

Supplement to Water Right Application Form: 5-Year Temporary Permit

Background:

Effective January 1, 2020, amendments to the Water Code allow issuance of a 5-year temporary permit to local agencies for diversion of water to underground storage. This permitting pathway is intended to encourage groundwater recharge projects during times of high flow events. The Division of Water Rights anticipates that most parties will use a 5-year temporary authorization as a first step in pursuing a long-term project and permanent authorization for diversion to augment local supplies to help achieve groundwater basin sustainability.

Temporary permits are not water rights. Temporary permits are a conditional approval to divert and use available water that has not been claimed by a water right holder. Temporary permits are junior to all water rights and include terms and conditions that prohibit diversions in times of water shortage when the demands of other right holders may not be met.

Instructions:

This form includes two sections. The first section is a checklist for prospective applicants to use when considering whether and how the 5-year temporary permit process might apply to their project. The second section of this form is a list of supplemental questions for which answers must be submitted as part of the application filing package. Please include your answers to the questions in section two of this form in a document titled, "5-year Temporary Permit Supplement" and format your answers in an enumerated list that aligns with the question numbering scheme used in this form.

In addition to your answers to the questions in section two of this form, your application package should also include the following forms and associated documents: application form, the underground storage supplement, evidence of California Environmental Quality Act (CEQA) compliance, a water availability analysis, an accounting plan, and evidence of consultation with California Department of Fish and Wildlife (CDFW) as well as the appropriate filing fees.

Section 1: Eligibility Check: As a first step, please conduct an eligibility check before you start the application process to confirm if a 5-year temporary permit is the right fit for your project.

- Is this the correct type of authorization?** The application seeks a 5-year Temporary Permit as authorized in Water Code sections 1431 et seq. (as opposed to a 180-day Temporary Permit or a “Standard” Permit application). For more information on these other permitting options, please see Water Rights for Groundwater Recharge.
- Entity Type.** The applicant is a Groundwater Sustainability Agency (GSA) or local agency as defined by the Sustainable Groundwater Management Act (SGMA) **[Wat. Code, section 1433.1(a)]**
- Method of Diversion.** The application proposes a method of diversion to place diverted surface water in underground storage. **[Wat. Code, section 1433.1(b)(1)]**
- Purposes of Use.** The application proposes purposes of use that advance the sustainability goal of a groundwater basin and are consistent with any relevant adopted groundwater sustainability plan (GSP), interim plan, or alternative under SGMA for the basin. Please note that groundwater recharge itself is not a beneficial use. For more information on beneficial uses and SGMA, see Fact Sheet: Purposes of Use for Underground Storage **[Wat. Code, section 1433.1(b)(1)]**
- CEQA Complete.** The applicant is able to provide information documenting that CEQA compliance has been completed prior to submittal of this application. **[Wat. Code, section 1433.2 (c)(1)]**
- CDFW Consultation Complete.** The applicant has engaged CDFW at least 30 days ahead of this submittal and has notification documentation, including any proposed conditions, ready to submit with this application. **[Wat. Code, section 1433.2 (c)(2)]**
- Water Availability Analysis.** The applicant has completed either a “standard” or “simplified” water availability analysis (WAA) and has documentation to include as part of this application submittal. **[Wat. Code, section 1433.2(c)(3)]** If the applicant intends to submit a simplified WAA, the application is limited to diversion only when flow in the source water body exceeds an established or calculated flood stage or the applicant has requested board consideration of a simplified water availability analysis prior to submittal of this application.
- A Beneficial Use Accounting Plan.** The applicant has prepared their proposed accounting method to account for storage, including losses, and beneficial use under the proposed permit; **[Wat. Code, section 1433.2(c)(4)]**
- Demonstration of Urgent Need.** The applicant has prepared documentation describing the urgent need for the water to be diverted and used **[Wat. Code, section 1425(c)]**
- All Other Requirements.** The applicant has reviewed the detailed requirements in Water Code Section 1433 and can demonstrate that their proposed project is compliant.

Section 2: Supplemental Questions. Please answer all questions and provide any relevant attachments to substantiate your responses. Information available on websites can be provided by listing the full web address. Your answers should be submitted in a document titled, “5-year Temporary Permit Supplement” and formatted in an enumerated list that aligns with the question numbering scheme used below. Applications that do not meet the eligibility requirements or do not include all the required components (including, but not limited to, evidence of CEQA compliance) will be rejected. Application rejection will result in loss of some or all of your filing fee as described in the California Code of Regulations, Section 1062.

1. Confirm that you are applying for a 5-year temporary permit.
2. Applicant Entity Type Eligibility **[Wat. Code, section 1433.1(a)]**: Describe the applicant entity type(s) and identify those that are a GSA or a local agency as defined by SGMA.
3. Confirm that the application form lists the method of diversion as placing diverted surface water into underground storage. **[Wat. Code, section 1433.1(b)(1)]**
4. Purposes of Use:
 - a. Describe how the proposed use advances the sustainability goal of the groundwater basin.
 - b. Indicate whether there is an adopted GSP, interim plan, or an alternative and provide a link to or copy of the plan.
 - c. If so, confirm that the diversion to underground storage is consistent with any relevant adopted GSP, interim plan, or alternative under Section 10733.6 for the basin. **[Wat. Code, section 1433.1(b)(1)]**
5. Provide the date the applicant completed CEQA for the proposed application. **[Wat. Code, section 1433.2 (c)(1)]**
 - a. Attach evidence that the applicant has completed any environmental review required by, or the project is exempt from, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
 - b. Provide a summary of the pre-submittal engagement the applicant conducted with State Water Board and Regional Water Board staff on the draft CEQA document. This summary should specifically highlight Board comments on any instream beneficial uses of the waters of the state that may be affected by the project **[Wat. Code, section 1433.2(c)(1)]**
6. Provide a copy of the notification from CDFW that the applicant has consulted with CDFW at least 30 days before submission of the application. Include a copy of any conditions proposed by CDFW. **[Wat. Code, section 1433.2 (c)(2)]**
7. Water Availability Analysis. **[Wat. Code, section 1433.2(c)(3)]**

- a. Applicants may choose either to prepare a “standard” WAA or to use a simplified approach. In all cases, the analysis is to be submitted as part of this application.
 - b. There are two pathways for the simplified approach: 1) the application only proposes to divert water when flow in the source waterbody exceeds an established or calculated flood stage; or 2) the applicant has requested board consideration of a simplified water availability analysis prior to submittal of this application. In either case, the Deputy Director for water rights must determine that a simplified WAA is sufficient to make the findings for the application.
 - i. Prospective applicants may consult with Division staff regarding a simplified WAA in advance of filing their application. For purposes of facilitating an effective consultation, applicants should consider providing a copy of the simplified WAA and draft application package at least 30 days to several months in advance of submission of the application, depending on the complexity of the project. Consultation does not constitute a State Water Board finding of water availability. Consultation may be of value to prospective applicants who wish to have some level of assurance that their application package will meet the requirements of Water Code section 1260(k).
 - c. A “standard” WAA must quantify water available to supply the project under a range of foreseeable hydrologic conditions. This requirement may be satisfied by demonstrating that diversions would only occur when both of the following are true: (i) flow in the source waterbody exceeds the claims of all known legal users who divert water downstream of the proposed point of diversion; and (ii) unregulated flow in the source waterbody will be sufficient below the proposed point of diversion to meet instream flow requirements and water quality objectives.
 - d. In all cases, staff encourages the applicant to consult with Division staff on a draft of the WAA prior to submittal. The WAA, especially the results of yield analysis, may affect the nature of the project requested in the application.
8. Accounting Plan. **[Wat. Code, section 1433.2(c)(4)]**
- a. Provide the proposed accounting method to account for storage, including any losses, and beneficial use, including extraction if applicable, under the proposed permit; and
 - b. Indicate whether and how the method is either: 1) certified to be consistent with the GSP or alternative approved pursuant to Water Code section 10733.6 by the GSA for the basin where the water is proposed to be stored or the local agency responsible for implementing the approved alternative; or 2) if there is no applicable GSP or alternative approved pursuant to Water Code section 10733.6, adequate to demonstrate beneficial use of water under the proposed permit and not inconsistent with the Department of Water Resource’s standards in Section 356.2 of Title 23 of the California Code of Regulations.

9. Provide information about the intended permanence of the project. If short term, indicate when the project is intended to end and why it is short term in nature. Please describe whether you intend to pursue a “standard” application to appropriate water and any actions taken. **[Wat. Code, section 1425(c)]**

10. Please provide any additional information relevant to items a through e below that may assist the Division in its review of your application. Information should be in a narrative format and as detailed as possible at the time of application to assist staff as they prepare findings necessary to act on your application. If you are planning to develop additional materials during application processing, please provide an overview of the intended schedule for development and scope and explain how the materials will inform the required findings.
 - a. The application proposes diversion to underground storage for a beneficial use that advances the sustainability goal of the groundwater basin(s). **[Wat. Code, section 1433.1(b)(1)]**
 - b. The water may be diverted and used without injury to any lawful user of water, including the user’s ability to meet water quality objectives. This finding may be satisfied by demonstrating both of the following:
 - i. The proposed diversion to underground storage will occur only when both of the following conditions are satisfied:
 1. Flow in the source waterbody exceeds the claims of all known legal users who divert water downstream of the proposed point of diversion; and
 2. Unregulated flow in the source waterbody will be sufficient below the proposed point of diversion to meet instream flow requirements and water quality objectives.
 - ii. To prevent injury to existing legal users of water, storage and extraction from storage in the basin under the proposed permit will be subject to accounting methods and reporting requirements established by any of the following:
 1. A groundwater sustainability plan;
 2. An interim plan;
 3. An alternative approved pursuant to Water Code section 10733.6; and
 4. The board, in applying conditions to the permit. **[Wat. Code, section 1433.1(b)(2)]**
 - c. Any additional information you want the Division to consider when assessing the required finding regarding whether and how the water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. **[Wat. Code, section 1433.1(b)(3)]**
 - d. Any additional information you want the Division to consider when assessing the required finding regarding whether and how the proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest. **[Wat. Code, section 1433.1(b)(4)]**

- e. If there is an adopted groundwater sustainability plan, an interim plan, or an alternative under Water Code section 10733.6 for the basin, the proposed diversion to underground storage is consistent with that plan or alternative. **[Wat. Code, section 1433.1(b)(5)]**