single tunnel directly to a new pumping plant and aqueduct complex between Byron Highway and Mountain House Road near Mountain House in the south Delta, discharging the water to the Bethany Reservoir near the beginning of the California Aqueduct.

DWR is the lead agency for the project under the California Environmental Quality Act, and the U.S. Army Corps of Engineers (USACE) is the action agency for the project under the National Environmental Policy Act. In July 2022, DWR released a Draft Environmental Impact Report (Draft EIR) for the project and USACE released a Draft Environmental Impact Statement in December 2022. DWR released the Final EIR on December 8, 2023, and certified it on December 21, 2023. The proposed project is identified as Alternative 5 in the Final EIR.

Prohibition on Ex Parte Communications

The State Water Board anticipates that it will be necessary to conduct an adjudicative proceeding for the petition in accordance with chapter 4.5 of the California Administrative Procedure Act (Gov. Code, § 11400 et seq.). In an abundance of caution, the Board assumed an adjudicative proceeding to be impending upon the filing of DWR's petition, which means ex parte communications are prohibited at this time.

What are Ex Parte Communications?

Ex parte communications are any type of communication regarding a substantive or controversial procedural issue in a proceeding from any interested person or entity (including the petitioner) to the presiding officer or a State Water Board member without notice and an opportunity for all parties to participate. The prohibition promotes fairness and protects the interests of all parties to the water rights proceeding by ensuring parties only communicate to the presiding officer or Board members about issues in the proceeding (1) in a duly noticed meeting, or (2) in an appropriate written communication copied to the other parties. In both instances, other parties have an opportunity to hear or to read the communication and respond appropriately.

To avoid indirect ex parte communications, which are also prohibited, the Board's practice is to extend the prohibition against ex parte communications to Board management and staff. (Gov. Code, §§ 11430.10-11430.80.)

How to Avoid Ex Parte Violations

Please do not attempt to communicate by telephone or in person with any Board member or Board staff regarding this petition because other parties will not be able to participate. If any party wishes to communicate with Board staff at any time regarding any issue related to this project's petition, including non-controversial procedural matters, protest procedures, or filing of documents, please communicate by email to

DCP-WR-Petition@waterboards.ca.gov. To facilitate distribution and public access to substantive and potentially controversial communications, said communications and related documentation will be made available without restriction via the State Water Board's File Transfer Protocol (FTP) site (see instructions to request access to the FTP site below). Once it has been developed, the Board will provide interested persons access to a service list for this proceeding, and interested persons will be required to copy the service list on future communications to the Board concerning any substantive or controversial procedural issues in the proceeding.

A document regarding ex parte communications entitled "Ex Parte Questions and Answers" is available on the State Water Board's website at:

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

Access to Petition Documents

The petition, attachments, and related information are available on the State Water Board's FTP site. To request access to the FTP site, please email DCP-WR-Petition@waterboards.ca.gov with "Request for DCP FTP access" in the subject line. The petition documents are also available on the DWR Delta Conveyance Project Change in Point of Diversion webpage at:

<https://www.deltaconveyanceproject.com/planning-processes/change-in-point-of-diversion>

Protesting the Petition

If you wish to protest the petition, you must submit a protest in writing in accordance with Water Code section 1703.2. Protests must be submitted via email, regular mail, or hand-delivered to either the email address or physical address provided at the end of this notice. A copy of the protest must also be sent to the DWR representative listed at the end of this notice. A form on which to submit a protest may be obtained from the Board's Division of Water Rights website at:

http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_protest.pdf

Petition protests must be received by the State Water Board or postmarked **on or before April 29, 2024**, with a copy provided to DWR.

If a protest is based on injury to a legal user of water, the protest must describe specifically what injury would result if the proposed changes requested in the petition were approved. In addition, the party claiming injury must provide specific information describing the basis of their water right or other legal use, the quantity of water used, the location of their POD, the purpose of use, and the place of use.

If the protest is based on an allegation that the proposed changes would not be within the State Water Board's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation. Protests should identify any conditions of approval or other grounds for settlement which, if agreed upon, would result in withdrawal of the protest.

If sufficient information is not submitted, the State Water Board may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest. A protest may not be accepted if it fails to substantially comply with the requirements of California Code of Regulations, title 23, section 745, fails to state a valid ground of protest, or is based upon issues which are not within the jurisdiction of the State Water Board.

Procedure for Submitting Protests

If a protest is not submitted on a standard protest form, the protest should, at a minimum, contain the following information (Wat. Code, § 1703.2):

- Name and address of the protestant;
- Signature of the protestant or a designated representative;
- Clear and specific objections to approval of the petition, and the bases for the objections, as described above; and,
- Indication of the manner in which the protestant served upon the petitioner a duplicate copy of the protest.

Resolution of Protests

The petitioner is required to provide an answer to a protest within 15 days following notification of acceptance of the protest unless additional time is allowed by the State Water Board. (Cal. Code Regs., tit. 23, §§ 751, 796.)

The protestant and the petitioner are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period. For good cause, additional time for protest resolution may be allowed. (Wat. Code, § 1703.4.)

Language Access Services

The State Water Board provides interpretation and translation services in any language at no cost to you. If you or someone you know need these services, please complete the Language Access Form by accessing this link:

https://forms.office.com/pages/responsepage.aspx?id=JWoY_kI95kGZQQXSKB02weK0qg8yprhDkaNWK3voyE5UM0dPUTEyRk03QIBBTFg1VUo3MjIUUTgwNC4u

Contact Information

Protests must be received by the State Water Board on or before April 29, 2024.

All electronic correspondence and filings related to this notice should be addressed to DCP-WR-Petition@waterboards.ca.gov. Written correspondence and filing should be addressed to:

Attn: Delta Conveyance Project Change Petition Staff
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA, 95812-2000

Protests must be submitted via email, submitted via regular mail, or hand delivered. A copy of the protest must also be sent to the DWR contact below.

All electronic correspondence directed to DWR should be addressed to David.Steffenson@water.ca.gov. Hard-copy correspondence should be addressed to:

California Department of Water Resources
c/o David J. Steffenson
P.O. Box 899
Sacramento, CA 95812-0899

If you would like to receive updates regarding this proceeding, please sign-up for the Board's email subscription list for the project by accessing this link:

https://public.govdelivery.com/accounts/CAWRCB/subscriber/new?qsp=ca_swrCb

After creating an account, expand the "Water Rights" category under Subscription Topics, then check the "Delta Conveyance Project" box, and click "Submit" at the bottom of the webpage. You will receive an automated email confirming your subscription.

Date of Notice: February 29, 2024