



Requested Action:

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 redirection, and application fee amount.

Detailed Description/Background:

Staff is continuing to make progress on the development of the Project’s water right application to the State Water Resources Control Board (State Board). As part of a series of briefings in preparation for the release of the application, staff will provide an overview presentation of the water right permit process and key components of the process. In addition, staff will also provide a focused overview of the updated place of use and points of redirection map that will accompany the application along with a review of the large, non-refundable filing fee commitment the goes with applying. This is leading up to the anticipated submittal of the Project’s water right application to the State Board in April 2022.

Water Right Permit Process

All water planned to be stored in the Sites Reservoir is proposed to be “Sites water” and is to be covered under the applied for water right. The State Constitution protects the waters of the State for the benefit of all Californians. A valid water right is necessary for an entity to beneficially use water in the State. Water rights are generally administered by the State Board and there are several different types of water rights. The Authority would be applying for an appropriative water right. The following generally outlines the steps in obtaining an appropriative water right.

Filing an Application. To initiate the process, the Authority will file its application. At this time, staff continues to recommend that the Authority request assignment of the previously filed state Application A025517 (with appropriate amendments) and request release from priority of state Applications A025514 and A025513, in favor of A025517. These releases would place A025514 and A025513 lower in priority than A025517.

Acceptance of Application. The State Board will notify the Authority within 30 days whether the application is incomplete or accepted. Acceptance usually

establishes priority as the date of filing; however, the state filing the Authority will be requesting assignment of has a priority date of 9/30/1977.

Public Notice. The State Board will then publish a public notice of the Authority's application and invite public comment for a period of at least 60 days. Any person may file a protest based on an allegation that the proposed appropriation would: interfere with prior water rights, have an adverse environmental impact, not best conserve the public interest or public trust, be contrary to law, or not be within the jurisdiction of the State Board.

Protest Resolution. Within 180 days of the close of the public comment period (which period the State Board would likely extend if requested by the Authority), the Authority will attempt to resolve any protests that have been filed. If both the protestant and the Authority can agree to mutually acceptable conditions, the protest is resolved at this point in the process. The State Board staff may also dismiss protests during this time period if proposed standard or project-specific permit terms address the protestants' concerns.

Hearing. Any protests not resolved or dismissed would be resolved in a formal hearing before one or more members of the State Board or a hearing officer in the State Board's Administrative Hearings Office. The State Board's decision is based upon the record established during the hearing.

Order and Permit Issuance. Two initial Board findings are required before a permit can be issued: that unappropriated water is available to supply the applicant, and that the applicant's appropriation is in the public interest. In the case of the Project, the Permit will contain standard and project-specific permit terms, or conditions under which the Project may operate. In issuance of a permit, the State Board must also comply with the California Environmental Quality Act (CEQA), and we anticipate the State Board using the Authority's CEQA document to accomplish this. The State Board will also issue an Order concurrently with the issuance of the Permit that documents the process, describes how protests were resolved, and describes how the State Board has complied with CEQA and other laws.

Permit to License. After the construction and initial operations of the Project, the Authority may progress from permit to a license. This occurs after the Authority has demonstrated beneficial use of the water. The application includes a request for 20 years following the completion of construction to put the full extent of the volume requested to beneficial use. A license is the final confirmation of the water right and remains in effect as long as the conditions in the license are being fulfilled. Licenses are typically granted for the maximum amount of water utilized under a Permit (up to the Permit amount) during the specified development period.

These key permit steps are summarized in Figure 1.

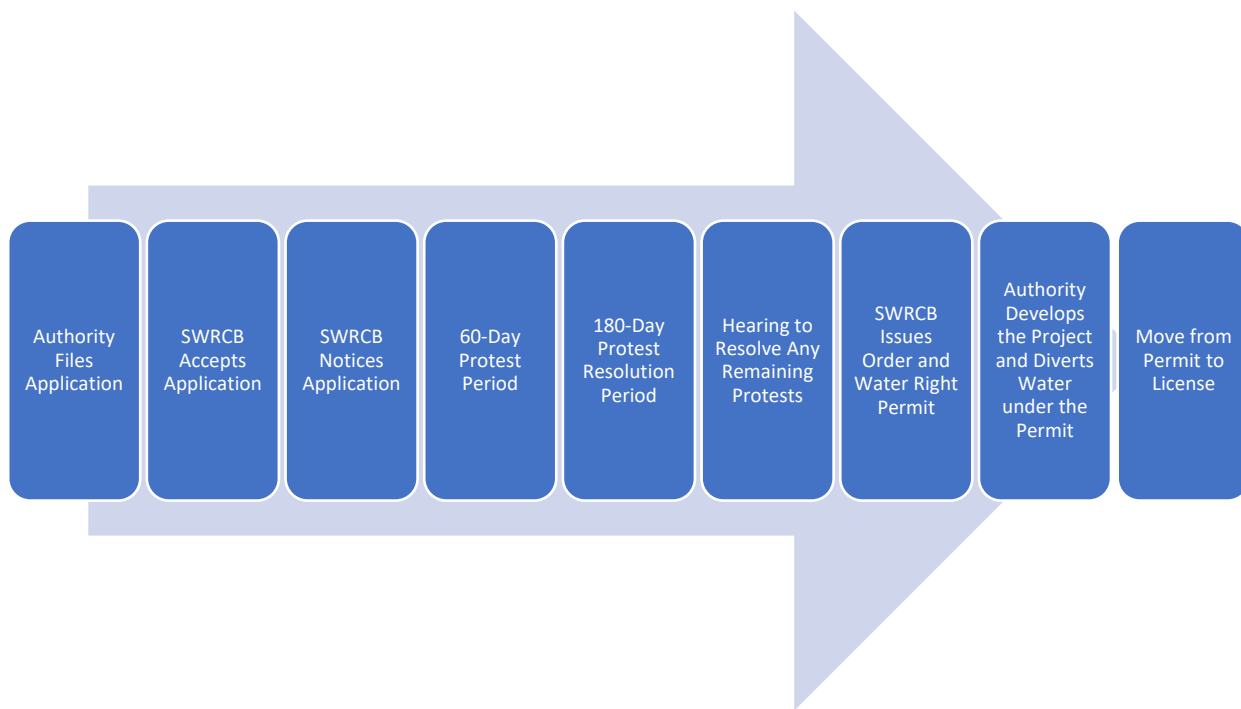


Figure 1. Key Water Right Permit Process Steps

Place of Use and Points of Rediversion

Over the last several months the water rights team has continued to adjust the place of use and points of rediversion based on one-on-one discussions with member agencies and Reclamation. Revised Place of Use and Points of Diversion/Rediversion Maps are provided as Attachment 1. Minor additional revisions may be made but no substantial changes are anticipated to this map prior to submittal of the application.

Application Fee

State required fees to process the Project’s water right application, assign Application A025517 (with appropriate amendments) to the Authority and request release from priority of Applications A025514 and A025513 are as follows:

- Base Application Fee: \$579,952.
- Petition for Assignment of a State Filed Application filed with water right application: \$5,000.
- Request for Release from Priority of State-filed applications: \$10,000.
- Total Fee = \$594,952.

All fees are non-refundable.

The water right application fee eliminates state fees associated with filing and processing the Project's Section 401 Clean Water Act permit, which is currently estimated at \$207,000.

Next Steps

Staff will continue to develop the water right application. The Water Availability Analysis and standard and project-specific terms proposed to be included in the water right application will be reviewed at the Joint Reservoir Committee and Authority Board meeting next month (March). At that time, staff also anticipates requesting approval for the Executive Director to finalize and submit the application along with the application fee in early April.

Prior Authority Board Action:

December 2021: Review and comment on the status of the preparation of the water right application.

Fiscal Impact/Funding Source:

None. Staff and the water rights team time to develop and submit the application, along with efforts to resolve protest 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 Provider:

Somach Simmons & Dunn along with MBK Engineers

Attachments:

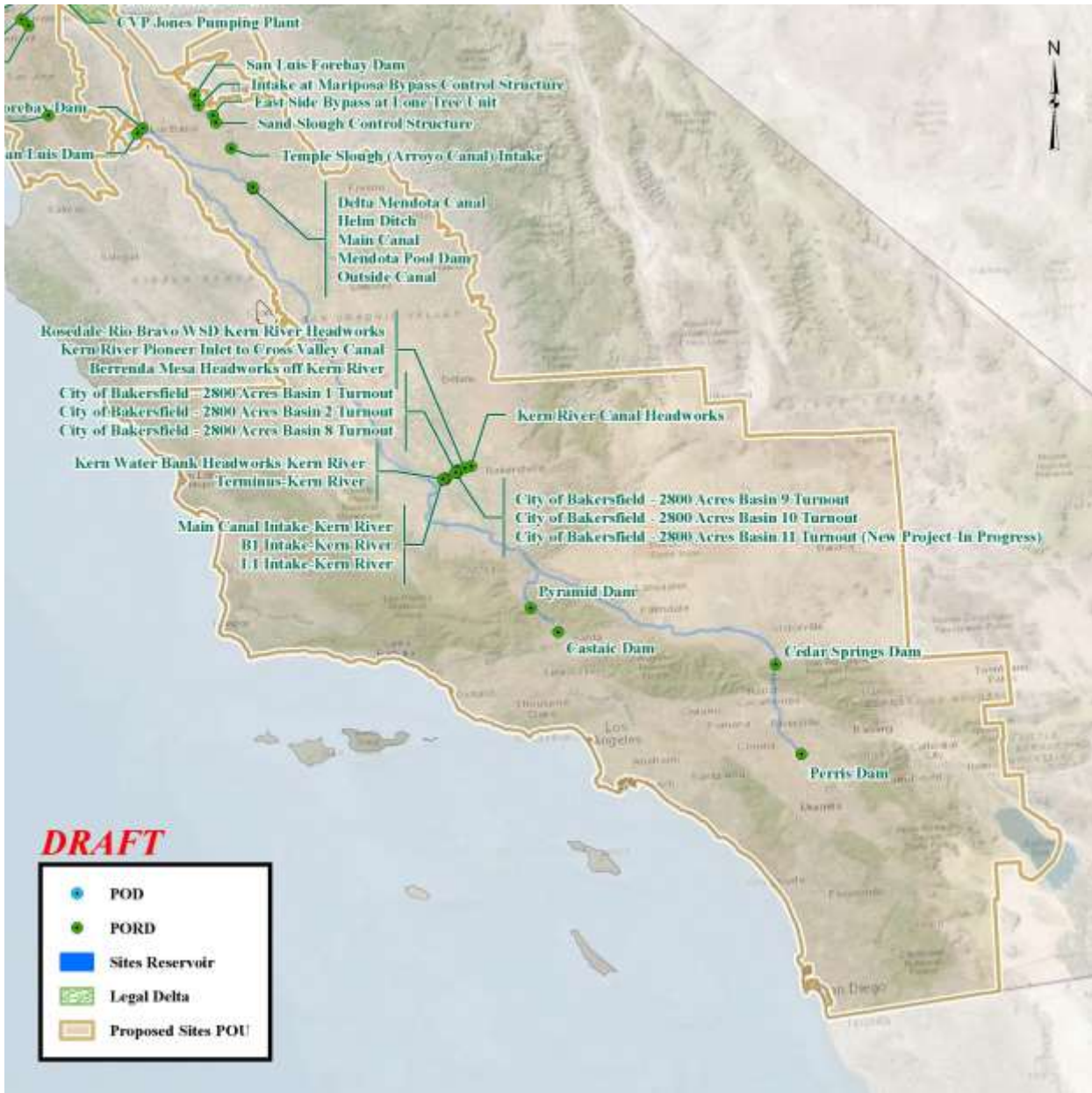
Attachment A: Proposed Place of Use and Points of Diversion/Points of Rediversion Maps

Attachment A

Proposed Place of Use and Points of Diversion/Points of Rediversion Maps



North of Delta and Delta Proposed Place of Use and Points of Diversion/Points of Rediversion



South of Delta Proposed Place of Use and Points of Diversion/Points of Rediversion