

## **Recommendations for Water Rights Consultants**

The Division of Water Rights (Division) is providing the following general comments and recommendations for your consideration during preparation of deliverables prepared for the Division.

### **Acronyms and Abbreviations:**

Please review the Division's list of standard [Abbreviations and Acronyms](#) and ensure that documents prepared for the Division are consistent with the list. Additionally, the term "Division staff" should be used in place of "State Water Board staff" when the text is referring to day-to-day decisions made by Division staff members. The term "State Water Board" should be reserved for use only when decisions are elevated to the Executive Director or the State Water Board itself.

### **Limitations on Scope of Work:**

Although it may be necessary for consultants to place limits on the scope of work (e.g., type and quantity of analyses performed, level of detail for various studies, etc.) contained in contracts with applicants or petitioners, these limitations should not be construed as limitations on the work needed to fulfill the Division's obligations under CEQA, the Water Code, or the Public Trust Doctrine. The Division may determine that additional work is needed to proceed with processing an application or petition.

### **Existing Studies and File Review:**

As a first step in the environmental review process, you must carefully review the Division's water right files. During file review, you should identify any existing studies to avoid duplication of effort. You should also review existing studies (e.g., previously completed biological surveys, cultural resources studies, etc.) to determine if they are adequate to support the environmental review or whether follow up studies are needed to augment the existing body of work.

### **Electronic Water Rights Information System (eWRIMS) Review:**

[eWRIMS](#) is a computer database developed by the State Water Resources Control Board to track information on water rights in California. eWRIMS contains information on water right permits and licenses that have been issued by the State Water Resources Control Board and its predecessors.

eWRIMS consists of both a tabular database and an integrated geographic information system (GIS). You can search eWRIMS data by several criteria, including the water right owner's name, watershed, stream system, and county. After you have executed a water right search, you can plot the results. The GIS will visually display the point(s) of diversion for each of the water rights that matched your search criteria. In the GIS, you can view important information about each water right that you have selected.

It is important to note that a review of the Division's electronic system will not provide you with all of the relevant existing studies, and a review of the Division's water right files is still necessary.

### **Agency Consultation:**

Pursuant to CEQA, the State Water Board, as Lead Agency, is directed to consult informally with all responsible agencies and trustee agencies as soon as we decide to prepare an Initial Study for a project. The CEQA process is designed to ensure that we obtain informal consultation before we decide on the appropriate environmental document. If it is determined that an Initial Study will be prepared, you should prepare a list of responsible and trustee agencies that may be interested in providing input on the project. In coordination with Division staff, you should schedule a meeting (or teleconference) with these agencies to satisfy the informal consultation requirements in CEQA. All consultation should be documented and provided for Division files.

Notwithstanding CEQA requirements, it is recommended that all projects work with applicable agencies regarding permit coordination.

### **Environmental Setting and Baseline:**

As part of the environmental review process, you must prepare a description of the environmental setting for the project. The environmental setting should include a description of the physical environmental conditions that existed at the time the Division commenced environmental review for the subject project. In some cases, the Division begins the environmental review process when an application or petition is filed. In most cases, the environmental setting will constitute the baseline conditions from which environmental effects are evaluated pursuant to CEQA.

If certain aspects of the project existed in their current configuration prior to the time the application was filed, you should provide supporting evidence (e.g. reservoir surveys, water diversion records, aerial photographs, or any other information that verifies the baseline condition) to assist the Division in determining the project's status under CEQA. Those aspects that existed at the time the application or petition was filed should be considered part of the CEQA baseline. If it can be demonstrated that the entire project existed in its current configuration at the time the application or petition was filed, then the project may qualify for an exemption from CEQA. If appropriate, you should provide a justification for a CEQA exemption that evaluates the site-specific circumstances of project. The State Water Board; however, will make final decisions regarding a project's status under CEQA.

### **Public Trust Resources Impact Assessment:**

The Division must consider the effect of the project on [public trust](#) resources and where feasible, avoid or minimize harm to those resources. This requirement is independent from CEQA, and the CEQA baseline should not be construed as the appropriate baseline for a public trust resource analysis. Therefore, if all or a portion of a project is found to be exempt from CEQA, an analysis will still be needed to evaluate the project's effects on public trust resources and the beneficial uses of water. Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation.

Similarly, the Division may require environmental analysis needed to demonstrate compliance with applicable requirements of the Water Code, the Fish and Game Code or the Federal Endangered Species Act.

To document compliance with public trust, a Public Trust Resource Consideration (PTRC) is typically prepared for CEQA exempt projects. The PTRC may be prepared by Division staff or by a consultant. Information from site visits, the biological resource assessment (focused on riparian associated biological resources), onstream dam or other mitigation plans, and the water availability analysis are some of the key information for preparation of the PTRC. Sections of the PTRC may include:

- Project Description
- CEQA Status
- Supporting Guidelines and Assessments
- Summary of Stream Habitat and Water Availability Analysis Findings
- Public Trust Findings
- Mitigation Recommendations

#### **Responsibility for Assessment of Flow-Related Impacts:**

A Water Availability Analysis (WAA) is required for all water right applications in order to demonstrate that there is unappropriated water available for appropriation. The WAA is required even if a project is determined to be exempt from CEQA. Similarly, an assessment of flow-related impacts to the environment will likely be needed for water right projects where approval of an application or petition may result in changes to stream flow or impacts on public trust resources.

In some cases, multiple consultants may be working on a single project. For example, a separate engineering firm may be preparing the WAA and/or the hydrologic reports necessary to assess flow-related impacts of a project. The environmental consultant will be responsible for using the hydrologic analysis to evaluate the potential for significant impacts on aquatic resources. Accordingly, it is the responsibility of the environmental consultants named in the MOU to coordinate the work prepared by other consultants, and to ensure that it is adequate to support any proposed determinations regarding the potential for environmental impacts.

#### **Evaluation of Impacts to Anadromous Fish:**

The State Water Resources Control Board (State Water Board) adopted a [Policy for Maintaining Instream Flows in Northern California Coastal Streams](#) (North Coast Instream Flow Policy) on October 22, 2013. This policy is also known as the North Coast Instream Flow Policy. It applies to applications to appropriate water, small domestic use and livestock stockpond registrations, and water right petitions located in Marin, Sonoma, portions of Napa, Mendocino, and Humboldt counties.

This policy establishes principles and guidelines for maintaining instream flows for the protection of fishery resources. It does not specify the terms and conditions that will be incorporated into water right permits, licenses, and registrations. It prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion. Applicants may

choose to implement the policy principles through the regionally protective criteria or site-specific studies. Site-specific studies may be conducted to develop alternative site-specific protective criteria. The policy also limits construction of new onstream dams and contains measures to ensure that approval of new onstream dams does not adversely affect instream flows needed for fishery resources. The policy provides for a watershed-based approach to evaluate the effects of multiple diversions on instream flows within a watershed as an alternative to evaluating water diversion projects on an individual basis. The policy contains guidelines for evaluating whether a proposed water diversion, in combination with existing diversions in a watershed, may affect instream flows needed for the protection of fishery resources.

For the processing of water right applications prior to the adoption of this policy, the State Water Board considered the recommendations in the 2002 "[Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams \(Draft\)](#)" (DFG-NMFS Draft Guidelines) jointly developed by DFG and NMFS. (See Wat. Code, § 1259.4, subd. (b)). The DFG-NMFS Draft Guidelines were specifically developed to protect and restore anadromous salmonids and their habitat. The DFG-NMFS Draft Guidelines were intended to preserve a level of streamflow that protects anadromous salmonids from deleterious effects of water diversions. The DFG-NMFS Guidelines are not regulations, but they provide support for the measures necessary to evaluate and protect fishery resources. The North Coast Instream Flow Policy specifies certain conditions, which when met, allow for continued processing of the water availability aspects of applications pursuant to the DFG-NMFS Draft Guidelines.

In any case, your analysis must demonstrate that the potential for direct, indirect, and cumulative impacts were evaluated and avoided or mitigated to less than significant levels if a mitigated negative declaration or negative declaration is being proposed. Minimum bypass flow and maximum rate of diversion requirements developed pursuant to the Policy must be met on an instantaneous basis. To ensure compliance with the requirements, all applicable diversions must operate using a bypass system. Bypass system requirements are described in the Policy. If onstream reservoirs are proposed, then the analysis should evaluate the potential for any adverse impacts that may result from: 1) interruption of migratory patterns; 2) interruption of coarse sediment supply (gravel); 3) loss of riparian habitat, wetlands, or other waters of the State; 4) potential for creating invasive species habitat; and 5) interruption of benthic macroinvertebrate drift.

### **Biological Surveys:**

Please refer to our [Guidance for Biological Surveys and Reports](#) and our [Template for Biological Survey Report](#) that you may consider when preparing biological surveys that may be required for the project. Keep in mind that the guidelines are draft and are only intended to provide guidance on the type and level of analysis typically considered to be necessary for the Division's environmental review. Determinations regarding potential impacts to biological resources should be based on scientifically justified site-specific evaluation consistent with widely accepted protocols and available literature.

If watercourses, wetlands, riparian areas, springs, or seeps are located on a project site they should be identified on a project map. Impacts to these resources must be quantified using a verifiable method.

### Stream Classification and Limit of Anadromy

Information should be collected to support Division determination of the upper limit of anadromy and stream classification at the point(s) of diversion. The upper limit of anadromy is the upstream end of the range of anadromous fish that currently are, or have been historically, present year round or seasonally. A Class 1 stream currently or historically supports fish, a Class 2 stream supports no fish, but does support other aquatic life, and a Class 3 does not support aquatic life.

### Delineation of Watercourses, Wetlands, Riparian Areas, Springs, and Seeps:

For projects that appear to have an impact to waters of the U.S., as defined by Section 404 of the Clean Water Act or navigable waters of the U.S. as defined by Section 10 of the Rivers and Harbors Act of 1899, the U.S. Army Corps of Engineers (ACOE) should be consulted regarding the need for a Section 404 permit. We recommend consultation early in the environmental review process, as the need for a Section 404 permit may require alterations to the project or changes to the required environmental analysis.

### Setback Analysis:

Setbacks or buffers from environmentally sensitive resources may in some cases be established to mitigate actual or potential impacts of a project. If setbacks or buffers are proposed, you should provide a setback analysis that evaluates site-specific data in combination with scientific literature to establish a justifiable setback/buffer distance for any watercourses, wetlands, riparian areas, or other sensitive areas that may be impacted by project construction or operation. In some cases, you may also need to provide a justification of why setbacks or buffers are not required to protect sensitive resources.

### **Archaeological Surveys:**

The following protocol is provided for your consideration for projects where an Archaeological Survey is necessary. Review any previously completed surveys; cultural resource reports; archaeological site records and maps; and formal property listings at the Information Center of the [California Historical Resources Information System](#) as the initial cultural resource inquiry. Contact the [Native American Heritage Commission](#) for a search of their sacred lands database and for the names of Native American individuals and groups who may be contacted for information in the project vicinity. Supplement the above information with a review of the appropriate ethnographic resources prior to any fieldwork. It is important that you coordinate and consult with Division staff as you proceed, to determine the full scope of the work necessary.

If it is determined that a survey is necessary, a qualified professional archaeologist should conduct a site visit to complete a standard archaeological inventory using pedestrian transects to survey the points of diversion, diversion structures, pipeline routes, dam and reservoir locations, and the place of use. Record any newly found archaeological sites or re-record previously identified sites that were recorded more than five years previously, including linear features encountered within the project area. All sites and features must be recorded in a manner consistent with the Office of Historic Preservation's publication titled [Instructions for Recording Historical Resources](#). Provide Department of Parks and Recreation Series 523 forms along with appropriate supporting forms (e.g., archaeological site record, linear feature record, site sketch map, and location map) for the sites. Prepare an inventory report

documenting the methods and findings of the cultural resource investigation of the project area. Describe pre-field research methods including data reviewed, field inventory procedures and results, and a summary of cultural resources identified within the project area. Include site records, maps, photographs, and appendices to the technical report as appropriate. All reports need to meet the requirements and standards as outlined in the Office of Historic Preservation's publication titled [Archaeological Resource Management Reports \(ARMR\): Recommended Contents and Format](#).

### **Evaluation of Potential Impacts in the Initial Study:**

The Initial Study, if needed, must describe the criteria used for determining significance for each potential impact listed in the Initial Study checklist (checklist). The discussion (based on/responding to the checklist) must explain the nature of any potential environmental impacts identified and include a discussion of why the impact is considered to be: 1) potentially significant; 2) less than significant with mitigation incorporated; or 3) less than significant. For any issues identified as having no impact, the discussion must include the rationale supporting this determination.

An analysis should be provided, for impacts identified as less than significant with mitigation incorporated, to demonstrate how the impact taken in combination with proposed mitigation results in a less than significant impact. The Initial Study should include the following sections:

- Project Description
- Environmental Setting
- Environmental Checklist
- Explanation of Checklist
- Mitigation Measures/Permit Terms
- Mitigation Monitoring and Reporting Program

You are to assume primary responsibility for organizing and preparing responses to comments received following public circulation of the draft CEQA document(s) prepared under the MOU.

### **Standard Water Right Terms and Compliance Plans:**

The State Water Board maintains a list of Standard Terms, applicable portions of which are included in all water rights. The Standard Terms are available on the [Division's website](#).

Consideration of these terms may be useful towards developing mitigation measures, designing project features, and preparing compliance plans. All new and amended rights will contain the Mandatory Terms (listed in the Water Right template). Mandatory Term H (0000070) requires operation in accordance with a compliance plan. The compliance plan shall specify how the right holder will comply with the terms and conditions of the right. You may be required to provide detailed information for incorporation into the compliance plan. These details may include, but are not limited to:

- a. A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes, etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.

- b. A description of the gages and monitoring devices that will be installed or have been installed to measure streamflow and/or reservoir storage capacity, including any necessary calibration
- c. A description of the frequency of data collection and the methods for recording bypass flows and storage levels
- d. How the facility will be operated and maintained in good condition.
- e. A description of the events that will trigger recalibration of the monitoring devices and the process that will be used to recalibrate.
- f. A description of the best management practices observed to maintain setback and buffer areas.
- g. A time schedule for the project, including installation and rating of these facilities.
- h. Other mitigation plans as applicable (e.g. riparian vegetation, wood and gravel, and invasive species).

**Summary and Next Steps:**

The comments and recommendations described above apply to water right projects in general, and as such, some comments may not apply to your specific project. You should carefully review this information and consult with Division staff regarding the applicability of these comments to the individual circumstances of the project.

For reference, some possible next steps for work related to your project may include the following:

- a final work plan and schedule;
- agency consultation
- a draft Initial Study or PTRC and all supporting studies and analyses;
- supplemental work plans (as needed).

If you have any questions, please contact your assigned Division staff.