



Meeting: **Joint Authority Board & Reservoir Committee**
Agenda Item 2.2

March 18, 2022

Subject: **Water Right Permit Application**

Requested Action:

Consider authorizing the Executive Director to submit the Project's water right application for a Sites water right to the State Water Resources Control Board including associated application fee.

Detailed Description/Background:

Staff has largely completed the development of the Project's water right application to the State Water Resources Control Board (State Board). This is the last in a series of briefings in preparation for the release of the application. In this briefing, staff will provide an overview presentation of the project-specific and standard terms included in the application along with the water availability analysis completed for the application.

Proactively Addressing Concerns

The Authority has been and will continue to work to proactively understand and address concerns and collaboratively develop mutually agreeable solutions with parties.

Through its 2020 Strategic Plan, the Authority identified the values of trust and integrity, environmental stewardship, and proactive innovation. Based on these values, staff has reached out to water agencies, regulatory agencies, and non-governmental organizations to discuss the Project's water right application approach, identify concerns, and attempt to address those concerns. As a result of the concerns raised during numerous meetings with various entities and organizations, staff is proposing that the water right application include the following project-specific terms :

- Winter Water Right Term – This term would subordinate the Project's ability to divert to 12 appropriative water right holders in the Sacramento Valley that have priority dates that post-date September 30, 1977.
- Funks and Stone Corral Creek Flows Term – This term would identify a process for determining the release schedule for flows into Funks and Stone Corral Creeks in compliance with Fish and Game Code Section 5937.

- Diversion Criteria Term – This term would require that diversions under the water right permit are subject to the Authority remaining in compliance with its State Incidental Take Permit.

By including these terms in its application, the Authority is consenting to the State Board including these terms in the Project’s water right permit.

The State Board has developed standard terms to set forth specific conditions for its water right permits. Staff is also proposing that the water right application include the following standard terms with the intent that these also be included in the Project’s water right permit issued by the State Board:

- Term 90, Reduction of Diversion Season – This term puts the Authority on notice that the right to divert is subject to prior rights and that water may not be available for diversion during portions or all of the season authorized due to hydrologic conditions.
- Term 91, Inbasin Entitlements – This term identifies that no diversion would be authorized when satisfaction of inbasin entitlements requires supplemental releases by the Central Valley Project (CVP) and State Water Project (SWP).
- Term 96, Reserved Jurisdiction for Bay-Delta Plan Amendments – This term would reserve jurisdiction for the State Board to amend the Authority’s water right to implement an updated Bay-Delta Plan.
- Term 70, Compliance Plan – This term would require the Authority to prepare a Compliance Plan that identifies how the Authority would comply with the terms and conditions of its water right permit.

In addition to the technical discussions involving DWR and Reclamation that were reported during the July 2021 Board meeting, Staff has had several detailed review meetings with water rights staff at both agencies over the past six months to specifically receive their input and feedback in the development of the water rights application materials. All comments received have been addressed in the proposed application and at this time, no unresolvable issues have been identified.

Prior to and after submittal of the application, staff will continue to work to understand and address concerns and collaboratively develop mutually agreeable solutions with parties and may bring additional terms to the Reservoir Committee and Authority Board for consideration.

Reasonable Likelihood of Water Availability

A robust water availability analysis was completed for the Project, using three different methods with varying levels of conservatism, and all methods show a reasonable likelihood of water available for the Project.

Table 1 provides a summary of the three different approaches and the results of each. Each approach was conservative in nature, with the Historical Analysis and Face Value Analysis representing the most conservative of the approaches (because, among other factors, they use the face value of water rights as a component of demand). As shown in Table 1, under each approach, there is a reasonable likelihood of water available for the Project. In addition, each approach shows water is also available in excess of the Project’s long-term average annual diversions.

Table 1. Summary of Water Availability Analysis Approaches and Results

Approach	Time Period	Supply	Demand	Take Away	Annual Average Water Available
Historical Analysis	Daily; Jan 2000 to Sept 2021	Historical flow data from 5 Sacramento River gages from Red Bluff to Freeport	Face value of all water rights in Sacramento River reach and Delta conditions	Water available in all year types and 20 out of 22 years in analysis	860,800 AF
CalSim II Model	Monthly; Water years 1922 to 2003	Historical hydrology	2030 planning level demands	Water available in all year types and all but three years in analysis	1,500,000 AF
Face Value Analysis	Seasonal; Water years 1922 to 2014	Monthly unimpaired flow data from DWR’s Natural Flow Report	Water right face value throughout Sacramento Watershed (~8,500 water rights)	Water available mainly in wet and above normal years, and about half of years in analysis	1,279,000 AF

Balanced Approach

The water right application presents a balanced approach by demonstrating water is available while avoiding injury to other water right holders, avoiding unreasonable harm to the environment, and establishing that the Project protects public trust resources and otherwise is in the public interest (e.g., by assisting our state in preparing for the realities of climate change).

The Project includes the following actions to avoid injury to other water right holders:

- Project would only divert when the following conditions are met:
 - Flows exceed the minimum Project diversion criteria;
 - Delta is in “excess” conditions as determined under the Coordinated Operating Agreement between the CVP and SWP;
 - Water is available at the Sites points of diversion in excess of the quantity needed to satisfy senior downstream water rights; and
 - Flows are available in excess of those needed to meet all applicable laws, regulations, biological opinions and court orders in place at the time of diversion.

- Project diversions would be subject to Term 90 and Term 91 and the Winter Water Right Project-specific term identified above.

These terms collectively provide protective criteria such that the Project would not result in injury to other water right holders.

The Project includes several measures to avoid unreasonable harm to the environment and protect public trust resources. These include the Project diversion criteria, which will protect resources in the Sacramento River and Delta. In addition, the Diversion Criteria Term identified above would provide the State Board a mechanism to ensure that the Authority complies with the California Endangered Species Act, which requires that impacts to state-listed species, both aquatic and terrestrial, be fully mitigated. The Authority is also proposing to include Term 96, which would reserve jurisdiction for the State Board to amend the Authority’s water right to implement an updated Bay-Delta Plan. These measures collectively work to avoid unreasonable harm to the environment and protect public trust resources.

Staff is finalizing the application and anticipates being ready to submit the application in April 2022.

Prior Authority Board Action:

February 2022: Review and comment on the status of the development of the Authority’s water right permit application, including the water right permit process, refinements to the proposed place of use and points of rediversion, and application fee amount.

Fiscal Impact/Funding Source:

None. Staff and the water rights team time to develop and submit the application, along with efforts to resolve protests and possibly participate in a

hearing is currently budgeted for in Amendment 3. The water right application fee is also budgeted for in Amendment 3.

Staff Contact:

Ali Forsythe

Primary Service Providers:

Somach Simmons & Dunn and MBK Engineers

Attachments:

None