

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 93-61

Adoption of Amendments to Regulations in
Articles 15, 16, 17, and Addition of Article 16.5,
Chapter 2, Division 3, Title 23
of the California Code of Regulations)

WHEREAS:


1. The regulations currently set forth in Articles 15, 16, and 17 of Chapter 2, Division 3, Title 23 of the California Code of Regulations regarding changes in point of diversion, place of use, or purpose of use are out of date and are inconsistent with the practice of the State Water Resources Control Board (State Water Board) and recently enacted statutory provisions.
2. The proposed amendments to Sections 791, 792, 793, 794, 795, 796, and 799, and the proposed repeal of Section 797 in Article 15; the proposed amendments to Sections 801 and 804, and the proposed repeal of Sections 800, 802, and 803 in Article 16; the proposed amendments to Sections 811, 812, 814, 815, and 816, and the proposed repeal of Section 813 in Article 17 will make the regulations in Articles 15, 16, and 17 consistent with current statutory provisions at Water Code Sections 1700-1706 and 1725-1740 and consistent with the State Water Board's current practice.
3. Currently no regulations implement the provisions regarding temporary urgency changes filed under Water Code Sections 1435 et seq.; proposed Article 16.5 will implement these sections of the Water Code.
4. The State Water Board gave notice of the proposed regulations and conducted a public hearing on the proposed regulations on August 27, 1992.
5. The State Water Board has considered the testimony given at the public hearing and written comments received, and modifications are proposed in the regulations as initially proposed. Notice of these modifications has been given as required by law.

THEREFORE BE IT RESOLVED THAT:

The State Water Board approves and adopts the proposed amendments which modify existing regulations governing procedures for changes in point of diversion, place of use or purpose of use of water, as specified above and in the text of proposed regulations attached to this resolution.

Certification

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 1993.


Maureen Marché
Administrative Assistant to the Board

TITLE 23. WATERS
Division 3. State Water Resources Control Board
Chapter 2. Appropriation of Water

TITLE 23, CALIFORNIA CODE OF REGULATIONS
DIVISION 3, CHAPTER 2

Amend Articles 15, 16, and 17 and adopt Article 16.5 under Chapter 2 as follows:

**Article 15. Changes in Point of
Diversion, Place of Use, or Purpose of Use.**

791. Change Petitions.

(a) After notice of an application to appropriate water has been given pursuant to Article 3, changes in point of diversion, place of use, or purpose of use as stated in the application, permit, or license may be allowed only upon petition and provided that the petitioner establishes that the proposed change(s) will neither in effect initiate a new right nor injure any other legal user of water.

(b) Upon petition under Water Code Section 1740, the board may approve changes in point of diversion, place of use or purpose of use in a water right determined by a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981. The petitioner shall provide the same factual basis for a temporary, long-term, or permanent change in a water right determined under Water Code Section 2500 et seq. as would be required for a temporary, long-term, or permanent change under a permit or license.

(c) See Sections 686, 730 and 799 regarding the addition of generation of power as a purpose of use. The fee required by Water Code Section 1547 or 1547.1 must be submitted before a petition for change will be accepted for filing.

(d) For purposes of Articles 15 and 16, "petition" shall be deemed to include the notice or notification provided by the water right holder under Water Code Sections 1726 and 1727.

(e) The procedures set forth in Articles 15, 16, 16.5 and 17 shall be followed as nearly as possible when filing and processing petitions for changes in permits or licenses other

than changes in point of diversion, place of use, and purpose of use.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1547, 1547.1, 1701, 1702, 1725, 1726, 1727, 1735 and 1740, Water Code.

792. Nature of Approval Action.

(a) Prior to issuance of a permit, a petition for change shall set forth amendments to the application or be accompanied by an amended application reflecting the proposed change(s). Thereafter consideration of the application will be based upon the amended application.

(1) If the petition is filed prior to issuance of the notice of application (See Article 3), amendments to the application shall be reflected in the application notice.

(2) If the petition is filed after issuance of the notice of application and prior to issuance of a permit, the application shall be renoticed using the procedures in Article 3.

(b) A proposed change in an existing permit or license, or a proposed change pursuant to Water Code Section 1740 in a water right determined by a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981, may be approved in an order. Any order approving a change will consist of an order designating the new point of diversion, place of use or purpose of use, and any terms and conditions, to be attached to the permit or license as a part thereof. At its option, the board may issue an amended permit or license. For temporary changes, the terms and conditions shall be those necessary to avoid or mitigate adverse impacts that would result from the transfer or to ensure reasonable and beneficial use of water by the transferee during the period of the transfer.

(c) Any order approving a change under Articles 15, 16, 16.5, or 17 shall (1) identify existing rights and current uses of water, (2) designate the amount(s) of water involved in the change, (3) designate the quantities of current and new or temporary beneficial uses of water, (4) designate the existing and new or temporary point(s) of diversion, places(s) of use, and purpose(s) of use, (5) include any required statutory findings, and (6) include any terms and conditions to which approval of the change is subject. Any order approving a change under Articles 15, 16.5, or 17 shall include compliance with any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1435, 1438(a), 1547, 1547.1, 1701, 1702, 1705, 1725, 1726, 1727, 1735 and 1740, Water Code.

793. Filing Fee When Multiple Changes or Rights Involved.

With respect to a single application, permit, license, or other water right upon which a change petition is filed, a petition or petitions for more than one change shall be considered a single petition insofar as the filing fee is concerned, provided the changes are of such nature that action on all of them can be taken simultaneously. A petition involving changes to more than one application, permit, license or other water right upon which a change petition is filed shall be deemed a separate petition for each and applicable fees will be required for each. Fees based on water quantity shall be calculated using the quantity of water or water rights subject to the petition.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1436, 1526, 1547 and 1547.1, Water Code.

794. Petition Information and Map Requirements.

(a) A petition for change(s) submitted by a permittee or licensee, or submitted pursuant to Water Code Section 1740 by a holder of a water right determined under Water Code Section 2500 et seq. after January 1, 1981 shall identify the amount(s) and holder(s) of the right(s) involved and shall include the following information and map(s):

(1) The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent;

(2) The amount(s) of water proposed for change, transfer or exchange;

(3) The existing and the proposed purpose(s) of use of water;

(4) The existing and the proposed point(s) of diversion and redirection, and the existing and proposed location(s) of any return flow;

(5) The existing and the proposed place(s) of use of the water for various purposes of use;

(6) The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed;

(7) Any changes in property ownership(s) involved, and the point(s) of diversion and place(s) of use of other known users of water who may be affected by the proposed change(s);

(8) Information identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses;

(9) Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s);

(10) The parties involved in the proposed change, transfer or exchange;

(11) Map(s) prepared in accordance with Article 7 which describe the proposed change(s), delineate any additional information required by Items (4), (5), and (7) above, and show the hydrologic basin of origin and the streams which could be affected by the proposed change(s).

(12) The proposed place(s) of use for irrigation may be listed as net acreage(s) within gross area(s) shown on a map submitted with the petition.

(b) Water right holders proposing a change in point of diversion, place of use or purpose of use shall provide preliminary information and map(s) required by subdivision (a) to, and shall request consultation with, the Department of Fish and Game and the appropriate Regional Water Quality Control Board regarding the potential effects of the proposed change(s) on water quality, fish, wildlife, and other instream beneficial uses.

(c) Before approval of a change petition, any water right holder petitioning for a change in point of diversion, place of use or purpose of use shall provide to the board all comments of the Department of Fish and Game and the Regional Water Quality Control Board in response to the request for consultation required by subsection (b).

(d) The petition for change(s) will not be accepted for filing unless it contains all of the information required by subdivision (a) and proof that a copy of the petition has been served on the Department of Fish and Game.

NOTE: Authority cited: Sections 1058, 1436, and 1726, Water Code. Reference: Sections 1435, 1436, 1437, 1438(a), 1702, 1726, 1727, and 1740, Water Code.

795. Notice of Change Petitions.

(a) After a petition has been filed for change(s) in point of diversion, place of use, or purpose of use, the petitioner shall cause notice to be given or published if and as required by the board. The board's notice requirements shall be based on the potential effects of the proposed change(s) on legal users of water and on fish, wildlife, and other instream beneficial uses of water. The board will not ordinarily require that notice be given or published in cases where the proposed change(s) do not have the potential to impair the water supply of other legal users of water or instream beneficial uses, except that in all cases the petitioner shall notify the Department of Fish and Game in writing of the proposed change(s). Examples of petitions for which notice will not ordinarily be required, include the following:

(1) Petition for a change in point of diversion which does not change the point relative to diversion points of others and tributary sources on the same stream;

(2) Petition for a change of place of irrigation use from one parcel to another provided that the return flow is unchanged;

(3) Petition for a change in purpose of use which would add incidental uses to, or substitute incidental uses for, permitted or licensed uses which are themselves incidental to the principal use of water stored in a reservoir. For the purpose of this section, incidental uses are limited to the following beneficial uses of water: stockwatering; fire protection; non-commercial recreation; non-commercial wildlife preservation or enhancement; generation of power; non-industrial dust control; or soil conservation.

(b) At any time any person may file with the board a written request to receive notice of the filing of change petitions. Thereafter the board shall mail or deliver a copy of each such notice to the person filing the request, including a statement of the time within which any protest, comment, or objection must be filed.

NOTE: Authority cited: Section 1058 and 1726, Water Code.
Reference: Sections 106.7, 110, 1250.5, 1312, 1491, 1703, 1704, 1736, and 1740, Water Code.

796. Protest Procedure on Change Petitions.

The provisions of Articles 9, 10, and 11, insofar as they are applicable, shall govern protests, answers to protests, investigations, and hearings of petitions for change(s) under

Articles 15 and 17, including minor protested petitions for change. The procedures for notification of and objection to temporary changes due to transfer or exchange of water or water rights, or temporary urgency changes are provided in Articles 16 and 16.5 respectively.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1438, 1703, 1704, 1704.1, 1704.2, 1704.3, 1725, 1736 and 1740, Water Code.

797. Changes Prior to Notice of Application

NOTE: Repeal this section.

799. Petition For Change To Add A Power Plant To Existing Works.

(a) Persons having a permit or license for the use of water may petition the board to add generation of power to the permit or license as a beneficial use when the water can be used for the generation of power without changing the streamflow regime. The criteria that shall be considered in determining whether there would be a change in the streamflow regime include, but are not limited to, the following: (1) Will the rate and volume of flow be changed? (2) Will the water temperature be changed? (3) Will there be changes in the concentration of dissolved oxygen or turbidity? (4) Will there be changes in the timing of water releases from any existing water diversion or storage facility? (5) Will there be a change in the point of discharge or will any additional section of watercourse be bypassed?

(b) See Section 730 concerning when a new application must be filed.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 106.7, 110, 1250.5, 1381, 1394, 1396, 1397, 1490, 1491, 1611, 1700, 1701, 1702, 1703, 1704, 1704.1, 1704.2, 1704.3, 1704.4, 1705, 1705.5, 1706, Water Code.

Article 16. Temporary Changes Due to Transfer or Exchange of Water or Water Rights

801. Notice of Temporary Change.

The petition for temporary change submitted by the water right holder under Water Code Section 1726 shall include the information required by Section 794.

NOTE: Authority cited: Section 1058, Water Code. Reference: Section 1726, Water Code.

804. Public Notice and Objections to Proposed Temporary Changes.

(a) Within ten days after the receipt of a petition meeting the requirements of Section 801, the board will send notice of the petition or contact all legal users of water known to the board who may be affected by the proposed temporary change(s).

(b) Any interested person may file an objection to the proposed change(s) with the board not later than 15 days after the date of the notice required by subsection (a). The objection shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

(c) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons known to the board.

(d) Notice of hearing on a proposed temporary change may be given by mailing notice to the water right holder, the Department of Fish and Game and persons known to the board who might be affected by the proposed change, not less than 20 days before the date of hearing by certified mail or personal delivery.

(e) Any order approving a temporary change under this Article shall meet the requirements of section 792(c).

NOTE: Authority cited: Sections 1058, 1438(a), and 1726, Water Code. Reference: Sections 1725, 1726, and 1727, Water Code.

Article 16.5. Temporary Urgency Changes

805. Petition for Temporary Urgency Change.

(a) A petition for a temporary urgency change will not be accepted for filing until the minimum fee required by Water Code Section 1436 is received and the applicable information specified by Section 794 has been submitted to the board.

(b) Prior to issuance of any temporary urgency change order pursuant to Water Code Section 1435, there shall be compliance with any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, payment of any additional fees, and submittal to the board of any additional information or maps necessary to make the findings required by Water Code Section 1435.

NOTE: Authority cited: Sections 1058, 1436, and 1438(a), Water Code. Reference: Sections 1435, 1436, and 1437, Water Code.

806. Notification of and Objections to Temporary Urgency Changes.

(a) As soon as practicable after receipt of a petition meeting the information and map requirements of Section 794 and compliance with Water Code Section 1437 the board shall cause notice to be given pursuant to Water Code Sections 1438(b) and 1438(c).

(b) Any interested person may file an objection to the petition with the board prior to adoption of a board order or validation of any temporary urgency change order. The objection shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

(c) Any objections to a temporary urgency change petition will be heard by the board during its validation meeting or at a hearing after notice to all interested persons known to the board.

NOTE: Authority cited: Sections 1058, 1436, and 1438(a), Water Code. Reference: Sections 1435, 1437, and 1438, Water Code.

**Article 17. Changes Involving a
Long-term Transfer of Water or Water Right**

811. Long-term Transfer.

(a) A permittee, licensee, or holder of a water right determined under a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981 who is filing a petition pursuant to Water Code Section 1740, may petition the board for a long-term transfer of water or water rights involving change(s) in point of diversion, place of use, or purpose of use specified in the permit, license, or water right for any period of time in excess of one year.

(b) Any long-term transfer requested under Water Code Section 1735 shall be subject to the applicable requirements of Articles 15 and 16 and any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1735, 1736, and 1740, Water Code.

812. Petition for Long-term Transfer.

A petition for a long-term transfer of water or water rights will not be accepted for filing until the fee required by Water

Code Section 1547.1 and the information and maps specified in Section 794 have been submitted to the board.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1547.1, 1735, 1736, and 1740, Water Code.

814. Notice of Long-term Transfer Petitions.

After a completed petition has been filed for a long-term transfer of water or water rights involving a change in point of diversion, place of use or purpose of use, the board shall give notice to the Department of Fish and Game, all persons requesting notice of change petitions, and all legal users of water known to the board who may be affected by the proposed change. A hearing will be held upon request of the petitioner or a protestant.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1736 and 1740, Water Code.

815. Protest Procedure on Long-term Transfer Petitions.

The provisions of Articles 9, 10 and 11 insofar as they are applicable, shall govern protests, answers, investigations, and hearings of petitions under this Article.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1735, 1736, and 1740, Water Code.

816. Action of the Board Regarding Long-term Transfers.

If the board determines that a long-term transfer of water or water rights as described in Section 811 is appropriate, and meets the requirements of Water Code Section 1736, an order will be issued in accordance with Section 792 authorizing the long-term transfer, subject to appropriate terms and conditions, for the period requested or such lesser period found by the board to be appropriate.

NOTE: Authority cited: Section 1058, Water Code. Reference: Sections 1735, 1736, and 1740, Water Code.