



Water Rights Factsheet

*California Department of Fish and Wildlife's Roles in
Water Rights Petition and Registration Processes*

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Introduction

The State Water Resources Control Board (State Board) administers several water rights petitions and registration processes for which consultation, coordination, and/or concurrence with the California Department of Fish and Wildlife (Department) is required. In addition to participating in the State Board's processes as the State's trustee agency for fish and wildlife resources, the Department has separate regulatory authority with respect to stream diversion and modification, and issues separate authorizations for those activities.

This document addresses frequently asked questions regarding the Department's roles in these water rights petitions and registration processes to help petitioners and registrants prepare for and expedite consultation and coordination with the Department.

Frequently Asked Questions

What is the California Department of Fish and Wildlife's role in water rights petitions and registration processes administered by the State Water Board?

As the State's trustee agency for fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species. The Department strongly recommends consultation with the Department on any water rights petitions, applications, registrations, licenses, or changes (proposed projects) that may cause impacts to fish and wildlife resources or habitats. Applicable provisions of the California Water Code (Water Code) and related regulations require consultation, coordination, and/or concurrence with the Department on certain proposed projects for which the petitioner or registrant seeks State Board regulatory approval, including but not limited to the following:

- ⇒ 180-day conditional permits (temporary urgency permits for new water rights) (Water Code § 1425 et seq.);
- ⇒ Conditional temporary change petitions (temporary urgency change petitions for existing water rights) (Water Code § 1435 et seq.);
- ⇒ Petitions to change the point of diversion, place or use, or purpose of use (changes to existing water rights) (Cal. Code Regs., tit. 23 § 794);
- ⇒ 5-year conditional temporary permits for the diversion of surface water to underground storage for beneficial use (Water Code § 1433 et seq.);
- ⇒ 5-year conditional change petitions for the diversion of surface water to underground storage for beneficial use (Water Code § 1443 et seq.); and
- ⇒ Small domestic use, small irrigation use, and livestock stockpond registrations (Water Code § 1228.1 et seq.).

In its trustee agency role, the Department considers and applies the best available science to assess the proposed project's potential impacts on fish and wildlife resources and habitats. When appropriate, the Department develops proposed permit terms and conditions for the protection of these resources. In some cases, the Department may identify studies, surveys, and/or data gaps that must be completed or addressed in order to accurately evaluate potential project impacts on fish and wildlife resources and habitat and/or to develop appropriate proposed permit terms and conditions.

What type of consultation, coordination, and/or concurrence from the Department is required for my water rights petition or registration?

The requirements vary depending on the type of water rights petition or registration you are filing and the applicable requirements from the Water Code and implementing regulations:

- ⇒ For 180-day conditional permits (temporary urgency permits for new water rights) and conditional temporary change petitions (temporary urgency change petitions for existing water rights), the State Water Board must consult with representatives of the Department before the State Water Board makes findings to support a water rights or change order, as appropriate (Water Code §§ 1427(b) and 1437).
- ⇒ For 5-year conditional temporary permits and 5-year conditional change petitions for the diversion of surface water to underground storage for beneficial use, the petitioner must consult with the Department before submission of the petition to the State Water Board and must include any conditions proposed by the Department in the petition to the State Water Board (Water Code §§ 1433.2(c)(2) and 1443.2(c)(2)).
- ⇒ For small domestic use, small irrigation use, and livestock stockpond registrations, the petitioner must certify that it has contacted the appropriate Department representative and provided the information set forth on the applicable State Water Board registration form (Water Code §§ 1228.3(a)(7) and 1228.6(a)(3)).
 - ⇒ For small domestic use and livestock stockpond registrations, the State Water Board shares the registration with the Department for an opportunity to develop special conditions, unless the State Water Board has already received special conditions or a waiver of conditions from the Department.
 - ⇒ For small irrigation use registrations, the petitioner must consult with the Department prior to submittal of the registration packet to the State Water Board and include any special conditions provided by the Department in its registration packet.

For 180-day conditional permits, conditional temporary change petitions, 5-year conditional temporary permits, and 5-year conditional change petitions, before issuing a change order, the State Water Board must make findings that the water may be diverted and used or the change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses (Water Code §§ 1425(b)(3), 1435(b)(3), 1433.1(b)(3), and 1443.1(b)(4)).

California Code of Regulations, title 23, section 794 makes clear that water rights holders seeking to change the point of diversion, place or use, or purpose of use shall request consultation with the Department regarding effects of the proposed change on water quality, fish, wildlife, and other instream beneficial uses and provide all Department comments to the State Board.

What are the timelines for consultation, coordination, and/or concurrence from the Department on my water rights petition or registration?

The timelines vary depending on the type of water rights petition or registration you are filing and the applicable requirements from the Water Code and implementing regulations:

- ⇒ For 180-day conditional permits (temporary urgency permits for new water rights) and conditional temporary change petitions (temporary urgency change petitions for existing water rights), the State Water Board must consult with representatives of the Department before making findings to support a water rights or change order, as appropriate (Water Code §§ 1427(b) and 1437). No timeline for this consultation is specified in code or regulation.
- ⇒ For 5-year conditional temporary permits and 5-year conditional change petitions for the diversion of surface water to underground storage for beneficial use, the petitioner must consult with the Department at least 30 days prior to submitting the petition to the State Water Board. If the Department determines that it needs additional time to review, the consultation period may be extended to a period of up to 60 days (Water Code §§ 1433.2(c)(2) and 1443.2(c)(2)).
- ⇒ For small domestic use and livestock stockpond registrations, after receipt from the State Water Board Division of Water Rights, the State Water Board has typically requested a 90-day period for the Department to review the information in the registration package to determine whether any lawful conditions are necessary for the registration. Department staff may contact the petitioner to arrange for a site visit or ask for additional information. If the Department develops lawful conditions for your registration, it will provide the conditions to the State Water Board Division of Water Rights.
- ⇒ For small irrigation registrations, the timeline for Department review and input will vary on a case-by-case basis, and the Department encourages the petitioner to contact appropriate Department representatives as early as possible. The registration packet submitted to the State Water Board must include either of the following from the Department: (1) conditions or (2) clearance that conditions are not needed.

What information would be helpful to prepare for consultation or coordination with the Department on water rights petition and registration processes?

As applicable depending on the circumstances of the proposed project, the following information may be helpful to compile and have on hand before initiating consultation or coordination with the Department:

- ⇒ Project summary¹;
- ⇒ Timeline for the proposed project (e.g., diversion season and construction start and end dates)¹;
- ⇒ Location of the proposed project and proposed place(s) of diversion(s) and rediversion(s), including maps¹;
- ⇒ The source of water supply, including maps¹;
- ⇒ The nature and amount of the proposed use¹;
- ⇒ Place of intended use of the water, including maps¹;
- ⇒ Water availability analysis or other similar analysis demonstrating availability of water for the proposed project¹;
- ⇒ Stream monitoring plan;
- ⇒ All available information and data on the proposed project's potential impacts to fish and wildlife resources and habitats² such as biological surveys of species of concern in the project area or species data obtained from the California Natural Diversity Database (CNDDDB) or Biogeographic Information and Observation System (BIOS));
- ⇒ Proposed or potential measures for the protection of fish and wildlife resources and habitats that may be impacted by the proposed project².

The Department's review process is project-specific, and the above list is not intended to be exhaustive. Thus, depending on the nature of the project, the Department may request other or additional materials or information in the consultation and coordination processes.

¹ Per applicable sections of the Water Code, implementing regulations, and/or the forms prescribed by the State Board, this information is also required to be submitted to the State Board as part of the water rights petition or registration.

² Depending on the facts of the specific project and staff availability, the Department may be able to assist with compiling this information if needed. If you intend to request assistance from the Department on compiling this information, contact appropriate Department representatives as early as possible.

What happens after the State Water Board or petitioner requests consultation or coordination with the Department?

Once contacted for consultation or coordination by State Water Board staff or petitioner (as appropriate), Department staff will review the petition or registration and other materials provided. Based on that review, the Department will do one of the following: (1) provide its proposed permit terms and conditions to the State Water Board or petitioner (as appropriate); (2) provide a letter stating that no conditions are needed for the protection of fish and wildlife resources; or (3) request a meeting with State Water Board staff or petitioner and/or a site visit (as appropriate) to clarify details of the project or obtain additional information as necessary for the consultation or coordination process.

What other roles does the Department have in these water rights petition and registration processes?

In addition to participating in the State Water Board's processes as the State's trustee agency for fish and wildlife resources, other Fish and Game Code requirements may apply depending upon the facts of each project. *The Department encourages proponents to reach out to the Department early, so that the Department can provide information to help proponents style projects in a manner that streamlines regulatory compliance to the greatest extent possible.*

One of the regulatory requirements that will apply to these is Fish and Game Code section 1602, which requires any entity (defined as any person, State or local governmental agency, or public utility) to notify the Department before beginning any activity that will substantially divert or obstruct the natural flow of a river, stream, or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Note that for purposes of section 1602, "any river, stream, or lake" includes those that are dry for periods of time as well as those that flow year-round.

The notification required under section 1602 is separate and distinct from the water rights consultation and coordination processes described above. If you are not certain a particular activity requires notification, the Department recommends that you notify. If the activity may substantially adversely affect fish and wildlife resources, the Department will require a Lake or Streambed Alteration Agreement (LSAA) or another appropriate authorization as provided under Fish and Game Code section 1602 et seq. Fish and Game Code section 1610 exempts certain types of emergency work from the notification requirement in section 1602. While notification is not required before beginning emergency work, entities must notify the Department in writing within 14 days after beginning the work.

For more information about lake and streambed alteration, visit: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The entity can notify the Department online via the Environmental Permit Information Management System (EPIMS) Permitting Portal (<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA#55227742-notify-online>) or via PDF (<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA#55227761-notify-by-pdf>). For project- and site-specific LSA inquiries, contact the LSA Program in the Department Region where the project is located: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA/Contact>.

Whom should I contact to initiate consultation or coordination with the Department, or for more information?

The Department's Regional Water Right Coordinators are responsible for engaging in consultation and coordination with the State Water Board and/or the petitioner as part of the State Water Board water rights petition and registration processes described above. To initiate consultation or coordination with the Department, the petitioner should email the Department's Regional Water Rights Coordinator for the region in which the proposed project is located. Visit <https://wildlife.ca.gov/Conservation/Watersheds/Water-Rights> for the Department's Water Rights contact map and other helpful links. The Regional Water Rights Coordinator can also address project- and site-specific water rights petition and registration inquiries within the Department's purview. For general inquiries (e.g., the Department's role in the water rights petition and registration process), contact Lillian McDougall, the Department's Statewide Water Rights Coordinator, at Lillian.McDougall@wildlife.ca.gov.

Where can I find more information about the State Water Board's water rights permitting and registration processes?

For more information about water rights permitting and licensing, visit the State Water Board's website at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/.

For more information about water rights registrations, visit: https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/.