

**State Water Resources Control Board
Northern California Coastal Streams
Water Rights Application and Petition Processing
Trial Program for Predecisional Review**

The State Water Board adopted the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) on May 4, 2010, which became effective on September 28, 2010. Pursuant to Section 3.4.3 of the Policy, the State Water Board has established a Predecisional Review Trial Program that provides an opportunity for water right applicants, petitioners, and protestants to seek review of Division staff determinations by a designated Member of the Board before the State Water Board takes final action on the water right application, petition or registration. This trial program provides affected persons the opportunity for interim Board member review of certain staff determinations concerning the processing of water right applications, petitions, and protests.

This program became effective on September 28, 2010, and will sunset on September 28, 2013. At the end of the trial period, the State Water Board will reevaluate the program and consider whether to extend it.

Program Implementation

The Predecisional Review Trial Program may be utilized by persons involved with pending and new water right applications and petitions within the Policy area, which includes streams and tributaries discharging to the Pacific Ocean from the mouth of the Mattole River south to San Francisco, and all stream and tributaries discharging to northern San Pablo Bay. An affected person(s) may participate in the program if they would like a Board member to provide direction to Division staff regarding an interim staff determination. The following issues may be considered for Board member review:

1. Whether the diversion is from a natural watercourse subject to the permitting authority of the Board;
2. Whether the project involves diversion of water subject to the permitting authority of the Board;
3. Whether the water right application or petition is subject to CEQA, exempt by statute, or categorically exempt from further CEQA analysis;
4. Whether a CEQA document satisfies the requirements of CEQA;
5. Whether a water availability analysis satisfies the requirements of the Water Code and the Policy;
6. Whether a protest shall be accepted or rejected, or dismissed.

Board member participation

Schedules permitting, the individual Board members will take assignments in the Predecisional Review Program on a rotational basis. Initial assignments will be made in alphabetical order, based on the last names of the Board members.

The designated Board member will offer direction to staff regarding any issues brought forward for their review under the Predecisional Trial Program. A request for Board Member review pursuant to this program does not constitute a petition for reconsideration. The assigned Board Member's review will be informal, and will not culminate in a final decision subject to administrative or judicial review.

Process for initiating Board member review

1. Persons desiring Board member review shall provide a letter to the Chief Deputy Director of Water Rights that contains the following information: (a) identification of the project involved; (b) a brief chronology of the water right application, petition, or protest being considered; (c) identification of the specific issues concerning this application, petition or protest that the person would like the designated Board member to review under this program; (d) a list of the documents that have been previously submitted to Division staff regarding those issues; and (e) an explanation why these issues should be brought to the designated Board member for review under the Predecisional Trial Program. The applicant or petitioner and any protestants shall copy one another on any correspondence regarding a request for review pursuant to this program.
2. The Deputy Director of Water Rights will make a determination whether the issues qualify for review pursuant to this program. The Deputy Director will consider information received from the persons requesting the review and any other information received from the applicant or petitioner and any protestants regarding the issues contained in the request for review. If the Deputy Director determines that some or all of the issues qualify for review, the Deputy Director shall provide the affected person's documentation and any other information received from the applicant or petitioner and any protestants to the designated Board member, with a separate written summary prepared by the Division. The Division's written summary should, at a minimum, contain the following information: (a) the issues that are under review, and (b) the technical basis for the staff recommendation regarding the specified issues.
3. The designated Board member shall review the documentation provided. The Board member shall provide to interested persons and Division staff the Board member's recommendations regarding the specific issues brought forward for the Board member's review. The recommendations should be advisory in nature, and serve to expedite resolution of the issues under review. To aid in this process, the Board member's rationale and basis for the Board member's recommendations should be provided to interested persons and Division staff.