

# WHAT HAPPENS NEXT?

## California WaterFix State and Federal Planning and Permitting Process

Large infrastructure projects like California WaterFix require multiple and often concurrent regulatory review and permitting processes to obtain all of the necessary approvals before moving forward. Below is an overview of the regulatory and permitting actions associated with California WaterFix.

	REGULATORY PROCESSES AND PERMITS	IN PROGRESS?	SEQUENCING	
			IN COORDINATION WITH CEQA/NEPA	AFTER ROD/NOD
1	CALIFORNIA ENVIRONMENTAL QUALITY ACT / NATIONAL ENVIRONMENTAL POLICY ACT (CEQA/NEPA)	✓	●	
2	ENDANGERED SPECIES ACT (ESA) SECTION 7 CONSULTATION	✓	●	
3	NATIONAL HISTORIC PRESERVATION ACT (NHPA) SECTION 106 COMPLIANCE	✓	●	
4	CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) 2081(B) PERMIT	✓		●
5	SECTION 401 OF THE CLEAN WATER ACT - WATER QUALITY CERTIFICATION	✓		●
6	CDFW LAKE AND STREAMBED ALTERATION AGREEMENT, SECTION 1602	✓		●
7	U.S. ARMY CORPS OF ENGINEERS (USACE) SECTION 404 PERMIT	✓		●
8	STATE WATER RESOURCES CONTROL BOARD (SWRCB) CHANGE PETITION	✓		●
9	DELTA STEWARDSHIP COUNCIL	✓		●
10	USACE SECTION 408 PERMIT			●
11	DESIGN & ENGINEERING	10% DESIGN		30% - 95% DESIGN



**1**

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) /  
NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESS**

STATUS: IN PROGRESS

**WHAT**

Disclose proposed project’s potential environmental impacts and associated mitigation measures. Required before the USACE Section 404 and CDFW Section 2081(b) permits, the SWRCB Change Petition and 401 Certification, and CDFW Section 1602 Lake and Streambed Alteration Agreement can be issued and the project can move to the next phase.

**WHO**

California Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation)  
(Lead Agencies)

**NEXT STEPS**

1. Public review period closes on October 30, 2015
2. Review and respond to all comments received on the 2013 Draft Environmental Impact Report / Environmental Impact Statement (EIR/EIS) and Partially Recirculated Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement (RDIER/SDEIS)
3. Prepare Final EIR/EIS and release for public review for a minimum of 30 days
4. Anticipated public meeting prior to a final decision on the project
5. CEQA process:
  - i. Certification of the Final EIR
  - ii. Prepare CEQA Findings and Statement of Overriding Consideration (if appropriate)
  - iii. DWR approves project and adopts Findings
  - iv. DWR adopts Mitigation Monitoring and Reporting Program
  - v. Issuance of Notice of Determination (NOD)
6. NEPA process (concurrent with the CEQA process):
  - i. Reclamation prepares the Record of Decision (ROD)
  - ii. The ROD will be issued after receipt of the final Biological Opinion (BO) and after a 30 day public review period

**ISSUANCE OF THE ROD/NOD DOCUMENTS THE DECISION AND SELECTION OF THE FINAL PROJECT BY THE LEAD AGENCIES AND COMPLETES THE LEAD AGENCIES’ ENVIRONMENTAL REVIEW (CEQA/NEPA) PROCESS**

[More information](#)



**2**

**ESA SECTION 7 CONSULTATION**

STATUS: IN PROGRESS

**WHAT**

Federal Agencies, in coordination with USFWS and NMFS, must document that their actions will not jeopardize the continued existence of any listed species or adversely modify or destroy critical habitat.

**WHO**

DWR (Applicant), Reclamation (Lead Federal Action Agency), U.S. Fish and Wildlife Service (USFWS) (Consulting Agency), and National Marine Fisheries Service (NMFS) (Consulting Agency)

**NEXT STEPS**

1. Preparation of a Biological Assessment (BA) by Reclamation and DWR to document the scientific analyses and effects of the proposed project to listed species and critical habitat
2. Reclamation submits the BA and requests formal consultation with USFWS and NMFS - expected late Fall 2015
3. USFWS and NMFS conduct a sufficiency review of the BA, and if they choose to move forward will then enter into formal consultation and begin preparation of the BO
4. BO issued by the USFWS and NMFS is expected to include authorization for take of a listed species — expected late Spring 2016

**COMPLETION OF THE SECTION 7 PROCESS IS REQUIRED BEFORE THE ROD AND A FINAL EIS CAN BE ISSUED**

**3**

**NHPA SECTION 106 COMPLIANCE**

STATUS: IN PROGRESS

**WHAT**

Federal agencies must consider, in consultation with the State Historic Preservation Office (SHPO), how its undertaking effect properties listed or eligible for listing under the NHPA. USACE prepares draft Programmatic Agreement (PA) with input from DWR and in consultation with SHPO and the tribes. USACE submits PA to SHPO for finalization and signature. SHPO then sends the final PA to interested parties for signature.

**WHO**

DWR (Project Applicant), USACE (Federal Action Agency) and SHPO (Consulting Agency)

**NEXT STEPS**

USACE expected to submit the PA to SHPO in late 2015, and signature is expected in early 2016.

**COMPLETION OF SECTION 106 IS REQUIRED BEFORE THE 404 CAN BE ISSUED**



**4**

**CDFW 2081(b) PERMIT PROCESS**

STATUS: IN PROGRESS

**WHAT**

Required for the incidental take of threatened and endangered species under the California Endangered Species Act (CESA). This permit must be obtained in order to move forward with project construction.

**WHO**

DWR (Applicant) and CDFW (Permitting Agency)

**NEXT STEPS**

- |   |  |
|---|--|
| 1. DWR submits application to CDFW<br>– expected late Fall 2015 | 2. CDFW issues permit decision<br>– expected in late Spring 2016 |
|---|--|

**PERMIT CANNOT BE ISSUED UNTIL DWR FILES THE NOD, SIGNALING COMPLETION OF THE LEAD AGENCY'S CEQA PROCESS**

**5**

**SECTION 401 OF THE CLEAN WATER ACT - WATER QUALITY CERTIFICATION**

STATUS: IN PROGRESS

**WHAT**

Section 401 of the Clean Water Act requires Federal Agencies to obtain certification that proposed discharge actions do not violate state water quality standards. Prior to Section 404 becoming operative, USACE requires 401 certification be issued by the SWRCB. This process addresses impacts to wetlands with regard to water quality and involves coordination between DWR and SWRCB.

**WHO**

DWR (Applicant) and SWRCB (Regulatory Body) and USACE

**NEXT STEPS**

- |                                   |   |
|-----------------------------------|---|
| 1. Projected issuance Summer 2016 | 2. Must be issued after Final EIR is certified and NOD has been issued. |
|-----------------------------------|---|

**401 PERMIT IS NEEDED BEFORE 404 PERMIT AUTHORIZES DISCHARGE ACTIONS ASSOCIATED WITH PROJECT CONSTRUCTION**



**6**

**CDFW LAKE AND STREAMBED ALTERATION AGREEMENT, SECTION 1602**

STATUS: IN PROGRESS

**WHAT**

Required for any project that will impact the bed or bank of any river, stream or lake, change or use any material from any river, stream, or lake; or, divert water; or, deposit debris, waste or other materials that could pass into any river, stream or lake.

**WHO**

DWR (Applicant) and CDFW (Permitting Agency)

**NEXT STEPS**

1. DWR prepares application in coordination with CDFW for eventual submittal to CDFW - planned for Spring 2016
2. Submitted in coordination with the 2081(b) permit and 404/401 of CWA process

**STREAMBED ALTERATION AGREEMENT CANNOT BE ISSUED UNTIL DWR FILES THE NOD AND IS NEEDED BEFORE PROJECT CONSTRUCTION ACTIVITIES WITHIN STATE WATERS**

**7**

**USACE SECTION 404 PERMIT UNDER CWA**

STATUS: IN PROGRESS

**WHAT**

Required by the Clean Water Act for projects that discharge dredged or fill materials into waters of the United States. This permit must be obtained in order to move forward with project construction within waters of the U.S. Permit is combined to include authorization for activities in, under, or over navigable waters regulated by Section 10 of the Rivers and Harbors Act.

**WHO**

DWR (Applicant) and USACE (Permitting Agency)

**NEXT STEPS**

1. Upon receipt of the permit application, USACE issued a public notice for the application starting a 60-day comment period that ends on November 9, 2015. All comments received will be transmitted to DWR for response, in coordination with the Draft EIR/ EIS and RDEIR/SDEIS comment response process
2. USACE reviews the permit application, including refinement of impacts and mitigation related to permit terms and concurrently prepares the 404(b)(1) alternatives analysis
3. USACE makes permit decision after Reclamation issues the ROD, USACE completes Section 106 of the NHPA, USFWS/NMFS issue the BO, and SWRCB issues 401 Certification.

**FINAL PERMIT DECISION MADE AFTER RECLAMATION ISSUES THE ROD, USACE COMPLETES SECTION 106 OF THE NHPA, USFWS/NMFS ISSUE THE BO, AND SWRCB ISSUES 401 CERTIFICATION**

[More information](#)



**8**

## SWRCB CHANGE PETITION PROCESS

STATUS: IN PROGRESS

### WHAT

Required by water rights holders seeking change in point of diversion, place of use or purpose of use. Approval of this petition must be obtained in order to move forward with project construction.

### WHO

DWR and Reclamation (Applicant) and SWRCB (Regulatory Body)

### NEXT STEPS

1. SWRCB issues notice of receipt of application and notice of hearing, which includes a calendar of when the hearing will be held – Fall 2015
2. Adjudicatory hearing – Spring/Summer 2016
3. SWRCB prepares the administrative record for their decision; issues decision on change petition late 2016 or early 2017

**DELTA REFORM ACT PROHIBITS ANY PROJECT  
CONSTRUCTION UNTIL SWRCB ISSUES THEIR DECISION**

[More information](#)

**9**

## DELTA STEWARDSHIP COUNCIL

### ROLE

CEQA responsible agency

### NEXT STEPS

1. DWR may determine that California WaterFix is a covered action consistent with the Delta Plan and regulations, and in such event, would file a certification of consistency with the Council. The Council would have appellate authority over DWR's consistency determination.
2. If BDCP, as originally proposed, is approved by DWR at the conclusion of CEQA review, it would be incorporated into the Delta Plan if it meets specified statutory criteria in the Delta Reform Act. The Council would have appellate authority over compliance with these criteria for incorporation.



**10**

**USACE SECTION 408 PERMIT**

STATUS: NOT STARTED

**WHAT**

Required by USACE for any actions that could lead to alteration and/or modification of Federally constructed levees, or an existing USACE civil works project. USACE must determine that the proposed alteration does not impair the usefulness of the USACE project, and would not be injurious to public interest.

**WHO**

DWR (Applicant) and USACE (Permitting Agency)

**NEXT STEPS**

1. Prior to work commencing on a jurisdictional levee, DWR will prepare and submit the permit application to USACE
2. Application developed in conjunction with continued facility design

**ISSUANCE OF THE 408 IS REQUIRED PRIOR TO ANY CONSTRUCTION RELATED TO EXISTING USACE CIVIL WORKS PROJECTS**

**ISSUED BY USACE IN CONJUNCTION WITH AUTHORIZATION OF 404 ACTIONS THAT OVERLAP WITH 408 ACTIVITIES**

**11**

**ENGINEERING & DESIGN PROCESS**

STATUS: IN PROGRESS

**WHAT**

Part of the initial design phase, which includes 10 percent design and preliminary work to perform environmental impacts analysis and determine feasibility of mitigation and associated costs. Once the ROD/NOD has been issued, engineering and design work can progress toward construction.

**WHO**

DWR in coordination with the Public Water Agencies

**NEXT STEPS**

1. [Design Construction Enterprise](#) established and managed by DWR to develop preliminary engineering plans and assist in completing the environmental planning process
2. Land acquisition process will be phased and will not occur until after the ROD/NOD has been issued. Initial planning for this process has already begun.



Detailed design and construction will not begin until the environmental review has been completed, a project has been approved, and all appropriate permits and other regulatory items have been obtained.