

**State Water Resources Control Board**

**NOTICE OF PETITION  
REQUESTING CHANGES IN WATER RIGHTS OF  
THE DEPARTMENT OF WATER RESOURCES AND U.S. BUREAU OF RECLAMATION  
FOR THE CALIFORNIA WATERFIX PROJECT<sup>1</sup>**

**AND**

**NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE  
TO CONSIDER THE ABOVE 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.-CalEPA Building, Byron Sher Auditorium  
1001 I Street, Second Floor, Sacramento, CA**

**PART I  
of this Hearing will commence on  
Thursday, April 7, 2016 at 9:00 a.m.  
at  
Joe Serna Jr.-CalEPA Building, Byron Sher Auditorium  
1001 I Street, Second Floor, Sacramento, CA  
and continue, as necessary, as indicated  
on the dates and at the locations shown on Enclosure A**

**PART II  
of this Hearing will commence following completion of environmental and  
endangered species act compliance for the project  
with dates to be noticed in the future**

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<sup>1</sup> The counties that could be affected by the Petition are: Alameda, Butte, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Ventura, Yolo, and Yuba. These are the counties in which the Department of Water Resources and U.S. Bureau of Reclamation operate the State Water Project and federal Central Valley Project, respectively. The stream systems that could be affected by the Petition are Sacramento River upstream of the Sacramento-San Joaquin Delta and downstream of Shasta Dam, Trinity River downstream of Lewiston Dam, Clear Creek downstream of Whiskeytown Dam, Feather River downstream of Oroville Dam, American River downstream of Folsom Dam, Old River tributary to San Joaquin River, and Sacramento-San Joaquin Delta Channels tributary to Suisun Bay. Stream systems that are not affected by SWP and CVP operations under the California WaterFix would not be affected by this Petition. These are the sources of water for the subject permits.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

## **NOTICE OF PETITION, PRE-HEARING CONFERENCE, AND EVIDENTIARY HEARING**

The State Water Resources Control Board (State Water Board or Board) hereby issues a combined notice of: (1) the California Department of Water Resources' (DWR) and the U.S. Bureau of Reclamation's (Reclamation) joint petition (hereinafter "Petition") to add three new points of diversion (POD) and/or points of rediversion (PORD) of water<sup>2</sup> to specified water right permits for the State Water Project (SWP) and the Central Valley Project (CVP) associated with the California WaterFix Project<sup>3</sup>; and (2) an evidentiary hearing to consider the Petition. The State Water Board will also hold a pre-hearing conference to organize the conduct of the hearing. The pre-hearing conference is scheduled for January 28, 2016 and, if necessary, January 29, 2016.

The purpose of this hearing is to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, the aforementioned Petition. The hearing would also inform the consideration of an application for a water quality certification pursuant to Clean Water Act (CWA) section 401 for the California WaterFix Project. The first part of the evidentiary hearing is planned to commence on Thursday, April 7, 2016, and continue, if necessary, on the dates provided in Enclosure A of this notice. The due dates for notices of intent to appear (NOI) for Part I and Part II of the hearing and the due dates for submittals associated with Part I of the hearing are identified later in this notice. Dates for Part II of the evidentiary hearing, including submittal due dates, will be noticed in the future. Board staff proposes that Part II of the hearing commence after the environmental and endangered species act compliance processes are completed, as described further below. A quorum of the State Water Board members may be present during the hearing and pre-hearing conference; however, no final State Water Board action will be taken during the hearing or pre-hearing conference.

### **HEARING TO BE CONDUCTED IN PARTS**

State Water Board staff proposes that the hearing be conducted in two parts in order to allow the hearing to proceed while the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) processes and the compliance process for the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) are being completed for the California WaterFix Project. The first part of the hearing would focus on the potential effects of the Petition on agricultural, municipal and industrial uses of water and associated legal users of water and conditions that should be placed on any approval of the Petition to protect those uses. The second part of the hearing would focus on the potential effects of the Petition on fish and wildlife and recreational uses and conditions that should be placed on any approval of the Petition to protect those uses, including consideration of appropriate Delta flow criteria for the California WaterFix Project. Detailed key hearing issues are provided below.

The second part of the hearing is proposed to begin at least 30 days after the CEQA, ESA, and CESA processes have been completed such that the associated documents for these processes can be included as exhibits in the hearing record. The current schedule for completion of those processes is discussed below. In the second part of the hearing, it is also planned that the State Water Board will consider accepting into the record the final CEQA document for the project. To the extent that any substantial changes to the final CEQA document relative to the revised draft document have a material bearing on the issues

<sup>2</sup> The three proposed intakes are labeled as CWF Intakes 2, 3 and 5 on Map 5 of 5 in Attachment B of this notice.

<sup>3</sup> Specifically, Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) of the California Department of Water Resources for the State Water Project; and Water Right Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722, and 12723 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 17376, 5626, 9363, and 9364, respectively) of the U.S. Bureau of Reclamation for the Central Valley Project.

considered in the first part of the hearing, those issues may be revisited during the second part of the hearing. **Persons wishing to participate in either part of the hearing must file an NOI pursuant to the requirements of this notice. Only those persons filing an NOI will receive the supplemental hearing notice for Part II of this hearing.** Persons wishing to limit their participation to Parts I or II of the hearing should mark the NOI accordingly. Persons wishing to participate in the hearing **do not** need to submit a protest against the Petition.

## **SUBJECT OF THE PETITION**

Pursuant to California Water Code section 1701, DWR and Reclamation filed the subject Petition on August 26, 2015, and an addendum and errata to the Petition on September 16, 2015. DWR and Reclamation seek to modify their respective subject permits by adding three new PODs and/or PORDs<sup>4</sup> that would authorize the diversion of water using three proposed new intakes on the Sacramento River, described further below. No other changes have been requested in the Petition. The Petition states that the proposed changes will leave intact all existing places of use, manner of use, other existing points of diversion, quantities of diversion and other water rights terms and conditions.

This notice, 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/).

## **BACKGROUND**

### **Introduction**

The planning process related to the California WaterFix began in 2006 and has been ongoing since that time. Initially, the proposed project was identified as the Bay Delta Conservation Plan (BDCP) and was envisioned as a water conveyance and habitat conservation project intended to obtain federal ESA and CESA permits under a federal Habitat Conservation Plan and state Natural Communities Conservation Plan, respectively, for certain operations of the CVP and SWP. Under BDCP, DWR was the lead CEQA agency for the project and Reclamation, U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) were co-lead agencies pursuant to NEPA. In December 2013, DWR, Reclamation, USFWS, and NMFS released a Draft Environmental Impact Report/Draft Environmental Impact Statement for the BDCP pursuant to CEQA and NEPA.

In April of 2015, DWR and Reclamation announced plans to no longer pursue the BDCP, and to pursue instead two separate efforts for water conveyance facilities and habitat restoration. The water conveyance effort is now the California WaterFix Project, which consists of the new water conveyance facilities discussed above, operational elements, and habitat restoration and other environmental commitments to mitigate construction and operation-related impacts of the new conveyance. DWR continues to be the CEQA lead agency and Reclamation is now the sole NEPA lead agency for the California WaterFix Project. The habitat restoration effort that goes beyond the mitigation measures identified for the California WaterFix Project is referred to as California EcoRestore. California EcoRestore is a separate effort, is not part of the Petition, and is not discussed further in this notice. In July 2015, DWR and Reclamation released a Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) that analyzes the California WaterFix portion of the former BDCP.

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<sup>4</sup> A POD is the location where water from a water source is initially taken under control by the water right holder and may include water directly diverted, diverted to storage, or diverted to offstream storage. A PORD is a point, other than the initial point of diversion, where controlled water released from a water source is re-diverted at a point downstream of the initial POD.

DWR and Reclamation anticipate completion of the final EIR/EIS for the project by May or June of 2016.

As a requirement of Section 7 of the ESA, prior to making a final decision on the California WaterFix Project, the federal agencies approving the project (Reclamation and the U.S. Army Corps of Engineers (USACE)) must, in consultation with the USFWS and NMFS, ensure that the proposed action does not jeopardize the continued existence of a listed species or adversely modify or destroy critical habitat. The ESA Section 7 process for the California WaterFix Project involves the preparation of a biological assessment that Reclamation is expected to submit to USFWS and NMFS in November 2015. According to DWR, it is expected that USFWS and NMFS will issue the associated biological opinion within the April to June 2016 timeframe, prior to Reclamation's and USACE's final decisions on the project. In order to comply with CESA, DWR is seeking an incidental take permit from the California Department of Fish and Wildlife (DFW) pursuant to Section 2081(b) of the California Fish and Game Code. DWR expects to submit an application for an incidental take permit to DFW in November 2015, and expects DFW to make a decision on whether to issue the permit within the same approximate timeframe as the issuance of the biological opinion under Section 7 of the ESA.<sup>5</sup>

### **Project Description**

The SWP and CVP are the State's two major inter-basin water storage and delivery systems. Both the SWP and CVP (also referred to as Projects) include major reservoirs upstream of the Delta including Shasta, Oroville and Folsom Reservoirs. Water stored in Project reservoirs is used to meet contractor demands in the Delta watershed and south and west of the Delta, as well as for other purposes, including satisfaction of water right requirements to meet water quality objectives, satisfaction of ESA and CESA requirements, hydropower production, and flood control. The SWP and CVP divert previously stored water and also directly divert water from the Delta to areas south of the Delta via the Harvey O. Banks and C.W. "Bill" Jones pumping plants, respectively, located near Tracy California.<sup>6</sup> The SWP first diverts water from Delta channels into the Clifton Court Forebay through a tidally operated radial gate structure. The Banks Pumping Plant then pumps water that is impounded in the Clifton Court Forebay into the California Aqueduct. The CVP diverts water directly from the Delta channels via the Jones Pumping Plant into the Delta Mendota Canal. Water diverted from the Delta is then directly delivered for immediate use or stored in reservoirs south of the Delta for later use.

The California WaterFix Project, as described in the Petition and RDEIR/SDEIS, is identified as Alternative 4A, the CEQA preferred alternative. 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 is planned to be conveyed to a new separate north cell of a redesigned Clifton Court Forebay.

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<sup>5</sup> DFW is not expected to make a decision on the incidental take permit until after DWR completes the CEQA process and makes a decision on the project.

<sup>6</sup> The Projects also divert water to areas west of the Delta via the North Bay Aqueduct. The North Bay Aqueduct is not associated with the Petition so is not discussed further.

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 is planned to 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 Petition states that 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. According to the Petition, 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.

Enclosure C of this notice presents maps included with the Petition showing the extent and location of the three proposed north Delta intakes as well as the currently authorized PODs/PORDs within the Delta for the subject permits. A more detailed description of California WaterFix's Alternative 4A, including additional maps of the project, can be found in the RDEIR/SDEIS at:

[http://baydeltaconservationplan.com/RDEIRS508/4\\_New\\_Alternatives-508.pdf](http://baydeltaconservationplan.com/RDEIRS508/4_New_Alternatives-508.pdf).

### **Processing Changes in Points of Diversion and/or Rediversion**

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) establishes additional requirements related to the California WaterFix Project. Among other provisions, the Delta Reform Act defines the state's co-equal water policy goals as providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. In addition, the Delta Reform Act states that "[t]he coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."<sup>7</sup> The Delta Reform Act also imposes unique requirements on the processing of a water right change petition for the BDCP and now 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 predecisional with respect to any subsequent State Water Board consideration of a permit.<sup>8</sup> The Delta flow criteria are discussed in more detail, below.

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<sup>7</sup> According to the Petition, the actions proposed by DWR and Reclamation would facilitate fundamental, systemic change to the current system, putting the State on a course to "[a]chieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem."

<sup>8</sup> The Delta Reform Act recognizes that flow criteria are not static, but shall be subject to modification over time.

During the evidentiary hearing, interested parties will be given the opportunity to present evidence and argument about whether the Petition should be approved and, if so, under what conditions. The public record for the hearing will serve as the basis for the State Water Board's decision regarding the subject Petition.

### **Related State Water Board Activities**

There are several State Water Board activities that are related to the California WaterFix Project water right change petition, but separate. Specifically, the State Water Board is simultaneously 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 discussed above that will inform the California WaterFix Project. The relationship of each of the above to the subject Petition is discussed below.

### **Application for Water Quality Certification for the California WaterFix Project**

The State Water Board received an application for water quality certification from DWR for the California WaterFix Project on September 24, 2015. Construction of the project would involve the discharge of dredged or fill material into waters of the United States, which requires a permit from the USACE under Section 404 of the Clean Water Act. Section 401 of the Clean Water Act specifies that any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall obtain certification from the State or, if appropriate, from an interstate water pollution control agency, that any such discharge will comply with the applicable water quality standards. Water quality standards include beneficial uses, together with the water quality objectives that are contained in water quality control plans to protect and enhance those beneficial uses, and state and federal anti-degradation requirements.

Because the water quality certification for the California WaterFix Project is associated with a water right action, the State Water Board, Division of Water Rights is responsible for processing the application for water quality certification. State Water Board staff proposes to process the application for water quality certification and the change petition separately. The Executive Director has delegated authority to consider whether and under what conditions to issue the water quality certification. In so doing, the Executive Director is planning to rely on some or all of the information in the hearing record for this Petition to the extent the information is relevant to the certification decision. Additional information not included in the hearing record may also be relied on in consideration of the application for water quality certification. The Executive Director may make a decision on the application for water quality certification prior to completion of the hearing for the water right change petition and prior to the Board making a decision on the Petition. Any decision by the Executive Director would then be subject to reconsideration by the State Water Board.

### **Bay-Delta Planning and Implementation Processes**

The Bay-Delta Plan includes designation of beneficial uses of water in the Bay-Delta watershed, water quality objectives to reasonably protect those beneficial uses, and a program of implementation identifying measures that the State Water Board and other entities will take to implement the Bay-Delta Plan. The Bay-Delta Plan currently includes beneficial uses that fall into three broad categories: (1) municipal and industrial, (2) agricultural, and (3) fish and wildlife uses. Current Bay-Delta Plan water quality objectives include: inflows from the Sacramento and San Joaquin Rivers; Delta outflows; water project operations; dissolved oxygen; salmon

protection; and various salinity objectives to protect fish and wildlife, agriculture, and municipal and industrial uses. The last major update to the Bay-Delta Plan occurred in 1995. Minor changes to the 1995 Bay-Delta Plan were also made in 2006.

Many of the water quality objectives included in the 1995 and 2006 Bay-Delta Plans are implemented through State Water Board's [Water Right Decision 1641](#) (D-1641), which was adopted by the State Water Board in 2000 and revised in 2001. In D-1641, the State Water Board accepted various agreements by water right holders in the watershed to implement the Bay-Delta Plan and modified their water rights accordingly, including agreements by DWR and Reclamation to ensure compliance with many of the flow and salinity objectives in the Bay-Delta Plan on an interim basis. Those requirements include: Delta outflows; Sacramento and San Joaquin River flows; salinity objectives designed to protect municipal and industrial uses, agricultural uses, and fish and wildlife; SWP and CVP export limits; and Delta Cross Channel (DCC) gate closure requirements.

The State Water Board is currently developing updates to the Bay-Delta Plan and its implementation through a phased process. Phase 1 involves updating the San Joaquin River flow and southern Delta salinity objectives and their associated program of implementation included in the Bay-Delta Plan. Phase 2 involves other changes to the Bay-Delta Plan to protect beneficial uses not addressed in Phase 1, including Delta outflows, Sacramento River flows, export restrictions, DCC gate closure requirements and potential new reverse flow limits for Old and Middle Rivers. Following the updates to the Bay-Delta Plan, the State Water Board will undertake proceedings to implement the Bay-Delta Plan through water rights or other measures, referred to as Phase 3. Phase 3 may be further subdivided to implement the changes resulting from Phases 1 and 2. Phase 1 is expected to be complete in the summer or fall of 2016 and Phase 2 is expected to be complete in mid-2018. Phase 3 will commence following completion of Phases 1 and 2.

In developing and updating the Bay-Delta Plan, the State Water Board must consider a comprehensive list of environmental, economic, and societal factors, competing beneficial uses of water, the effects of all water diversions, and other factors affecting beneficial uses of Bay-Delta waters, both upstream of the Bay-Delta and in export areas. In determining what changes are needed to the Bay-Delta Plan, the State Water Board will undertake a broad evaluation of flows and other water quality conditions that are needed throughout the watershed. In implementing the flow related provisions in the Bay-Delta Plan, the State Water Board will determine the responsibilities of water right holders throughout the watershed, including the SWP and CVP. While Delta and Sacramento River flow issues and other operational constraints are involved in both the California WaterFix and the Phase 2 and 3 proceedings, the WaterFix process is much more narrowly focused on the Projects' request to add points of diversion, the findings that are required to approve those changes, and the Delta Reform Act requirement to establish appropriate Delta flow criteria for the California WaterFix project alone.

In light of the current schedule for completion of Phase 2, State Water Board staff proposes to review the subject Petition and conduct Phase 2 concurrently, rather than delay consideration of the Petition for several years while Phase 2 is conducted and completed. The Delta Reform Act does not require the State Water Board to delay consideration of the Petition until the flow objectives contained in the Bay-Delta plan have been updated. To inform what appropriate flow criteria should be included in any approval of the Petition, however, State Water Board staff intends to submit the draft Phase 2 Scientific Basis Report into the record for this hearing. The Scientific Basis Report is intended to support the Phase 2 Update of the Bay-Delta Plan by documenting the science underlying potential modifications to the 2006 Bay-Delta Plan and



providing a potential range of alternatives that will be examined in the associated environmental document.

While any approval of the Petition would include appropriate Delta flow criteria, those flow criteria and the responsibilities of the SWP and CVP for meeting those flow criteria would be interim in nature, to be revisited in Phases 2 and 3. In the event the Petition is not approved, there would not be any interim flow criteria for the SWP and CVP associated with the Delta Reform Act provision. In Phases 2 and 3, the State Water Board will not be constrained by any decision on the Petition in establishing revised water quality objectives and a revised program of implementation, and determining the responsibilities of DWR and Reclamation to meet flow requirements and other measures. The State Water Board will not determine whether any other water right holders should be required to make additional flow contributions in the proceeding on the Petition since that determination will occur in Phase 3 of the Bay-Delta planning effort.

Additional information on the State Water Board's Bay-Delta planning efforts can be viewed on the Division's website at: [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/).

### Delta Flow Criteria Report

The Delta Reform Act, discussed above, required the State Water Board to develop non-regulatory flow criteria for the Delta watershed to protect public trust uses. These criteria were developed, via the Delta Flow Criteria Report, and approved by the State Water Board in 2010. The purpose of the criteria is to inform the State Water Board's Bay-Delta Plan updates as well as the State Water Board and other agencies' consideration of the BDCP and now California WaterFix Project. The flow criteria include the volume, quality, and timing of flows necessary to protect public trust resources in the Delta. The flow criteria have no regulatory effect and were not developed according to the requirements for regulatory flow objectives that consider other beneficial uses of water and other issues such as economics. The report was narrowly focused on the flows needed in the Delta ecosystem if fishery protection were the sole purpose for which its waters were put to beneficial use, and also did not address cold water pool requirements needed for protection of salmonids and other species. The report recognized that there are many other important beneficial uses that these waters support, such as municipal and agricultural water supply and recreational uses, but those uses were not the focus of the report. The information in the report is one of many factors that the State Water Board will consider as the State Water Board updates the Bay-Delta Plan and reviews the subject Petition.

The Delta Reform Act requires the State Water Board to consider the Delta flow criteria and include "appropriate Delta flow criteria" in any decision approving the California WaterFix Project. As discussed above, however, the 2010 Delta flow criteria are fundamentally different from water quality objectives because they were developed without taking into consideration competing beneficial uses of water. In addition, the 2010 Delta flow criteria do not address the relative responsibilities of DWR, Reclamation, and other water right holders for meeting water quality objectives. As discussed above, should the Petition be approved, the order would include interim Delta flow criteria and other conditions that will be revisited in the more comprehensive Phase 2 and 3 processes. In addition, Delta flow criteria included in any order approving the Petition would not apply until the proposed new diversion facilities were constructed and used.

For additional information about the Delta Flow Criteria Report see:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/)

For additional information about the Delta Reform Act see:  
<http://law.justia.com/codes/california/2011/wat/division-35/>



## **DWR AND RECLAMATION WATER RIGHTS INVOLVED IN THE PETITION**

The Projects operate pursuant to water right permits and a license issued by the State Water Board that authorize the Projects to either (1) divert water to storage, which is released later in the year and re-diverted downstream or (2) directly divert water for beneficial use, or both. The Petition involves four of DWR's six permits for the SWP and 11 of Reclamation's 32 permits and one license for the CVP. Tables 1 and 2 below summarize DWR's and Reclamation's subject permits, respectively and the permit changes requested in the Petition.<sup>9</sup>

Table 1  
Summary of DWR's Subject Water Rights and Requested Changes<sup>10</sup>

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 <sup>11</sup>	Petition Request to Add:
5630	16478	Feather R.	1,400	Year-Round	380	9/1 - 7/31	10,350	12/31/09	PORD
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
14445A	16481	Old River <sup>12</sup> & Delta Channels	2,115	Year-Round	44.0	Year-Round	10,350	12/31/09	POD
17512	16482	Old River, <sup>12</sup> Delta Channels, & San Luis Cr.	--	--	1,100	Year-Round	10,350	12/31/09	POD

<sup>9</sup> Tables 1 and 2 do not reflect any regulatory constraints that may limit the Projects' ability to exercise their water rights to the fullest extent, including D-1641, the USACE's River and Harbors Act permits, or the 2008 USFWS and 2009 NMFS Biological Opinions on the coordinated operations of the Projects.

<sup>10</sup> TAF refers to thousand acre-feet; TAFa refers to thousand acre-feet annually, and cfs refers to cubic feet per second.

<sup>11</sup> 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. DWR's time to complete construction and beneficial use of water for its subject permits elapsed on December 31, 2000, and December 31, 2009, respectively. On December 31, 2009, DWR filed petitions to extend the development schedule until December 31, 2015, for the subject four permits and two additional DWR permits. The State Water Board noticed all six DWR petitions on August 19, 2010, and received eight protests. The protests have not been resolved and the petitions for time extensions are still pending.

<sup>12</sup> On Page 2 of the addendum and errata to the Petition, DWR and Reclamation list Italian Slough as an existing source of water for Permits 16481 and 16482. In D-1641, the State Water Board approved the addition of the intake to Clifton Court Forebay on Old River to Permits 16481 and 16482 as a point of diversion. Therefore, D-1641 also added Old River as an additional source to these permits even though it is not expressly listed in the permit. DWR has not developed Italian Slough as a source of water under these permits.

Table 2  
Summary of Reclamation's Subject Water Rights and Requested Changes<sup>10</sup>

App No.	Permit No.	Source(s)	Direct Diversion Amount (cfs)	Direct Diversion Season	Diversion to Storage Amount (TAF)	Diversion to Storage Season	Combination Exports Amounts (cfs / TAF)	Complete Use Date <sup>13</sup>	Petition Request to Add:
5626	12721	Sacramento R.	8,000	9/1 - 6/30	3,190	10/1 - 6/30	--	12/1/90	POD and PORD
9363	12722	Sacramento R.	1,000	Year-Round	310	10/1 - 6/30	--	12/1/90	POD and PORD
9364	12723	Sacramento R.	9,000	Year-Round	1,303	10/1 - 7/1	--	12/1/90	POD and PORD
13370	11315	American R.	8,000	11/1 - 8/1	1,000	11/1 - 7/1	--	12/1/90	PORD
13371	11316	American R.	700	11/1 - 8/1	300	11/1 - 7/1	--	12/1/90	PORD
5628	11967	Trinity R.	2,500	Year-Round	1,540	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
15374	11968	Trinity R.	300	Year-Round	200	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
15375	11969	Trinity R.	1,700	Year-Round	1,800	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
16767	11971	Trinity R.	--	--	700	Year-Round	3,200 cfs / 2,500 TAF	12/1/90	PORD
17374	11973	Trinity R.	1,500	Year-Round	--	--	3,200 cfs / 2,500 TAF	12/1/90	PORD
17376	12364	Clear Cr.	3,600	11/1 - 4/1	250	11/1 - 4/1	--	12/1/90	PORD

The State Water Board has issued various water right decisions and orders conditioning the Projects' permits and license. Most notable of the State Water Board decisions is D-1641, which placed conditions on Project operations necessary to implement the Bay-Delta Plan. Project operations also are subject to ESA and CESA, and USACE permitting requirements. DWR and Reclamation have stated in their Petition that they are not proposing to modify any of these requirements as part of the California WaterFix Project. It is anticipated that there will be new operational requirements for the Projects associated with the CESA and ESA process, as discussed above, and possibly the USACE permit.

### **COMPLIANCE WITH CEQA, ESA AND CESA**

As stated in the introduction, in July 2015, DWR and Reclamation released a RDEIR/SDEIS pursuant to CEQA and NEPA that analyzes 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 the project. To the extent feasible, the State Water Board is responsible for mitigating or avoiding the significant environmental impacts identified in the resource areas within the State Water Board's jurisdiction, specifically for the water right petition components of the California WaterFix Project. (Cal. Code Regs., tit. 14, §15096.) When considering the Petition, the State Water Board must make independent findings concerning significant environmental effects within the State Water Board's jurisdiction, and may require additional or different mitigation measures for impacts in those resource areas.

<sup>13</sup> 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.

Consistent with past practice, State Water Board staff proposes to 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 final CEQA document and associated comments on that document would then be submitted during the second part of the hearing. To the extent that any significant changes to the final CEQA document have a material bearing on the issues addressed in the first part of the hearing, those issues may be revisited during the second part of the hearing.

As discussed above, the petitioners must demonstrate that the project complies with the federal ESA and the California Fish and Game Code, including CESA. The ESA and CESA processes are expected to be complete within the same timeframe as the CEQA document. To ensure compliance with the above requirements, and to better inform the hearing process, State Water Board staff does not propose to begin the second part of the hearing or act on the Petition 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.

### **KEY ISSUES FOR THE HEARING**

The State Water Board's order following this proceeding must be based upon evidence in the record developed at the hearing. Parties to the hearing should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

#### **Part I – Effects of the Petition on Municipal, Industrial and Agricultural Uses of Water, Including Associated Legal Users of Water**

1. Will the changes proposed in the Petition in effect 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?
  - a. Will the proposed changes in points of diversion alter water flows in a manner that causes injury to municipal, industrial, or agricultural uses of water?
  - b. Will the proposed changes in points of diversion alter water quality in a manner that causes injury to municipal, industrial, or agricultural uses of water?
  - c. If so, what specific conditions, if any, should the State Water Board include in any approval of the Petition to avoid injury to these uses?

**Part II – Effects of the Petition on Fish and Wildlife and Recreational Uses, including What Appropriate Delta Flow Criteria Should Be Included in any Project Approval; Public Interest Considerations; and Consideration of the Final CEQA Document**

3. Will the changes proposed in the Petition unreasonably affect fish and wildlife or recreational uses of water, or other public trust resources?
  - a. Will the proposed changes in points of diversion alter water flows in a manner that unreasonably affects fish, wildlife, or recreational uses of water?
  - b. Will the proposed changes in points of diversion alter water quality in a manner that unreasonably affects fish, wildlife, or recreational uses of water?
  - c. If so, what specific conditions, if any, should the State Water Board include in any approval of the Petition to avoid unreasonable effects to fish, wildlife, or recreational uses?
  - d. What Delta flow criteria are appropriate and should be included in any approval of the petition, taking into consideration the 2010 Delta flow criteria, competing beneficial uses of water, and the relative responsibility of the Projects and other water right holders for meeting water quality objectives?
4. Are the proposed changes requested in the Petition in the public interest? If so, what specific conditions, if any, should be included in any approval of the Petition 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?

The State Water Board may in its discretion modify the scope or content of these key hearing issues following the pre-hearing conference.

**HEARING OFFICERS AND HEARING TEAM**

State Water Board Chair Felicia Marcus and Member Tam Doduc will preside as hearing officers over this proceeding. A hearing team will assist the hearing officers by providing legal and technical advice. State Water Board staff lead hearing team members will include: Dana Heinrich, Staff Attorney IV; Diane Riddle, Environmental Program Manager; Rich Satkowski, Senior Water Resource Control Engineer; and John Gerlach, Senior Environmental Scientist. Other staff hearing team members will include: Michael Buckman, Kenneth Emanuel, Thaddeus Hunt, Kevin Long, Steve Marquez, and Jean McCue. Additional staff may also assist with this project in the future and other staffing changes may be made. The hearing team and their supervisors will assist the hearing officers and the other members of the State Water Board throughout this proceeding.

## **PROTESTING THE PETITION**

IF YOU WISH TO PROTEST the Petition, you may submit a protest in accordance with Water Code section 1703.2. Standard forms on which to submit protests may be obtained from the State Water Board's Division of Water Rights or downloaded from the Division of Water Rights website at: [http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/pet\\_protest.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_protest.pdf). 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**. **Any correspondence directed to the petitioners should be sent to:**

California Department of Water Resources  
c/o James Mizell  
1416 Ninth Street, Room 1104  
Sacramento, CA 95818  
[James.Mizell@water.ca.gov](mailto:James.Mizell@water.ca.gov)

U.S. Bureau of Reclamation  
c/o Amy Aufdemberge  
U.S. Department of Interior  
Office of Regional Solicitor, Pacific Southwest Region  
2800 Cottage Way  
Sacramento, CA 95825-1898  
[Amy.Aufdemberge@sol.doi.gov](mailto:Amy.Aufdemberge@sol.doi.gov)

A person may file a protest based on an allegation that the proposed change:

- would cause injury to a legal user of water;
- would have an adverse environmental impact;
- would not best conserve the public interest or public trust uses;
- would be contrary to law; or
- would not be within the jurisdiction of the State Water Board.

If the 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 the claim of right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any revised water right permit issued by the State Water Board would be subject to vested water rights and would include conditions to protect such rights.

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. For example:

- public interest protests should clearly indicate how the proposed changes will affect the public;
- environmental protests should identify specific impacts and provide supporting recitals on the effect of the proposed project on plants, animals, fish, erosion, pollution, aesthetics, etc.; and
- public trust protests must identify the navigable waters and public trust values that would be affected by the proposed changes and how the changes will impact public trust values.

A request for information or a request that studies be conducted does not constitute a protest.

The State Water Board intends to conduct a hearing on the Petition beginning on **Thursday, April 7, 2016**, to receive evidence related to the Petition and any unresolved protests. If you intend to protest the Petition, **you must also submit a Notice of Intent to Appear** indicating your intent to appear to present evidence in support of your protest. You must also comply with the other instructions below related to hearing participation. **If you do not resolve your protest with the petitioners prior to the hearing, and then do not present a case supporting your protest at the hearing, your protest will be dismissed.** It is **not** necessary to file a protest to participate in the hearing.

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at the California WaterFix Hearing" (Enclosure D). As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below.

**Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.** While not mandatory, the State Water Board requests that policy statements be provided in writing before they are presented and, if possible, that they be submitted by electronic submittal. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits.

Within two weeks after the deadline for Notices of Intent to Appear, the State Water Board will transmit a list of those who desire to participate in the hearing and a copy of all Notices of Intent to Appear that the Board timely received to each of the parties that submitted a Notice of Intent to Appear. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence.

**12:00 noon, Tuesday, January 5, 2016**

Deadline for receipt of protests against Petition and Notices of Intent to Appear.<sup>14</sup>

For participants in Part I of the hearing, copies of **witnesses' proposed testimony, witness qualifications, exhibits, lists of exhibits, and a statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12:00 noon, Tuesday, March 1, 2016**

Deadline for receipt and service of witnesses' proposed testimony, witness qualifications, exhibits, lists of exhibits, and a statement of service for Part I of the hearing.

A subsequent amended notice will be issued identifying due dates for participants in Part II of the hearing, including copies of witnesses' proposed testimony, witness qualifications, exhibits, and lists of exhibits. **Participants in Part II of the hearing must submit a Notice of Intent to Appear by the due date of 12:00 noon, Tuesday, January 5, 2016, identified above.**

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<sup>14</sup> Submission of a "Notice of Intent to Appear" to participate in the hearing is required regardless of whether or not a hearing participant protests the Petition. Protests are not required to participate in the hearing.



## **PRE-HEARING CONFERENCE**

The hearing officers will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Thursday, January 28, 2016, at 9:00 a.m. and continuing, if necessary, on Friday, January 29, 2016**. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will focus on: (1) encouraging participants with similar cases to coordinate their hearing participation and ensuring that all hearing participants can and will present evidence during the hearing; and (2) developing presentation schedules for the hearing's public policy statements and testimony/exhibits.

The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree prior to the pre-hearing conference to resolve a hearing issue by stipulation. Following the pre-hearing conference, the hearing officers may, at their discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference, including those who intend to participate only in Part II of the hearing.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

The State Water Board has received several comments on this matter to date raising substantive and procedural issues. All of those comments are posted on the State Water Board's California WaterFix 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).

This notice addresses many of the procedural issues raised in the comment letters. To the extent that issues remain unaddressed, hearing participants should bring those issues to the attention of the hearing officers in written correspondence submitted with or following the submittal of notices of intent to appear and prior to the pre-hearing conference. The hearing officers may discuss those issues at the pre-hearing conference as necessary and will rule on those issues at the appropriate time. To the extent that the comments raised substantive factual issues, hearing participants should resubmit any information they wish to include in the evidentiary portion of the hearing record for this project in accordance with applicable deadlines for exhibits and other procedural requirements. If parties do not resubmit information, it will be part of the record for this project, but not the evidentiary record on which the State Water Board will rely to make factual findings in connection with its decision on the project.

## **SUBMITTALS TO THE STATE WATER BOARD**

All documents, including Notices of Intent to Appear, protests against the Petition, written testimony, and other exhibits submitted to the State Water Board should be submitted in accordance with the direction provided in Enclosure D "Information Concerning Appearance at the California WaterFix Hearing." Information should be submitted electronically to the State Water Board via email to:

[CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov)  
with the subject of "**California WaterFix Hearing.**"

Electronic submittals to the State Water Board of documents greater than 50 megabytes in total size should be submitted on a compact disc (CD) via mail or hand delivery. Mail and hand deliveries should be addressed as follows:

State Water Resources Control Board  
Division of Water Rights  
Attn: California WaterFix Hearing Staff

By Mail: P.O. Box 2000, Sacramento, CA 95812-2000

By Hand Delivery: Joe Serna Jr.-CalEPA Building  
1001 I Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814

**ALL HAND DELIVERED SUBMITTALS** should be Date and Time stamped by the Division of Water Rights' Records Unit on the second floor of the Joe Serna, Jr.-CalEPA Building at the above address prior to the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely Date and Time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officers.

### **IF YOU HAVE ANY QUESTIONS**

During the pendency of this proceeding, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to the California WaterFix hearing team by email at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) or at (916) 319-0960.

### **WEBCAST OF PRE-HEARING CONFERENCE AND HEARING**

Broadcasts of the pre-hearing conference and water right hearing will be available via the internet and can be accessed at: <http://www.calepa.ca.gov/broadcast/>.

### **RECEIVING FUTURE COMMUNICATIONS**

If you would like to receive additional information regarding the State Water Board's activities related to the California WaterFix Project, please sign up for the State Water Board's California WaterFix email distribution list at:

[www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml).


**If you do not sign up for this email distribution list and do not submit a Notice of Intent to Appear for the hearing, you will not receive further notices regarding this matter.**

### **PARKING, ACCESSIBILITY, AND SECURITY**

A map to the Joe Serna Jr. -CalEPA Building (CalEPA Building) and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Tanya Cole, Equal Employment Opportunity Office, at (916) 341-5880.

Due to enhanced security precautions at the Joe Serna Jr.-CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any

given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the pre-hearing conference or hearing.

October 30, 2015	
Date	Jeanine Townsend Clerk to the Board

Enclosures (4)

- Enclosure A: Hearing Date and Room Schedule
- Enclosure B: Staff Exhibits to be Offered Into Evidence
- Enclosure C: Maps of the Proposed California WaterFix Intake Locations and Currently Authorized Delta Points of Diversion and/or Points of Rediversion
- Enclosure D: Information Concerning Appearance at the California WaterFix Water Right Hearing, Notice of Intent to Appear, and Exhibit Identification Index

**Enclosure A:**  
Hearing Dates and Room Schedule  
California WaterFix

**PART I** of the hearing will commence on April 7, 2016, and continue, as necessary, on the following dates at the Joe Serna Jr.-CalEPA Building, 1001 I Street, Second Floor, Sacramento, CA:

<b>DATE</b>	<b>HEARING ROOM</b>
Thursday, April 07, 2016	Byron Sher Auditorium
Friday, April 08, 2016	Byron Sher Auditorium
Tuesday, April 12, 2016	Byron Sher Auditorium
Wednesday, April 13, 2016	Byron Sher Auditorium
Thursday, April 14, 2016	Coastal Hearing Room
Friday, April 15, 2016	Byron Sher Auditorium
Thursday, April 21, 2016	Sierra Hearing Room
Friday, April 22, 2016	Coastal Hearing Room
Tuesday, April 26, 2016	Byron Sher Auditorium
Wednesday, April 27, 2016	Byron Sher Auditorium
Thursday, April 28, 2016	Byron Sher Auditorium
Friday, April 29, 2016	Byron Sher Auditorium
Thursday, May 05, 2016	Byron Sher Auditorium
Friday, May 06, 2016	Byron Sher Auditorium
Tuesday, May 10, 2016	Byron Sher Auditorium
Wednesday, May 11, 2016	Byron Sher Auditorium
Thursday, May 12, 2016	Byron Sher Auditorium
Friday, May 13, 2016	Coastal Hearing Room
Thursday, May 19, 2016	Sierra Hearing Room
Friday, May 20, 2016	Coastal Hearing Room
Tuesday, May 24, 2016	Byron Sher Auditorium
Wednesday, May 25, 2016	Byron Sher Auditorium
Thursday, May 26, 2016	Byron Sher Auditorium
Friday, May 27, 2016	Byron Sher Auditorium
Tuesday, May 31, 2016	Byron Sher Auditorium
Wednesday, June 01, 2016	Byron Sher Auditorium
Thursday, June 02, 2016	Byron Sher Auditorium
Friday, June 03, 2016	Byron Sher Auditorium
Thursday, June 09, 2016	Byron Sher Auditorium
Friday, June 10, 2016	Byron Sher Auditorium
Tuesday, June 14, 2016	Sierra Hearing Room
Wednesday, June 15, 2016	Sierra Hearing Room
Thursday, June 16, 2016	Coastal Hearing Room
Friday, June 17, 2016	Byron Sher Auditorium

## Enclosure B

### STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE California WaterFix Hearing

The following items will be offered into evidence, by reference, as State Water Board staff exhibits at the hearing:

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-1	Department of Water Resources' (DWR) and United States Bureau of Reclamation's (Reclamation) August 25, 2015 (Submitted August 26, 2015) Joint Change Petition for California WaterFix Program.
SWRCB-2	DWR and Reclamation's September 11, 2015 (Submitted September 16) Joint Change Petition Addendum and Errata.
SWRCB-3	2015 Public Draft Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) and Comments.
SWRCB-4	2013 Public Draft Environmental Impact Report/Environmental Impact Statement Bay Delta Conservation Plan and Comments.
SWRCB-5	2013 Public Draft Bay Delta Conservation Plan.
SWRCB-6	State Water Resources Control Board (SWRCB) Water Right Permit 16478 (Application 5630) – DWR.
SWRCB-7	SWRCB. Water Right Permit 16479 (Application 14443) – DWR.
SWRCB-8	SWRCB. Water Right Permit 16481 (Application 14445A) – DWR.
SWRCB-9	SWRCB. Water Right Permit 16482 (Application 17512) – DWR.
SWRCB-10	SWRCB. Water Right Permit 11315 (Application 13370) – Reclamation.
SWRCB-11	SWRCB. Water Right Permit 11316 (Application 13371) – Reclamation.
SWRCB-12	SWRCB. Water Right Permit 12721 (Application 5626) – Reclamation.
SWRCB-13	SWRCB. Water Right Permit 12722 (Application 9363) – Reclamation.
SWRCB-14	SWRCB. Water Right Permit 12723 (Application 9364) – Reclamation.
SWRCB-15	SWRCB. Water Right Permit 11967 (Application 5628) – Reclamation.
SWRCB-16	SWRCB. Water Right Permit 11968 (Application 15374) – Reclamation.
SWRCB-17	SWRCB. Water Right Permit 11969 (Application 15375) – Reclamation.
SWRCB-18	SWRCB. Water Right Permit 11971 (Application 16767) – Reclamation.
SWRCB-29	SWRCB. Water Right Permit 11973 (Application 17374) – Reclamation.
SWRCB-20	SWRCB. Water Right Permit 12364 (Application 15376) – Reclamation.
SWRCB-21	SWRCB. Revised Water Right Decision 1641: In the Matter of: Implementation of Water Quality Objectives for the San Francisco Bay/Sacramento-San Joaquin Delta; a Petition to Change the Point of Diversion of the CVP and SWP in the Southern Delta, and; a Petition to Change Places of Use and Purposes of Use of the CVP, March 15, 2000.
SWRCB-22	SWRCB. Water Right Decision 1629: In the matter of Application 20245 and Petition for Partial Assignment of State Filed Application 25516 of Contra Costa Water District; Petition for Change of 17 Permits of Reclamation Issued on Applications 5626, et al., June 2, 1994.
SWRCB-23	SWRCB. Water Right Decision 1485: In the Matter of Permit 12720 (Application 5625) and Other Permits of Reclamation for the CVP and of DWR for the SWP, August 16, 1978.

**STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE (CONTINUED)**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-24	SWRCB. Order WR 90-5: Order Setting Terms and Conditions for Fishery Protection and Setting a Schedule for Completion of Tasks - in the Matter of Permits and Licenses of Reclamation, May 2, 1990.
SWRCB-25	SWRCB. Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009, August 3, 2010.
SWRCB-26	SWRCB. Staff Report, Periodic Review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, Adopted by Resolution 2009-0065, August 4, 2009.
SWRCB-27	SWRCB. 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. December 13, 2006.
SWRCB-28	SWRCB. Plan amendment Report. 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Appendix 1. 2006.
SWRCB-29	SWRCB. Referenced documents. 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Appendix 2. 2006.
SWRCB-30	SWRCB. Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, May 1995.
SWRCB-31	SWRCB. Final Environmental Impact Report for Implementation of the 1995 Bay/Delta Water Quality Control Plan, Volume 1, November 1999.
SWRCB-32	SWRCB. Final Environmental Impact Report for Implementation of the 1995 Bay/Delta Water Quality Control Plan, Technical Appendices, Volume 2, November 1999.
SWRCB-33	Regional Water Quality Control Board, San Francisco Bay Region (Region 2). San Francisco Bay Basin Water Quality Control Plan (Basin Plan) - CA, March 20, 2015.
SWRCB-34	Regional Water Quality Control Board, Central Valley Region (Region 5). The Water Quality Control Plan (Basin Plan), Fourth Edition, revised October 2011 (with OAL Approved Amendments), the Sacramento River Basin and the San Joaquin River Basin (Region 5S Basin Plan).
SWRCB-35	Region 5. Region 5S Basin Plan, Appendix Part 1.
SWRCB-36	Region 5. Region 5S Basin Plan, Appendix Part 2.
SWRCB-37	Region 5. Resolution RB5-2015-0008, Resolution Approving the Continuation of the Control Program for the Dissolved Oxygen Impairment in the Stockton Deep Water Ship Channel.
SWRCB-38	Region 5. San Joaquin River Dissolved Oxygen Control Program Implementation Draft Staff Report, November 2014.
SWRCB-39	Region 5. Stockton Deep Water Ship Channel Demonstration Dissolved Oxygen Aeration Facility Project, Final Report, 2010.
SWRCB-40	Region 5. Stockton Deep Water Ship Channel Demonstration Dissolved Oxygen Aeration Facility Project, Final Report Appendix (Possible SJR TMDL Implementation Procedures), 2010.
SWRCB-41	Region 5. Memorandum: Summary of Aeration Facility Operations, Maintenance and Costs – 2014. Submitted to CVRWQCB by the Port of Stockton, July 2015.
SWRCB-42	Region 5. Memorandum: 2013 Port of Stockton Dock 20 Aerator Operations, Maintenance, and Cost Summary. Submitted to CVRWQCB by the Port of Stockton, March, 2014.



**STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE (CONTINUED)**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-43	Region 5. Cache Creek, Bear Creek, and Harley Gulch TMDL for Mercury, CVRWQCB Staff Report, Nov. 2004.
SWRCB-44	Region 5. Sacramento – San Joaquin Delta Estuary TMDL for Methylmercury, CVRWQCB Staff Report, April 2010.
SWRCB-45	Region 5. Total Maximum Daily Load for Selenium in North San Francisco Bay, Draft Staff Report for Proposed Basin Plan Amendment. SFBRWQCB, July 2015.
SWRCB-46	Delta Stewardship Council (DSC). The Delta Plan - Ensuring a reliable water supply for California, a healthy Delta ecosystem and a place of enduring value, 2013. (The Delta Plan)
SWRCB-47	DSC. The Delta Plan - Appendix A, The DSC's Role Regarding Conveyance, 2013.
SWRCB-48	DSC. The Delta Plan - Glossary, 2013.
SWRCB-49	Independent Science Board (ISB). Review of Environmental Documents for California WaterFix. September 30, 2015.
SWRCB-50	ISB. Flows and fishes in the Sacramento-San Joaquin Delta. Research Needs in Support of Adaptive Management. Review. 2015.
SWRCB-51	ISB. Adaptive Management in the Sacramento-San Joaquin Delta: How is It Used and How Can It be Improved? Report. 2015.
SWRCB-52	ISB. Review of the Draft EIR/EIS for the Bay Delta Conservation Plan. May 15, 2014.
SWRCB-53	ISB. Commentary on the National Research Council Report, Sustainable Water and Environmental Management in the California Bay-Delta. May 25, 2012.
SWRCB-54	National Research Council (NRC) A Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California's Bay-Delta. 2010.
SWRCB-55	Delta Science Program (DSP). Workshop on Delta Outflows and Related Stressors. Summary Report. 2014.
SWRCB-56	DSP. Workshop on the Interior Delta Flows and Related Stressors. Summary Report. 2014.
SWRCB-57	Independent Review Panel (IRP). Delta Science Program Independent Review Panel Report BDCP Effects Analysis Review, Phase 3. A Report to the Delta Science Program. 2014.
SWRCB-58	IRP. Review Panel Summary Report - Bay Delta Conservation Plan (BDCP). Effects Analysis Conceptual Foundation and Analytical Framework and Entrainment Appendix. 2013.
SWRCB-59	IRP. Report of the 2012 Delta Science Program Independent Review Panel (IRP) on the Long-Term Operations Opinion (LOO) Annual Review. 2012.
SWRCB-60	IRP. Review Panel Summary Report - Bay Delta Conservation Plan (BDCP) Effects Analysis Phase 2 Partial Review. 2012.
SWRCB-61	IRP. Report of the 2011 Independent Review Panel (IRP) on the Implementation of Reasonable and Prudent Alternative (RPA) Actions Affecting the Operations Criteria and Plan (OCAP) for State/Federal Water Operations. 2011.
SWRCB-62	IRP. Report of the 2010 Independent Review Panel (IRP) on the Reasonable and Prudent Alternative (RPA) Actions Affecting the Operations Criteria and Plan (OCAP) for State/Federal Water Operations. 2010.

**STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE (CONTINUED)**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-63	Management, Analysis, and Synthesis Team (MAST). An Updated Conceptual Model of Delta Smelt Biology: Our Evolving Understanding of an Estuarine Fish. Technical Report 90. 2015.
SWRCB-64	Fall Low Salinity Habitat (FLASH). Synthesis of Studies in the Fall Low-Salinity Zone of the San Francisco Estuary. September-December 2011. Scientific Investigations Report 2014-5041. 2014.
SWRCB-65	California Department of Fish and Game (DFG) Longfin Smelt. California Endangered Species Act Incidental Take Permit No. 2081-2009-001-03. Department of Water Resources. California State Water Project Delta Facilities and Operations. 2009.
SWRCB-66	DFG. Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta. 2010.
SWRCB-67	DWR DAYFLOW Dataset (.zip file), web-captured October 23. 2015
SWRCB-68	National Marine Fisheries Service (NMFS). Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule. Review of Native Species that are Candidates for Listing as Endangered or Threatened. Federal Register Vol. 79 No. 234. Part III. Department of the Interior. 50 CFR Part 17. Endangered and Threatened Wildlife and Plants. 2015.
SWRCB-69	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. 2014.
SWRCB-70	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix A. Central Valley Watershed Profiles. 2014.
SWRCB-71	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix B. Threats Assessment for the Evolutionarily Significant Units of Winter-Run Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> ) and Central Valley Spring-Run Chinook Salmon ( <i>O. tshawytscha</i> ), and the Distinct Population Segment of Central Valley Steelhead ( <i>O. mykiss</i> ). 2014.
SWRCB-72	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix B. Attachment A. Winter-Run Chinook Salmon Stressor Matrix. 2014.
SWRCB-73	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix B. Attachment B. Spring-Run Chinook Salmon Threats Matrices. 2014.
SWRCB-74	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix B. Attachment C. Steelhead Threats Matrices. 2014.

**STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE (CONTINUED)**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-75	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix C. Central Valley Technical Recovery Team Reports. 2014.
SWRCB-76	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Appendix D. Habitat Restoration Cost References for Salmon Recovery Planning. 2014.
SWRCB-77	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Basalt and Porous Lava Diversity Group. 2014.
SWRCB-78	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Sacramento-San Joaquin Delta. 2014.
SWRCB-79	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Northern Sierra Diversity Group. 2014.
SWRCB-80	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River winter-run Chinook salmon and the Distinct Population Segment of California Central Valley steelhead. Northwestern California diversity group. 2014.
SWRCB-81	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Sacramento River Migratory Corridor. 2014.
SWRCB-82	NMFS. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. Southern Sierra Diversity Group and Mainstem San Joaquin River. 2014.
SWRCB-83	NMFS. Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project (CVP) and State Water Project. 2011.
SWRCB-84	NMFS. Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project National Marine Fisheries Service Southwest Region. 2009.
SWRCB-85	United States Fish and Wildlife Service (USFWS). Federal Register Vol. 77 No. 63 Part II. 50 CFR Part 17. Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt as Endangered or Threatened; Proposed Rule. 2012.
SWRCB-86	USFWS. Endangered and Threatened Wildlife and Plants. Initiation of 5-Year Reviews of 58 Species in California, Nevada, Arizona and Utah. 74 FR 12878-12883. March 25, 2009.
SWRCB-87	USFWS. Formal Endangered Species Act Consultation on the Proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP). December 15, 2008.
SWRCB-88	USFWS. Delta Smelt Critical Habitat Map. 2003.
SWRCB-89	USFWS. Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes. 1996.

**STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE (CONTINUED)**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>
SWRCB-90	USFWS. Delta Smelt Critical Habitat Designation. Rules and Regulations. 65256 Federal Register. Vol. 59, No. 242. December 19, 1994.
SWRCB-91	USFWS. Delta Smelt Listing. Rules and Regulation. 12854 Federal Register. Vol. 58, No. 42. March 5, 1993.
SWRCB-92	USFWS. Recovery Plan for Tidal Marsh Ecosystem of Northern and Central California. Volume I. 2013.
SWRCB-93	USFWS. Recovery Plan for Tidal Marsh Ecosystem of Northern and Central California. Volume II. Appendices. 2013.
SWRCB-94	USBR. Suisun Marsh Habitat Management, Preservation, and Restoration Plan. 2013.
SWRCB-95	USBR. Suisun Marsh Habitat Management, Preservation, and Restoration Plan. Final Environmental Impact Statement/Environmental Impact Report. Executive summary. 2011.
SWRCB-96	USBR. Suisun Marsh Habitat Management, Preservation, and Restoration Plan. Final Environmental Impact Statement/Environmental Impact Report and Appendices. 2011.
SWRCB-97	United States Army Corps of Engineers (USACOE) Temporary Rivers and Harbors Act Section 10 Permit (# SPK-1999-00715). Dated 15 Aug 2013.
SWRCB-98	USACOE. Public Notice No. 5820A (Amended) Dated 13 October 1981
SWRCB-99	Anadromous Fish Restoration Program (AFRP). Final Restoration Plan for the Anadromous Fish Restoration Program. 2001.
SWRCB-100	San Francisco Estuary Institute (SFEI). Sacramento-San Joaquin Delta Historical Ecology Investigation: exploring pattern and process. 2012.
SWRCB-101	Hoffman, Glenn J. Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta. Final Report to SWRCB, January 5, 2010.
SWRCB-102	Final Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) and Comments (Upon Completion).
SWRCB-103	SWRCB. Technical Report on the Scientific Basis for Alternative Requirements – Comprehensive Review of 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Excluding San Joaquin River Flows and Southern Delta Salinity, (Upon Completion).

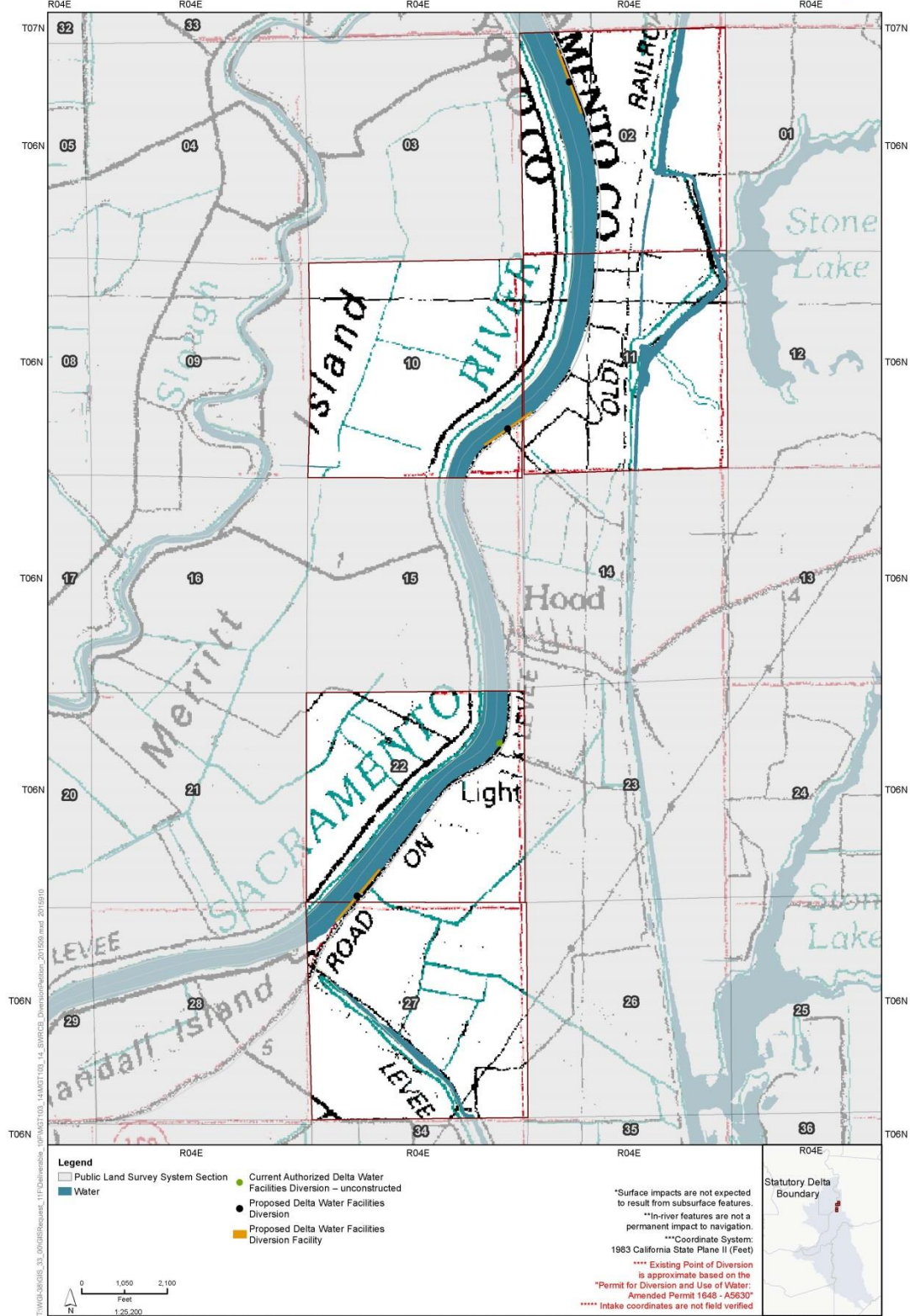
## **Enclosure C**

### **Maps of the Proposed California Water Fix Intake Locations and Currently Authorized Delta Points of Diversion and/or Points of Rediversion**

- Map 1 of 5- California WaterFix Intakes Overview
- Map 2 of 5- California WaterFix Intake No.2
- Map 3 of 5- California WaterFix Intake No.3
- Map 4 of 5- California WaterFix Intake No.5
- Map 5 of 5- Delta Overview

For convenience, the maps contained in Enclosure C are formatted to print on 8 1/2" x 11" paper.

The California WaterFix Petition Maps presented online 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/) are formatted to print on 11" x 17" paper.



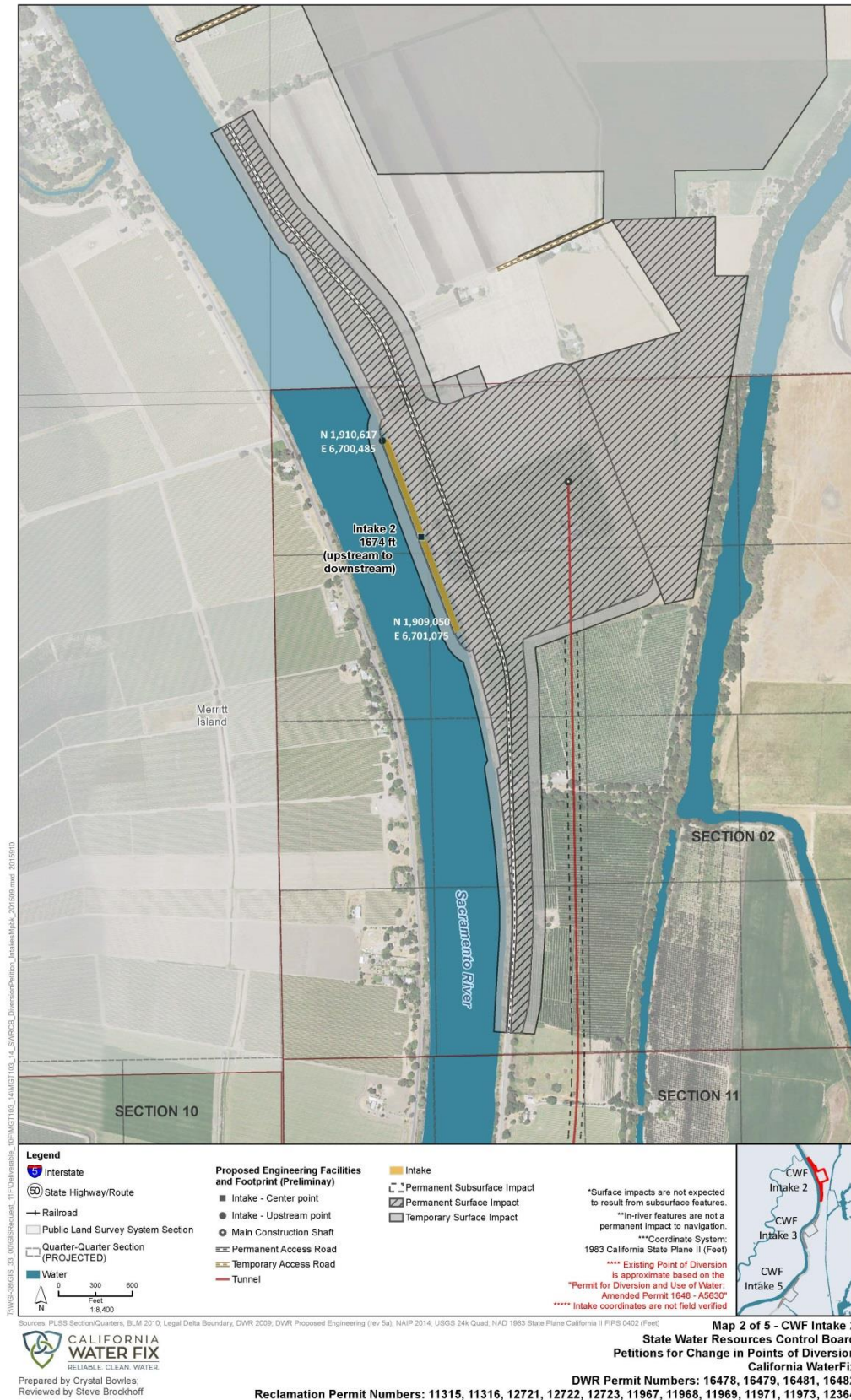
Sources: PLSS Section/Quarters, BLM 2010.

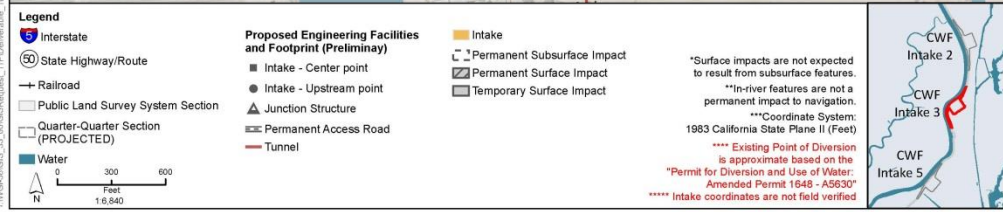
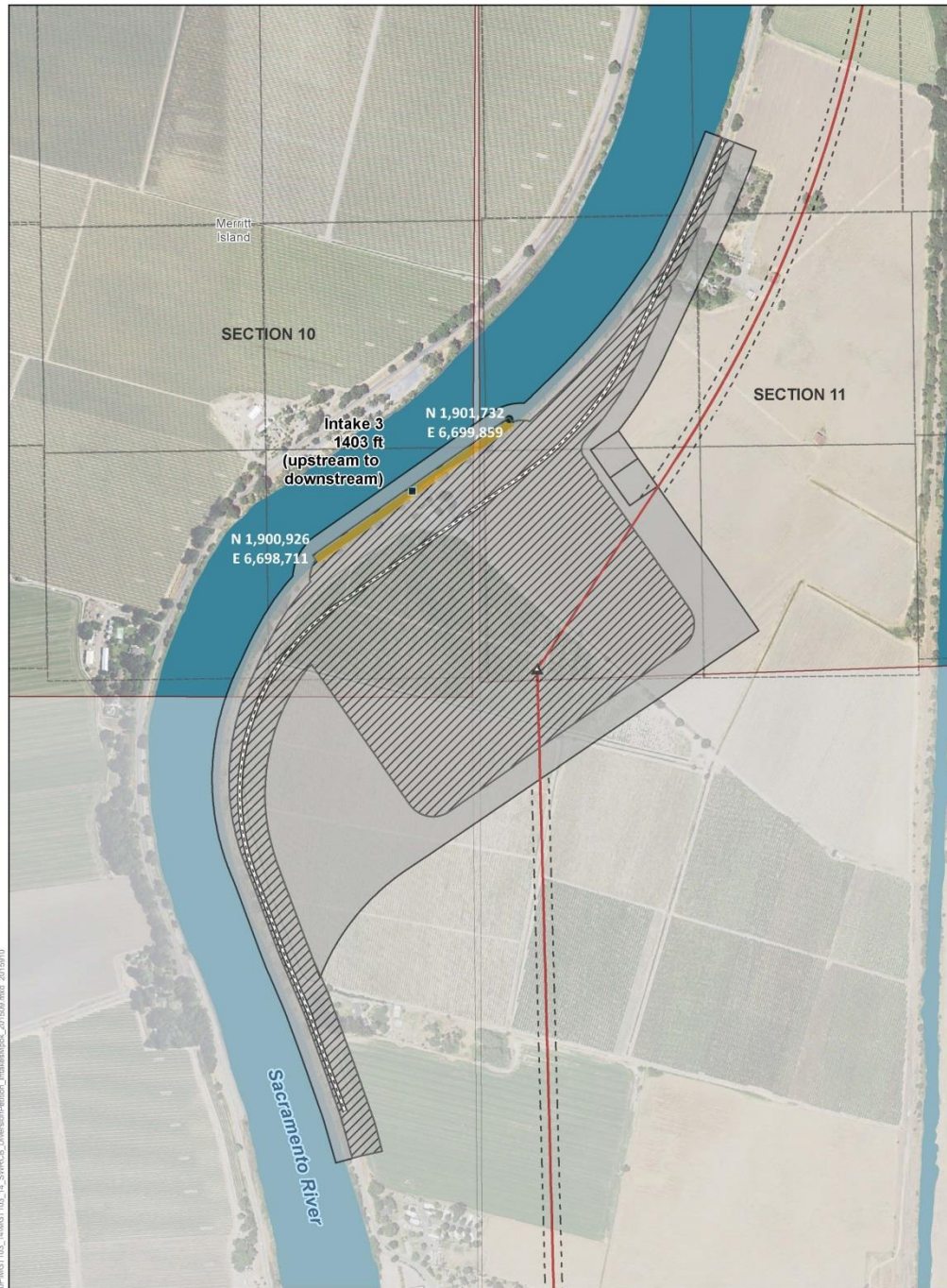
 **CALIFORNIA  
WATER FIX**  
RELIABLE. CLEAN. WATER.

Prepared by Crystal Bowles;  
Reviewed by Steve Brockhoff

2009, DWR Proposed Engineering (rev 5a), NAIP 2014, USGS 24k Quad, NAD 1983 State Plane California II FIPS 4002 (Feet) **Map 1 of 5 - CWF Intakes Overview**  
**State Water Resources Control Board**  
**Petitions for Change in Points of Diversion**  
**California WaterFix**  
**DWR Permit Numbers: 16478, 16479, 16481, 16482**  
**Reclamation Permit Numbers: 11315, 11316, 12721, 12722, 12723, 11967, 11968, 11969, 11971, 11973, 12364**



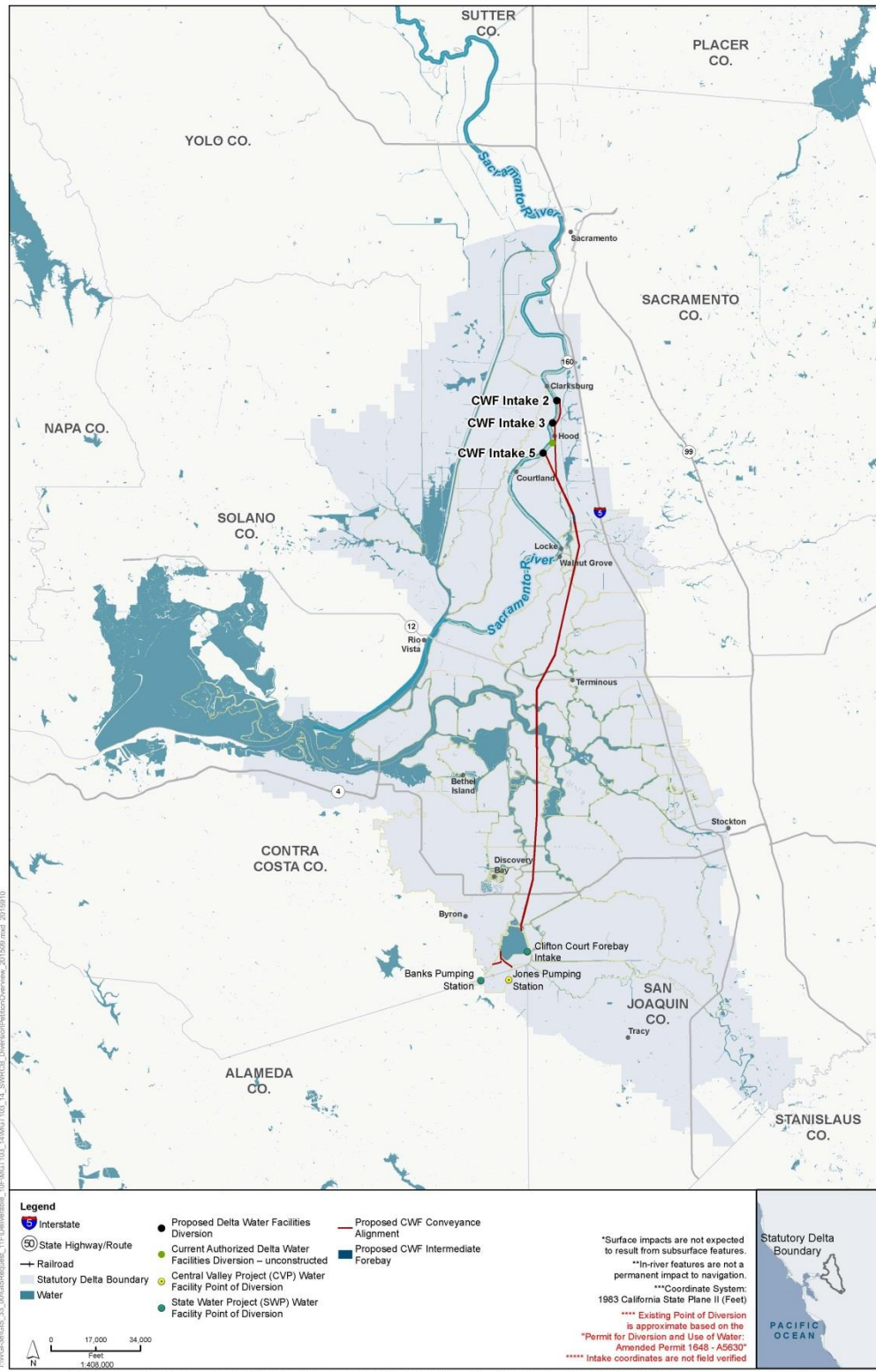




Map 3 of 5 - CWF Intake 3  
 State Water Resources Control Board  
 Petitions for Change in Points of Diversion  
 California WaterFix  
 DWR Permit Numbers: 16478, 16479, 16481, 16482  
 Reclamation Permit Numbers: 11315, 11316, 12721, 12722, 12723, 11967, 11968, 11969, 11971, 11973, 12364







Prepared by Crystal Bowles;  
Reviewed by Steve Brookhoff

**Map 5 of 5 - Delta Overview**  
**State Water Resources Control Board**  
**Petitions for Change in Points of Diversion**  
**California WaterFix**  
**DWR Permit Numbers: 16478, 16479, 16481, 16482**  
**Reclamation Permit Numbers: 11315, 11316, 12721, 12722, 12723, 11967, 11968, 11969, 11971, 11973, 12364**



## Enclosure D

### INFORMATION CONCERNING APPEARANCE AT THE CALIFORNIA WATERFIX HEARING

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Unless otherwise determined by the hearing officers, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **SETTLEMENTS:** In hearings involving an unresolved protest between a protestant and a water right petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officers will determine whether or not to continue the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the petitioners.
3. **PARTIES:** The current parties to the hearing are the Department of Water Resources and U.S. Bureau of Reclamation.

Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officers, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officers may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate

conditions as determined by the hearing officers. Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence.

- 4. INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
  - b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.
- 5. NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear.

**Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.** The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.<sup>15</sup> Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

The State Water Board intends to exchange information with and between parties electronically for this hearing to the extent possible. If you are unable to submit or receive electronic information, please check the appropriate box on the Notice of Intent to Appear and contact the hearing team by Tuesday, January 5, 2016, at (916) 319-0960 or by email at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov). (See section 7, below.)

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<sup>15</sup> A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.



The State Water Board will send a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unable to receive electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>16</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board an electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. **You should receive an electronic reply from [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) confirming that your email was received. If you do not receive a reply, please resubmit your exhibits immediately or contact the hearing team at (916) 319-0960.** Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for Part I of this hearing, and a statement of service, must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The hearing officers will establish the deadline for exhibits and indexes for Part II of this hearing at a later date. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the Bay-Delta Program's webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officers have discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

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<sup>16</sup> The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

**7. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants should submit hearing documents to the State Water Board in electronic form and parties should agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which should be in a format supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 50 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) with a subject of “**California WaterFix Hearing.**” Electronic submittals to the State Water Board of documents greater than 50 megabytes in total size should be submitted on a compact disc (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

**8. STAFF EXHIBITS:** A list of State Water Board staff exhibits proposed to be offered into evidence as exhibits by reference is included with this notice. (See Cal. Code Regs., tit. 23, §§ 648.3, 648.5, subd. (a)(4).) Hearing participants should not submit exhibits that are already listed as staff exhibits. Additional or modified staff exhibits relevant to the key issues may be proposed by the exhibit due dates for parts 1 and 2 of the hearing.

**9. PRE-HEARING CONFERENCE:** The State Water Board has scheduled a pre-hearing conference, as identified in the hearing notice, to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.

**10. ORDER OF PROCEEDING:** Hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officers, for good cause.

- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to **five (5) minutes** or such other time as established by the hearing officers.

- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
- i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to **twenty (20) minutes** per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **twenty (20) minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **one (1) hour total** to present all of its direct testimony.<sup>17</sup>
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officers will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one (1) hour** per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
- iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officers. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officers may establish time limits for any permitted redirect and recross examination.
- v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

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<sup>17</sup> The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officers may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officers authorize the parties to file briefs, an electronic copy of each brief shall be submitted to the State Water Board, and shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

**11. EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board Members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:  
[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

**12. RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code, section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

## NOTICE OF INTENT TO APPEAR (Due January 5, 2016)

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

### CALIFORNIA WATERFIX HEARING

California Department of Water Resources and U.S. Bureau of Reclamation

The Public Hearing will commence on **Thursday, April 7, 2016**

#### 1) Check all that apply:

- ☐ I/we intend to participate in Part I of the hearing
- ☐ I/we intend to participate in Part II of the hearing

#### 2) Check only one (1) of the following:

- ☐ I/we intend to present a policy statement only.
- ☐ I/we intend to participate by cross-examination or rebuttal only.
- ☐ I/we plan to call the following witnesses to testify at the hearing. (Fill in the following table)

NAME	SUBJECT OF PROPOSED TESTIMONY (Please indicate Application Number if Appropriate)	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

#### 3) Check if applicable:

- ☐ I/we have also protested the Petition in accordance with Water Code section 1703.2

#### 4) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

Optional:

- ☐ I/we **decline** electronic service of hearing-related materials. If you are unable to accept electronic service for any reason, please contact the hearing team by Tuesday, January 5, 2016, at (916) 319-0960 or by email at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit Identification Index

# CALIFORNIA WATERFIX HEARING

**California Department of Water Resources and U.S. Bureau of Reclamation**

The Public Hearing will commence on

**Thursday, April 7, 2016**

PARTICIPANT: \_\_\_\_\_

[illegible]