

California WaterFix Petition for Change of Point of Diversion, Identification of Information Required under the California Code of Regulations, Title 23, § 794 (Petition Information and Map Requirements)<sup>1</sup>

In the State Water Board February 11, 2016, ruling on the California WaterFix (CWF) Project pre-hearing conference, the Board requested that Petitioners provide information required by Water Board regulations for change petitions in a succinct and easily identifiable format. California Code of Regulations, Title 23, § 794(a) specifies the information that must be submitted to the State Water Board with a petition for change. On August 26, 2015, DWR and Reclamation (Joint Petitioners) filed their CWF Petition for Change with information required under § 794(a), which included information by reference to the BDCP DEIR/EIS and the RDEIR/SDEIS. Since that time, additional information has been released, including CalSim/DSM2 modeling and Reclamation's January 2016 Draft Biological Assessment (BA). This information on the Petition for Change and BA has been posted on the CWF website at <http://www.californiawaterfix.com/> and the Bay Delta Conservation Plan website at <http://baydeltaconservationplan.com>.

In response to the State Water Board request for succinct and easily identifiable information, the subsections of Title 23 § 794(a) are excerpted below and are followed by a summary of the required information. References to locations within the documents where additional information can be found are provided where applicable as well as information available in the Petition.

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<sup>1</sup> Prepared by Maureen Sergent, in coordination with Ray Sahlberg, in response to the State Water Board request for information in its February 11, 2016, Ruling regarding the Prehearing Conference for the CWF Petition.

Title 23, section 794(a) subsections and information listed below:

(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;”

As noted in the CWF Petition for Change, the rate of direct diversion and diversion to storage, maximum allowable combined diversion from the Delta, and season of diversion, will remain unchanged. However, total annual diversions may increase based on annual hydrologic conditions consistent with what is currently authorized under the existing permits. (Exhibits SWRCB-1 and SWRCB-2 (CWF Petition for Change, Supplemental Information pgs. 9, 12-13, and 19); Exhibits DWR-53, DWR-61, section VII; DWR-71, section III.).

DWR has diverted water from the Delta at the maximum rate allowed under the existing permits. The requested change will not increase the rate at which water can be diverted from the Delta. The maximum annual quantity of SWP water pumped at the Banks pumping plant to date is 4,042,851 af in 2005 which includes water directly diverted as well as water rediverted from Lake Oroville storage. (Exhibit DWR-53, section III, and Table 1, Summary Version of the State Water Project Annual Report of Operations,

<http://www.water.ca.gov/swp/operationscontrol/docs/annual/annual05.pdf> .).

The maximum annual quantity of CVP water pumped at the Jones Pumping Plant to date is 3,344,223 af in 1988 which includes water directly diverted as well as water rediverted from CVP storage.

(<http://waterdata.usgs.gov/nwis/inventory?agency>

[\\_code=USGS&site\\_no=11313000](#)).

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

As noted in Section (1) above, the CWF Petition for Change does not request any increase in the rate or timing of diversions (Exhibit SWRCB-1 (CWF Petition for Change, Supplemental Information pgs. 9, 12-13, and 19). The amount of water diverted and the potential change in any particular year due to the new diversion facilities will vary significantly depending on many factors including annual hydrology.

DWR has continued to refine its analysis of the potential changes due to the proposed facilities in response to comments received on the RDEIR/SEIS. The facilities and Initial Operational Criteria included in the CWF are identified in Table 1 of Ms. Pierre’s testimony. (Exhibit DWR-116.) The most recent modeling shows that with the Initial Operational Criteria the average annual combined SWP/CVP Delta diversions through operation of both the north Delta Diversion (NDD) and south Delta diversion may increase from approximately no change to five hundred thousand acre-feet (TAF) as compared to the no action alternative. (Exhibit DWR-71, section III.B.) DWR’s testimony includes a summary of the modeled effects of CWF operations. (Exhibits DWR-66 and DWR-71.)

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

The current purposes of use authorized under the four SWP permits listed in the CWF Petition for Change include Irrigation, Domestic, Municipal, Industrial,

Salinity Control, Recreational, and Fish and Wildlife Enhancement uses. The current purposes of use authorized under the 11 CVP permits listed in the CWF Petition for Change were amended in D-1641 to include Irrigation, Domestic, Municipal, Industrial, Fish and Wildlife Enhancement, Salinity Control, Water Quality Control, Stockwatering, and Recreational uses. There will be no change in the authorized purposes of use for either the SWP or CVP permits. (Exhibit SWRCB-1 and 2 ( CWF Petition for Change SWRCB Form pg 1) and Exhibit DWR-53.)

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

The existing points of diversion are listed in the SWP and CVP permits. (for SWP see, SWRCB-6 through SWRCB-9, for CVP see, SWRCB-10 through SWRCB-20.). The existing points of diversion and the proposed North Delta Diversion (NDD) points are shown on the maps provided with the CWF Petition for Change (SWRCB-1 and SWRCB-2(CWF Petition for Change SWRCB Form pg 1 and Supplemental Information pg. 13, maps attached to CWF Petition for Change, and CWF Petition for Change Addendum and Errata) and in Exhibit DWR-53 and DWR-330).. There will be no change in the location of return flow. There is no change in the location of the export of the water diverted at the existing and proposed points of diversion and no change in the place of use. Water will continue to be exported out of the watershed from the Delta to the SWP place of use from the Banks Pumping Plant and to the CVP Consolidated Place of Use from the Jones Pumping Plant.

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

There will be no change in the places of use for the water diverted under the listed SWP and CVP permits. The SWP authorized places of use downstream of the Delta are shown on the maps filed with the SWP applications to appropriate water and two Petitions for Change to add small areas south of the Delta to the authorized SWP place of use. The maps are on file with the State Water Board. The SWP Place of Use maps are attached as DWR-319 and DWR-320. The CVP Consolidated Place of Use is shown on map 214-208-12581 included in D-1641 which is also on file with the State Water Board (See CWF Petition for Change SWRCB Form p. 1).

(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;”

SWP and CVP diversion and release schedules vary dramatically from year to year depending on a number of factors. SWP/CVP operations are complex and must consider multiple flow and water quality criteria. The proposed change does not include changes to upstream operational criteria, therefore the upstream flow regime will not change as a result of the proposed facilities.

(Exhibits DWR- 51, 71.) There will be some changes in the streamflow regime within the Delta due to the new NDD. (Exhibit DWR-71.) However, as described in the testimony of Mr. Leahigh and Mr. Milligan, DWR and Reclamation will continue to meet all the existing Delta water quality and flow criteria and any other regulatory requirements applicable to the SWP/CVP facilities. (Exhibit

**DWR-61.)** The operation of the NDD will increase the operational flexibility available to SWP/CVP operators. Refer to Mr. Leahigh's and Mr. Milligan's testimony for a description of the factors that affect SWP/CVP operations and how the SWP/CVP is operated in real time to meet its Delta requirements, including D-1641. (Exhibit DWR-61.) Mr. Milligan's testimony describes the operation of the CVP facilities. The CWF with the Initial Operational Criteria will be adaptively managed in consultation with the Fisheries Agencies. (Exhibits SWRCB 1 and 2 (DWR Petitions for Change), SWRCB-3 ( Sections 4.1.2.2 and 4.1.2.4 of the RDEIR/SDEIS and DWR-51, section VI.B; SWRCB- ). Mr. Munevar's testimony describes the CWF with the Initial Operational Criteria and modeling analysis and results of the proposed CWF facilities of flows, diversions, and storage changes compared to the No Action Alternative. (See Exhibit DWR-71.)

(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);"

The operation of CWF has the potential to change flow and water quality at some locations in the Delta, as described in Mr. Nader-Tehrani's and Mr. Munevar's testimony. (Exhibits DWR-66, sections IV-VI; and DWR-71, sections III-IV.) In addition, small changes in water level may occur near the intake locations. (Exhibit DWR-66, section VII.) A list of all active water rights or claims of water rights within the legal Delta (from the State Water Board's eWRIMS database) was provided with the CWF Petition for Change Errata and

Addendum (SWRCB-2).

DWR has identified 15 existing diversions within the construction footprint of the proposed NDD intake facilities. Construction of the NDD intakes would permanently interfere with 5 diversions and would temporarily interfere with 10 diversions. DWR has developed measures to address the impacts to permitted diversions to ensure that water deliveries are maintained in the quantities consistent with the applicable water rights. These measures are identified in Mr. Bednarsky's testimony. (Exhibit DWR-57.)

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

Extensive information on potential impacts to fish, wildlife and other instream beneficial uses is provided in the RDEIR/SEIS (see Exhibit SWRCB-3, (RDEIR/SDEIS) sections 4.1.2.3; 4.3.7; 4.3.8; App. A, Chapter 11 for Fish and Aquatic Resources; and App. A, Chapter 12 for terrestrial biological resources) and in the August 26, 2015 CWF Petition for Change (Exhibit SWRCB-1, p. 14-18) including the RDEIR/SEIS submitted as part of the CWF Petition for Change and the September 11, 2015, Petition Addendum and Errata (Exhibit SWRCB-2, Environmental Information, p. 1). In addition, Reclamation's Draft BA provides information on CWF potential effects on listed species under NMFS jurisdiction in Chapter 5 and the potential effects on Delta Smelt and terrestrial species in Chapter 6. The information related to potential impacts to fish, wildlife and other instream beneficial uses will be presented in Part 2 of the CWF hearing.

(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);”

All water diverted at the NDD and exported from the Banks and Jones Pumping Plants is diverted out of the basin. There will be no change in return flow within the Sacramento-San Joaquin Delta watershed due to the proposed change. There will be no reduction in availability of water to other legal users within the streams affected by the proposed change. DWR and Reclamation divert natural flow only after meeting their respective regulatory requirements, including senior water rights and D-1641 requirements (Exhibits SWRCB-1 and 2 (CWF Petition for Change Supplemental Information pgs. 19-21); Exhibit SWRCB-3 (RDEIR/SEIS submitted as part of CWF Petition for Change).) Impacts on water surface elevations are small and would not affect the ability of other users to divert from the Delta channels. (Exhibit DWR-66, section VII-VIII; and Exhibit SWRCB-1 and 2 (CWF Petition for Change Supplemental Information p. 21).) The modeled potential effects to other users, and how the SWP/CVP address the potential effects in real time operations, are discussed and summarized in the testimony of Mr. Leahigh, Mr. Milligan, Mr. Nader-Tehrani, and Mr. Munevar. (Exhibits DWR-61, DWR-66, DWR-71.)

The CWF Petition for Change does not propose any changes to operational criteria upstream of the Delta. (See Exhibit DWR-51.) The CWF and the existing SWP/CVP facilities will be operated to meet authorized purposes, including flood control, water supply, and fish and wildlife purposes, in a manner that comports



with applicable water rights, regulatory restrictions and contractual obligations.

(Exhibits SWRCB-1 and SWRCB-2 (CWF Petition for Change Supplemental Information pgs. 11-12); DWR-51 and DWR-53.)

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

DWR and Reclamation filed the joint CWF Petition for Change. Appropriate changes will be included in the listed SWP and CVP water rights permits (CWF Petition for Change pg. 1). (Exhibit SWRCB-1.)

(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).”

See the maps submitted with the CWF Petition for Change. (Exhibit SWRCB-1.)