

Delta Conveyance Project Reference Guide on the Water Rights Change Petition Public Process

Background and Introduction

On February 22, 2024,¹ the Department of Water Resources (DWR) filed a petition requesting a change to DWR's existing water rights for the State Water Project to add two new points of diversion on the Sacramento River in the northern Sacramento-San Joaquin Delta. This [change petition](#) requires approval from the State Water Resources Control Board (State Water Board or Board).

The proposed Delta Conveyance Project would involve the construction of two 3,000 cubic feet per second water diversion facilities in the north Delta, a single below-ground tunnel to convey the water diverted to the south Delta, and a pumping plant to move the water from the tunnel into the existing Bethany Reservoir on the California Aqueduct. DWR would operate the new conveyance facilities in conjunction with the existing south Delta export facilities at Clifton Court Forebay.

Given high level of public interest in the proposed Delta Conveyance Project, the Board is providing information concerning the immediate next steps pertaining to the change petition process. The Board will occasionally update this information following major milestones or deadlines.

What is a change petition?

A change petition is filed (by a water right holder referred to as the petitioner) with the State Water Board to request modification of an existing water right permit or license. Change petitions are needed to modify a point of diversion, purpose of use, place of use, or other terms and conditions of an existing water right permit or license.

How is a change petition processed?

Before approving any change petition, the Board must find that the change will not injure any legal water user (including any water right holders who are junior in priority and anyone who contracts with a water right holder) and that the change will not unreasonably impact fish or wildlife. The Board must also determine that the proposed project is in the public interest. For the Delta Conveyance Project, the Board must include appropriate Delta flow criteria as a condition of any approval in accordance with the requirements of the Delta Reform Act. The process describing how a change petition is processed is summarized in the flowcharts linked on the State Water Board's [Petitions webpage](#).

¹ DWR submitted the petition on February 22, 2024, followed by an erratum on February 27, 2024, that made minor corrections to technical details.

What happens next?

Public Noticing and Protests

Upon receiving a change petition, the State Water Board first reviews the petition for completeness. A petition must meet specific requirements in the California Water Code and the Board's regulations (Wat. Code, § 1701.2; Cal. Code Regs., tit. 23, § 794) in order to be considered complete.

If the petition is complete, the Board will release a public notice providing information about the petition, including directions for how the public can comment on or protest the proposed change. The notice establishes a deadline, typically 60-90 days after the notice is issued, for the public to submit any protests to the State Water Board. (On February 29, 2024, the Board accepted the change petition for filing and issued a notice of the water right change petition, providing a 60-day period to submit protests to the State Water Board and provide a copy to the petitioner, the Department of Water Resources).

Following the deadline to submit protests, the State Water Board initiates a protest resolution period. The protest resolution period is intended to provide an opportunity for the petitioner and protestants to collaboratively resolve any protests before a more formal process is needed. The protest resolution period usually lasts for at least 180 days. If there are unresolved protests and disputed factual issues at the end of the protest resolution period, the Board must hold a water right hearing before it can decide on the petition.

Hearings

The Board is required to hold a hearing before approving or denying a petition, unless all the protests are resolved and there are no disputed factual issues. The purpose of the hearing is to allow the petitioner and protestants to submit information concerning disputed factual issues so that the Board can make an informed decision on whether to approve the petition, and whether conditions are needed if the petition is approved.

What issues can be protested and why is there a need for protest resolution?

A protest lays out objections to the approval of the petition. A person or entity may file a protest based on any of the below allegations 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,*
- *would be contrary to law, or*
- *would not be within the jurisdiction of the State Water Board*

All protests must include measures that could be taken to resolve the protest. Clear and specific objections to the approval of the petition provides an opportunity for the petitioner and protestant to attempt to resolve the protestant's concerns. Protests that are unclear, unsubstantiated, or that are not germane to the petition may be dismissed.

The procedures governing petitions and protests are set forth in Water Code sections 1703.1-1703.6. More information can be found on the Division of [Water Rights' Petitions webpage](#).

How can I submit a protest and participate in protest resolution?

A protest must contain the following information:

- *Name and address of the protestant;*
- *Signature of the protestant or a designated representative;*
- *Clear and specific objections to approval of the application or petition, and the factual basis for the objections;*
- *A description of any measures that could be taken to resolve the protest; and,*
- *Indication of the manner in which the protestant served upon the petitioner a duplicate copy of the protest.*

If the protest is based on injury to a legal user of water, the protest must specifically describe the injury that would result from approval of the petition. If the protest is based on concerns about environmental impacts, existing law, jurisdiction, or public interest or public trust, the protest must be accompanied by a statement of facts supporting the allegation.

The protest should be submitted using a [Petition Protest form](#), which is available on the Board's website or upon request in writing or by telephone from the Division of Water Rights.

Any requests, inquiries, or the submittal of a completed protest form should be directed to the contact information in the public notice issued by the State Water Board. For the Delta Conveyance Project, an email box has been created for general questions and submittal of protest forms: DCP-WR-Petition@waterboards.ca.gov.

Further details described in this [protest submittal requirements](#) document.

What is prohibition of ex parte communication and what does it mean for me?

Rules limiting ex parte or off the record communications ensure that the Board Members receive information pertaining to the subject of a hearing in a fair and transparent manner. An ex parte communication can occur when a person communicates with a Board Member, directly or through an intermediary, on a pending Board hearing without providing notice and an opportunity for all parties to be present or be able to participate in the communication. Even public communication before a large

audience may be an ex parte communication if other parties to the proceeding do not have notice of or an opportunity to participate in the communication.

For the Delta Conveyance Project, the prohibition against ex parte communications went into effect with the submittal of the change petition to the State Water Board on February 22, 2024. As a result, Board Members and Board staff currently working on the project are subject to certain limitations, which include:

- *Not being able to talk, off the record, about the substance of the project or hearing, except for non-controversial procedural issues, without notice to all other stakeholders and providing them with the opportunity to be present.*

Further details on are available in this [ex parte communications](#) document.

Where can I find additional information?

Additional information on the general petition process can be found [here](#).

Additional information on the Delta Conveyance Project can be accessed [here](#).

How can I stay up to date?

To stay up to date on upcoming notices or information on this change petition, we highly encourage you to sign up to our Delta Conveyance Project email subscription list:

Steps:

1. Go to: https://www.waterboards.ca.gov/resources/email_subscriptions/
2. Select 'State Water Resources Control Board' (first bullet) and provide your email address when prompted
3. Go to Subscription Topics under the Header 'Water Rights' and Select 'Delta Conveyance Project'

- Wetland and Riparian Area Protection Policy / Statewide Dredge or Fill Procedures
- Water Rights**
 - Instream Flow Guidelines for Northern Coastal Streams (AB 2121)
 - Bay Delta Notices
 - California American Water (Cal-Am) Notifications
 - California Water Action Plan/Statewide Instream Flows
 - California WaterFix
 - Cannabis Cultivators
 - Delta Conveyance Project
 - Delta Drought
 - Delta Water Rights (Office of the Delta Watermaster)
 - Drought Updates
 - Fresno River Adjudication
 - Fully Appropriated Streams
 - Lower Klamath Project License Surrender
 - Mill Dam Antiquities Creek Outfalls

4. Click 'Submit'

5. *You will receive a confirmation email*
6. *The questions on the next screen are optional, subscription to the list is completed once you receive the confirmation email. Please check your spam/junk folder for the confirmation email as well.*