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Evaluation of Salinas River Water Rights and Alternatives

Prepared for the Salinas Valley Basin
Groundwater Sustainability Agency

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Introduction

This is the second report prepared to support the first phase of a multi-phase study by the Salinas Valley Basin Groundwater Sustainability Agency (GSA) to support Sustainable Groundwater Management Act implementation pursuant to State of California Department of Water Resources (DWR) grant funding. The GSA is evaluating the Castroville and Eastside Canals and Alternatives to identify potential projects to halt the advancement of seawater intrusion and raise groundwater levels. The first report in this series is titled History of Water Rights – A013225 (Permit 11043), A032263C, A032263D, and A032263E, dated July 2025.

Purpose

The purpose of this report is to identify and evaluate water right options for the use of water from the Salinas River and/or its tributaries by means of diversion, including under existing water rights held by Monterey County Water Resources Agency (MCWRA) or other potential approaches. This report first provides options for using Permit 11043 (A013225) as it is currently defined in the amended permit, and second identifies an approach to change the amended permit for projects that do not fit within the parameters currently defined in the amended permit. This report also describes potential options for moving forward with Applications A032263C, A032263D, and A032263E. In the case that any of the existing water rights held by MCWRA cannot be used for a proposed project, this report lastly provides options for obtaining a new water right, both standard and temporary. Some additional potential approaches described in this report include diverting under flood conditions for groundwater recharge, the use of state filed applications, and pumping groundwater from a shallow well field. Understanding the opportunities, limitations, cost, and time associated with each option will help the Salinas Valley Basin GSA determine feasibility of potential projects it is considering.

Permit 11043 (A013225)

Permit 11043 (A013225) is held by MCWRA for year-round direct diversion of 400 cfs from the Salinas River for the purpose of irrigation and municipal uses. Two points of diversion are authorized: 1) the Eastside Canal Intake near the city of Soledad and 2) the Castroville Canal Intake, approximately 3 miles upstream of the town of Spreckels. The places of use for both irrigation and municipal reference portions of Zone 2 of the MCWRA service area. Due to the multiple State Water Resources Control Board (SWRCB) hearings and Orders associated with this permit, the most current version of amended Permit 11043 includes multiple terms and limitations, including bypass flow requirements based on downstream demand. The bypass flow requirements must be met at the Salinas River near Soledad stream flow gage prior to diversion at either the East Side Canal Intake or Castroville Canal Intake.

Petition for Extension of Time and Petition for Change

Permit Term 10 states that “this permit shall stand revoked and of no further effect if right holder [MCWRA] fails to meet any of the dates specified” in the permit, unless MCWRA petitions the SWRCB for an extension of time prior to the date in question, and the SWRCB finds good cause for a time extension. Pursuant to this permit term, MCWRA submitted a Petition for Extension of Time along with a Petition for Change approximately ten years ago, which are still with the

SWRCB and have not been publicly noticed. The Petition for Extension of Time was submitted in 2013 and amended in 2016 to request an extension of the development schedule defined in Permit Terms 6, 7, and 8 – approval of this request would extend the date to complete application of water to beneficial use from December 1, 2008, to December 31, 2040. The Petition for Change was submitted in 2016 to request an extension of the milestone dates defined in Permit Term 14 – approval of this request would extend the date to complete construction from July 1, 2026, to July 1, 2030. Within these petitions, MCWRA stated that it would be unreasonable to continue pursuing a project pursuant to Permit 11043 until the petitions are approved, due to the difficulty of obtaining voter approval of the necessary financing without certainty that Permit 11043 could be utilized.

It is our understanding that an approved Petition for Extension of Time and Petition for Change will be needed in order to use Permit 11043, specifically with respect to Permit Term 10. The ability and risks to proceeding with use of Permit 11043 as is (without a SWRCB Order approving a Petition for Extension of Time and Petition for Change) should be discussed with legal counsel. Water right permits issued by the SWRCB define points of diversion, places of use, and purposes of use, but in most cases do not define the infrastructure used to move the water from the point of diversion to the place of use. Therefore, using Permit 11043 for the project currently defined in the permit would limit the project to immediate¹ irrigation and municipal use within portions of Zone 2 of the MCWRA service area with water diverted at two points of diversion, one near Soledad and one approximately 3 miles upstream of Spreckels. Under the current parameters defined in amended Permit 11043, MCWRA and the Salinas Valley Basin GSA would still have options for how water is diverted (pump, gravity diversion, Ranney collector, etc) and what infrastructure is used to move the diverted water to the place of use (pipeline, canal, treatment, etc).

Petition Process (Noticing, Protests, Order Issuance, Environmental Review)

A Petition for Extension of Time or Petition for Change can be submitted at any time to the SWRCB. Once a petition is accepted, the SWRCB is required by law to publish a notice of the petition. Once public notice of the petition occurs, there is a protest period and a subsequent period to respond to protests. Any “interested person” may file a protest to a petition. For large projects with unresolved protests, a hearing is held before one or more members of the SWRCB or the Administrative Hearings Office. The SWRCB's decision is based upon the record established during the hearing. The petition process is expensive and time consuming. The SWRCB's website identifies a range of approximately three months to ten years for completion of a Petition for Change process. However, it can also take longer, as seen with the outstanding petitions submitted pursuant to Permit 11043. The SWRCB's process is depicted in Figure 1.

In previous discussion between MCWRA and the SWRCB pursuant to other projects, the SWRCB has recommended that MCWRA file Petitions for Extension of Time and Petitions for Change concurrently for the same water right. In such previous projects, the Division of Water Rights (Division) has then noticed the petitions together. Despite the concurrent submittal of Petitions for Extension of Time and Petitions for Change, protests can be filed on one, the other,

¹ Generally, water must be used within 30 days pursuant to a direct diversion right.

or both. Furthermore, a protestant could choose to protest part of a petition rather than everything in a petition. For example, someone could protest a request to add underground storage, but not a request to move the point of diversion. If the SWRCB determines that only part of the requested changes can be approved, then that will be detailed in an Order pursuant to the petition.

Compliance with the California Environmental Quality Act (CEQA) is necessary for filing and approval of a Petition for Extension of Time or Petition for Change. Legal counsel should be consulted for advice on compliance with CEQA.

The milestone dates defined in Permit Term 14 set a date for issuance of a Notice of Preparation (NOP), release of a draft Environmental Impact Report (EIR), certification of a final EIR, submittal of necessary permit applications for regulatory agency approvals, and obtainment of final permits and other agency approvals. MCWRA submitted the NOP prior to the date specified in the milestones. However, the other steps in the environmental review process were not completed. The time specified in the milestones for completing these steps has passed. The NOP, submitted on June 24, 2015, defined a project that would incorporate the Eastside Canal Intake and the Castroville Canal Intake. It was stated in the NOP that the EIR would explore different possibilities for conveyance and delivery facilities including treatment methods, injection wells, percolation ponds, and turnouts for direct use of the water.

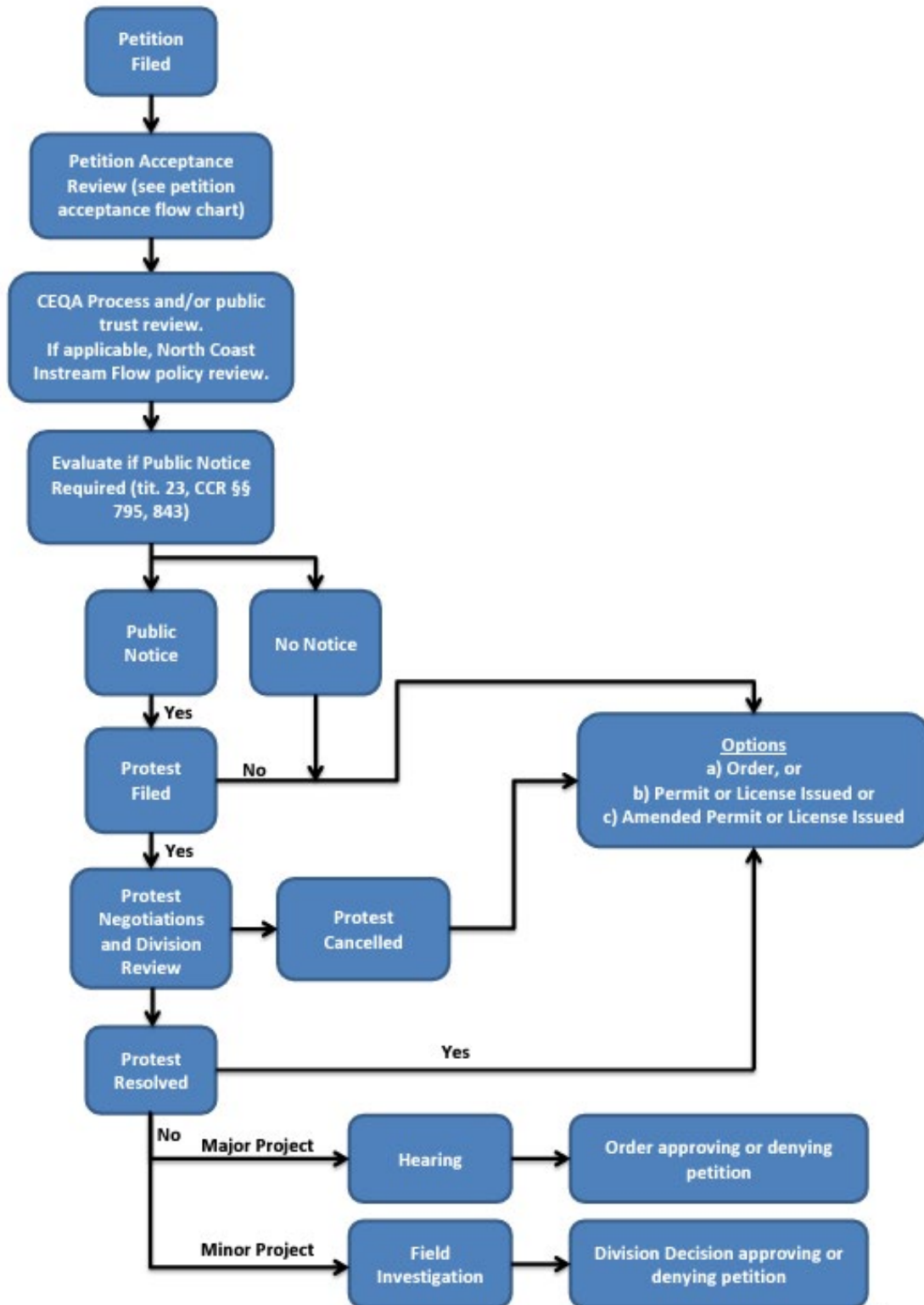


Figure 1: SWRCB Figure of Petition for Change Process (source: https://www.waterboards.ca.gov/waterrights/board_info/docs/petprocess.pdf)

Petition Amendments and/or New Petitions

As noted above, the Petition for Extension of Time and Petition for Change have not been publicly noticed. Prior to public notice, there may be an opportunity to request changes to the existing petitions to update them based on changed circumstances. Additional changes that might be needed (depending on the project that MCWRA and the Salinas Valley Basin GSA proceed with) pursuant to Permit 11043 are described below. We recommend consulting with legal counsel regarding any changes to the existing petitions.

An amendment to the existing Petition for Extension of Time pursuant to Permit 11043 that may be needed regardless of the project:

- 1) Further extension of time to complete beneficial use pursuant to the anticipated timing for project implementation (the current Petition for Extension of Time requests an extension to December 31, 2040).

Amendments to the existing Petition for Change pursuant to Permit 11043 that may be needed regardless of the project:

- 1) Further extension of time to complete the milestones defined in Permit Term 14 pursuant to the anticipated timing for project implementation (the current Petition for Change requests an extension to July 1, 2030, pursuant to construction completion).
- 2) Removal of Permit Term 9 – This term is based on the planning and financing of the Arroyo Seco Project, which was a proposed project to build a reservoir on the Arroyo Seco that would include the Eastside Canal and the Castroville Canal as integral parts of the project. However, the Arroyo Seco project has not been pursued due to significant local stakeholder opposition.
- 3) Removal of Permit Terms 6 and 7 – These were standard terms that set dates for the commencement and completion of construction, respectively. Since the current version of amended Permit 11043 was issued, the SWRCB has deleted these standard permit terms and no longer issues permits with these terms listed. It is our understanding that these permit terms would be removed in any amended permit issued pursuant to the petitions, but we recommend having a conversation with the Division and legal counsel regarding these terms in an amended Petition for Change.

Additional amendments to the existing Petition for Change that may be needed if MCWRA and the Salinas Valley Basin GSA are to proceed with a project that does not fit within the parameters currently defined in Permit 11043:

- 1) Addition of permit term allowing underground storage along with addition of points of rediversion for every injection/extraction well
- 2) Addition of permit term allowing surface storage
- 3) Change of place of use
- 4) Change of purpose of use
- 5) Addition/removal or moving of points of diversion from the Salinas River and/or points of rediversion

Once accepted and publicly noticed, the petitions may be protested by any interested person². We anticipate the petition process to be time consuming regardless of requested changes and the risk of protests will depend on the specific requests made in the petitions.

Adding Storage to a Direct Diversion Water Right

It has been emphasized by the Salinas Valley Basin GSA that adding storage to Permit 11043 would greatly increase the usability of the permit. The preliminary flow analysis conducted by Montgomery & Associates during this phase shows that in many years there is a large amount of water available during the winter but little to no water available in the summer. The GSA is interested in capturing this winter flow and storing it for utilization during times when demand is high and available supply is low (e.g. during the summer and extended dry periods). There have been conversations related to both underground storage and surface storage. We are aware of an example where an entity was able to add underground storage to a permit for direct diversion. It could also be possible to add off-stream surface storage to a permit for direct diversion, but we are not aware of an example where this has been done.

Regarding the potential addition of underground storage to Permit 11043, the end purpose of use needs to be determined. The California Code of Regulations (CCR) lists beneficial purposes of use for which water can be applied. Common beneficial uses include domestic, irrigation, power generation, municipal, industrial, fish and wildlife enhancement, and recreation use.

Underground storage is commonly referred to as groundwater recharge, which is not a beneficial use of water on its own, but rather is one method of diverting and storing water that takes advantage of the natural storage capacity of groundwater aquifers. To obtain a water right to divert water to underground storage, the eventual beneficial use of the water that would occur must be identified. This most commonly involves identifying the beneficial use(s) that occurs after water is extracted. Most water rights with authorized underground storage are for extractive beneficial uses, such as irrigation or municipal uses. However, we are aware of one example where an entity (Scotts Valley Irrigation District) was able to obtain a water right (Permit 21465) with underground storage for a non-extractive beneficial use. With its water right, Scotts Valley Irrigation District is authorized to divert water from the Scott River and put it into underground storage for later instream fish and wildlife preservation and enhancement. The assumption made is that the water will naturally return to the Scott River from the underground storage to enhance spring and summer flows which in turn benefits fish and wildlife. The Scott River reaches were identified as the place of use. Fish and wildlife preservation and enhancement is a beneficial use defined in the California Code of Regulations (CCR).

The Sustainable Groundwater Management Act (SGMA) identifies six undesirable results, listed below, that could potentially be addressed with underground storage and could support the need for a non-extractive beneficial use.

1. Chronic lowering of groundwater levels
2. Reduction of groundwater storage
3. Seawater intrusion

² Recently water right changes by MCWRA have been protested by NMFS, CDFW, the Salinas Valley Water Coalition (SVWC), and the Nacimiento Regional Water Management Advisory Committee (NRWMAC).

4. Degraded water quality, including migration of contaminant plumes
5. Land subsidence that substantially interferes with surface land uses
6. Depletions of interconnected surface water that have adverse impacts on beneficial uses of the surface water

We are not aware of any examples of an underground storage permit that has been approved for use to address undesirable results under SGMA. Legal counsel should be consulted to discuss issues related to beneficial use of water for addressing undesirable results under SGMA.

Underground Storage Example

The successful example of adding underground storage to a direct diversion water right with a Petition for Change is Woodland-Davis Clean Water Agency's (WDCWA) Permit 20281. WDCWA submitted a Petition for Change requesting a change in point of rediversion and the terms and conditions pursuant to Permit 20281. WDCWA included the Underground Storage Supplement with the petition, which describes the facilities to be used for underground storage. This document is required when seeking a water right with underground storage. Within the Petition for Change, WDCWA requested the addition of nine injection/extraction wells as points of rediversion pursuant to the permit and requested the addition of a permit term authorizing underground storage, setting quantity and rate limitations, and stating requirements for permitting.

An amended permit was issued pursuant to the Petition for Change, authorizing the addition of underground storage. The amended permit listed the nine injection/extraction wells as "points of diversion to and withdrawal from underground storage" and listed the "location of place of underground storage". The SWRCB modified the permit term requested by WDCWA and included the following term in the amended permit:

Permittee's diversion of water from the Sacramento River to underground storage is limited to storage within the Yolo Sub-basin (Sub-basin 5-21.67) of the Sacramento Valley Groundwater Basin (as defined in the California Department of Water Resources Bulletin 118, 2003 (Yolo Sub-basin)), and as shown on the map filed with the Division dated June 16, 2017. Storage of water underground and withdrawal of the water for beneficial use pursuant to this permit is subject to the following conditions:

- a. The total amount of water that may be held in underground storage in the Yolo Sub-basin from City of Woodland Wells 28 – 36 shall not exceed 100,000 acre-feet.*
- b. The cumulative instantaneous rate of withdrawal from underground storage in the Yolo Sub-basin from City of Woodland Wells 28 – 36 shall not exceed 23.4 cubic feet per second.*
- c. The amount of water that may be withdrawn from underground storage in the Yolo Sub-basin from City of Woodland Wells 28 – 36 shall not exceed 10,360 acre-feet per year.*

d. Water may be diverted to and withdrawn from the Yolo Sub-basin only at the points of diversion to underground storage (City of Woodland Wells 28 – 36) specified in this permit.

e. No water may be diverted to or withdrawn from underground storage in the Yolo Sub-basin until Permittee has obtained all applicable permits from local and state authorities, including any permit for the City of Woodland’s Aquifer Storage and Recovery (ASR) program required by the Central Valley Regional Water Quality Control Board for coverage under the State Water Board’s [SWRCB] General Order 2012-0010 regarding ASR projects, or any updates thereto.

f. This term does not affect the rights of Permittee’s members to extract groundwater from the Yolo Subbasin from groundwater wells other than the City of Woodland Wells 28 – 36.

g. Any water diverted to underground storage that is not withdrawn during that water year will have the net storage amount reduced by 10 percent per year, due to advection and dispersion of groundwater, for groundwater withdrawal monitoring and reporting purposes.

h. If groundwater levels rise to less than 10 feet below ground surface (bgs) during diversion to underground storage, the injection rates will be significantly reduced to cause the groundwater table to drop below 10 feet bgs.

Time to Process Petitions

It is common for the SWRCB to take many years to process petitions. However, the outstanding Petition for Extension of Time and Petition for Change filed by MCWRA have been filed and without a public notice for longer than the regular process. The SWRCB generally processes petitions based on the date they were filed. However, given the large number of pending petitions, priority is given to projects that meet defined “importance” and “demonstrated progress” criteria. These criteria are provided in the “new water right” section of this report and are on the SWRCB’s website³. We recommend that these criteria are considered and projects that meet them are developed in order to expedite the petition process. We recommend that any communication or documentation filed with the SWRCB emphasizes how the proposed project meets the criteria and provides evidence that:

- 1) Due diligence has been exercised;
- 2) Failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and
- 3) Satisfactory progress will be made if an extension is granted.

Specifically, the following project specific questions should be addressed:

- 1) Where would the point(s) of diversion generally be located?
- 2) What would the approximate diversion rate and volume be?

³ The criteria can be found on the SWRCB’s website at this link:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/priority_criteria.html

- 3) Would the project include underground storage?
 - a. Where/how would water be put underground?
 - b. Would the water stored underground be extracted later?
- 4) Would the project include surface storage?
- 5) What would the end beneficial use be?
- 6) Generally, where would the place of use be?
- 7) What is the anticipated timing for project implementation?
- 8) What efforts are currently underway to proceed with the project?

Minor Change Request

In some instances, changes to water rights can be made through a Minor Change Request. The Minor Change Request is an expedited process with no filing fees and no opportunity for public protest, although changes are publicly noticed and available for public comment. Minor Change Requests are typically processed and issued within a few months of submittal. Projects must meet certain criteria including:

- 1) The change does not enlarge or increase the authorized rate, amount, or season of diversion.
- 2) The change does not increase the total area subject to inundation by water diverted to storage or the area where facilities will be constructed.
- 3) The change is not substantial or constitutes a reduction, agreed to by the applicant, in the authorized diversion, affected area, or other feature of the application.
- 4) The change does not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses.

[Applications A032263C, A032263D, & A032263E](#)

MCWRA holds Applications A032263C, A032263D, and A032263E, which were originally filed as one application on May 19, 2014, and split into individual applications in November of 2015. These applications are currently outstanding and have not yet been permitted.

Application 32263C proposes to directly divert up to 3 cfs of water and collect to underground storage up to 1,500 AF, not to exceed 1,500 AF per year combined by direct diversion and collection to storage. The source of water is Tembladero Slough for year-round diversion, and water would be treated and then put underground via injection wells in the Seaside Groundwater Basin. The application was publicly noticed and was protested by the California Department of Fish and Wildlife (CDFW) and the National Marine Fisheries Service (NMFS).

Application 32263D was proposed to support the Coastal Sustainability Agricultural Project and would add water sources to allow for the expansion of the existing Castroville Seawater Intrusion Project to serve additional areas and reduce dependence on groundwater wells. Application 32263D proposes to directly divert up to 30 cfs of water and collect to storage up to 9,800 AF, not to exceed 9,800 AF per year combined by direct diversion and collection to storage. The sources of water are Blanco Drain, Reclamation Ditch, and Tembladero Slough for year-round diversion. Application 32263D has not been publicly noticed.

Application 32263E was proposed to support the Municipal Sustainability Project to diversify the current water sources for municipalities, residences, and industries to add drought resilience

and reduce dependence on groundwater wells. Application 32263E proposes to directly divert up to 55 cfs of water and collect to storage up to 8,700 AF, not to exceed 8,700 AF per year combined by direct diversion and collection to storage. The sources of water are Blanco Drain, Reclamation Ditch, and Tembladero Slough for year-round diversion. Application 32263E has not been publicly noticed.

The GSA can coordinate with MCWRA to review these pending applications to facilitate potential projects and proceed with the permitting process.

New Water Right

In some cases, entities choose to file a new water right application concurrently with a petition to begin the process of obtaining a new water right in case its petition is not approved.

Water cannot be diverted and used under a new water right until a permit⁴ is issued. To obtain a new water right permit in California, a complete Application to Appropriate Water by Permit (application) must be filed with the SWRCB Division of Water Rights along with the required fees. The application must specifically describe the proposed project's source, place of use, purpose, point(s) of diversion, quantity to be diverted, and other necessary information. Pursuing and obtaining a new appropriative water right requires separate applications for separate projects, depending on details, such as, but not limited to, location, type, and status. Acceptance of the application by the Division establishes the priority date of the application.

To issue a permit pursuant to an application, the SWRCB must find that there is unappropriated water available to supply the applicant and that the applicant's appropriation is in the public interest. If the proposed appropriation does not meet these criteria, conditions may be imposed to ensure the criteria are satisfied or the application may be denied. A Water Availability Analysis (WAA) is performed to support the determination that water is available. The SWRCB maintains a list of fully appropriated stream systems and the season when there is insufficient supply for new water right applications.⁵ The Salinas River is fully appropriated from May 15th to December 31st from the upper Salinas River at Salinas Dam⁶ down to the Nacimiento River, including any accretion flows with hydraulic continuity. Any project considering a new water right should not consider surface water sources or seasons deemed fully appropriated.

Similar to petitions, applications must comply with CEQA. Legal counsel should be consulted for advice on compliance with CEQA.

Standard Permit Process

Figure 2 shows the SWRCB's process for obtaining a water right. The SWRCB's website identifies at least a year to process an application, but also says can take significantly longer

⁴ Water right registrations are available for different types of small water right projects, but are not described herein since they are not applicable to the size and types of projects the GSA is considering. In addition, riparian rights are not described herein as riparian rights do not allow for storage, which we understand to be an integral component of a potential project.

⁵ Link to SWRCB listing of fully appropriated stream systems:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/fully_appropriated_streams/

⁶ Located in San Luis Obispo County, California, and forms the Santa Margarita Lake Reservoir

depending on the project. Once an application is accepted, the SWRCB is required by law to publish a notice of the application. Once public notice of the application occurs, there is a protest period and a subsequent period to respond to protests. Any person may file a protest to the application. For large projects with unresolved protests, a hearing is held before one or more members of the SWRCB. The SWRCB's decision is based upon the record established during the hearing. A permit will include standard permit terms and other conditions, such as deadlines to put water to beneficial use and any conditions developed in protest resolution including environmental flow requirements.

Currently, the water rights permitting process is estimated by the SWRCB to require five to seven years for regular priority projects from the time an application is received to the time that a decision is rendered. However, the process can be longer, particularly if a hearing is necessary due to protests and/or if there is potential to harm threatened or endangered species. There is also additional time needed for initial coordination with SWRCB staff and other regulatory agencies, such as CDFW and NMFS, that is recommended well in advance of submitting an application.

The SWRCB generally processes water right applications based on the date they were filed. However, similar to petitions, given the large number of pending water right applications, priority is given to projects that meet defined “importance” and “demonstrated progress” criteria. These criteria are provided below and are on the SWRCB’s website⁷. We recommend that the GSA consider these criteria and develop projects that meet them in order to expedite the permitting process. Subsequently, we recommend that any communication or documentation filed with the SWRCB emphasizes how the proposed project meets the criteria. Despite the priority criteria, we estimate the permitting process to require a minimum of five years from the time an application is received to the time that a decision is rendered, assuming CEQA is completed prior to or soon after application filing, there is significant coordination with Division staff on application preparation, and no protests are received.

Importance Criteria:

- *The proposed application or petition is for a project of regional or statewide significance.*
- *The proposed application or petition is for a project that assists a community in obtaining safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, or for a project that will substantially address a regional chronic shortage of water for beneficial uses other than use for human consumption, cooking, and sanitation.*
- *The proposed application or petition is for a project that addresses critical aquifer overdraft or subsidence, or other undesirable results identified by the Sustainable Groundwater Management Act.*

⁷ The criteria can be found on the SWRCB’s website at this link:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/priority_criteria.html

- *The applicant or petitioner has provided documentation showing the application or petition will enhance conditions for fish and wildlife. This may include reductions in riparian use and/or diversions under another valid basis of right as a result of application/petition approval, if relevant.*
- *The proposed application or petition is for a completely unbuilt project or change and the applicant or petitioner is following procedures and complying with laws and regulations.*
- *The project has pending state, federal, or philanthropic non-profit funding for which an agreement cannot be executed without first completing the water right application or petition.*
- *A project that is urgent and temporary in nature, such as a temporary transfer petition, a temporary urgency change or a temporary permit.*
- *Any other project that is adjacent or related to another high priority project in a watershed where the water right processing can be grouped, including where groups of applicants or petitioners, on their own initiative, coordinate development of technical information.*

Demonstrated Progress Criteria:

- *The applicant or petitioner has consulted with the California Department of Fish and Wildlife, National Marine Fisheries Service, the Regional Water Quality Control Boards, and other agencies with permitting or jurisdictional authority, and the Division has documentation of the agencies' approval or support for the proposed application or petition.*
- *The proposed application or petition is consistent with the principles of the Policy for Maintaining Instream Flows in Northern California Coastal Streams ¹.*
- *Review under the California Environmental Quality Act is substantially completed and the applicant or petitioner has agreed to proposed mitigation measures or project modifications.*
- *The applicant or petitioner has complied with deadlines established by the Division.*
- *Protests have been resolved or negotiations are substantially underway.*

Based on recent experience, it can be extremely complicated, time consuming, and expensive to apply for and obtain a new appropriative water right permit within California, particularly in watersheds with fishery or environmental concerns. However, depending upon the perspective and vision of various state and public agencies, and by meeting the criteria for prioritization, this process could be expedited. Support and assistance for expedition would be needed from various agencies at both the high management level and at the staff level. Our best estimate of the cost to prepare an application, prepare a WAA, and assist with the permitting process is \$500,000, not including the SWRCB filing fee, legal, or CEQA costs.

The SWRCB filing fee for a new water right, as defined in the SWRCB Water Rights Fiscal Year 2024-2025 Fee Schedule Summary, is:

- i) *Less than 10 acre-feet per year, \$5,000*
- ii) *Equal to or more than 10 acre-feet but less than 200 acre-feet per year, \$40,000*
- iii) *Equal to or more than 200 acre-feet but less than 1,000 acre-feet per year, \$43,000*
- iv) *Equal to or more than 1,000 acre-feet but less than 5,000 acre-feet per year, \$55,000*
- v) *Equal to or more than 5,000 acre-feet but less than 10,000 acre-feet per year, \$117,000*
- vi) *Equal to or more than 10,000 acre-feet but less than 15,000 acre-feet per year, \$192,000*
- vii) *Equal to or more than 15,000 acre-feet but less than 20,000 acre-feet per year, \$266,000*
- viii) *Equal to or more than 20,000 acre-feet but less than 25,000 acre-feet per year, \$341,000*
- ix) *Equal to or more than 25,000 acre-feet but less than 30,000 acre-feet per year, \$415,000*
- x) *Equal to or more than 30,000 acre-feet but less than 35,000 acre-feet per year, \$489,000*
- xi) *More than 35,000 acre-feet but less than 40,000 acre-feet per year, \$564,000*
- xii) *More than 40,000 acre-feet but less than 200,000 acre-feet per year, \$649,000*
- xiii) *More than 200,000 acre-feet, \$811,000*

In addition to the standard permit fee payable to the SWRCB, there is an \$850 fee payable to CDFW.

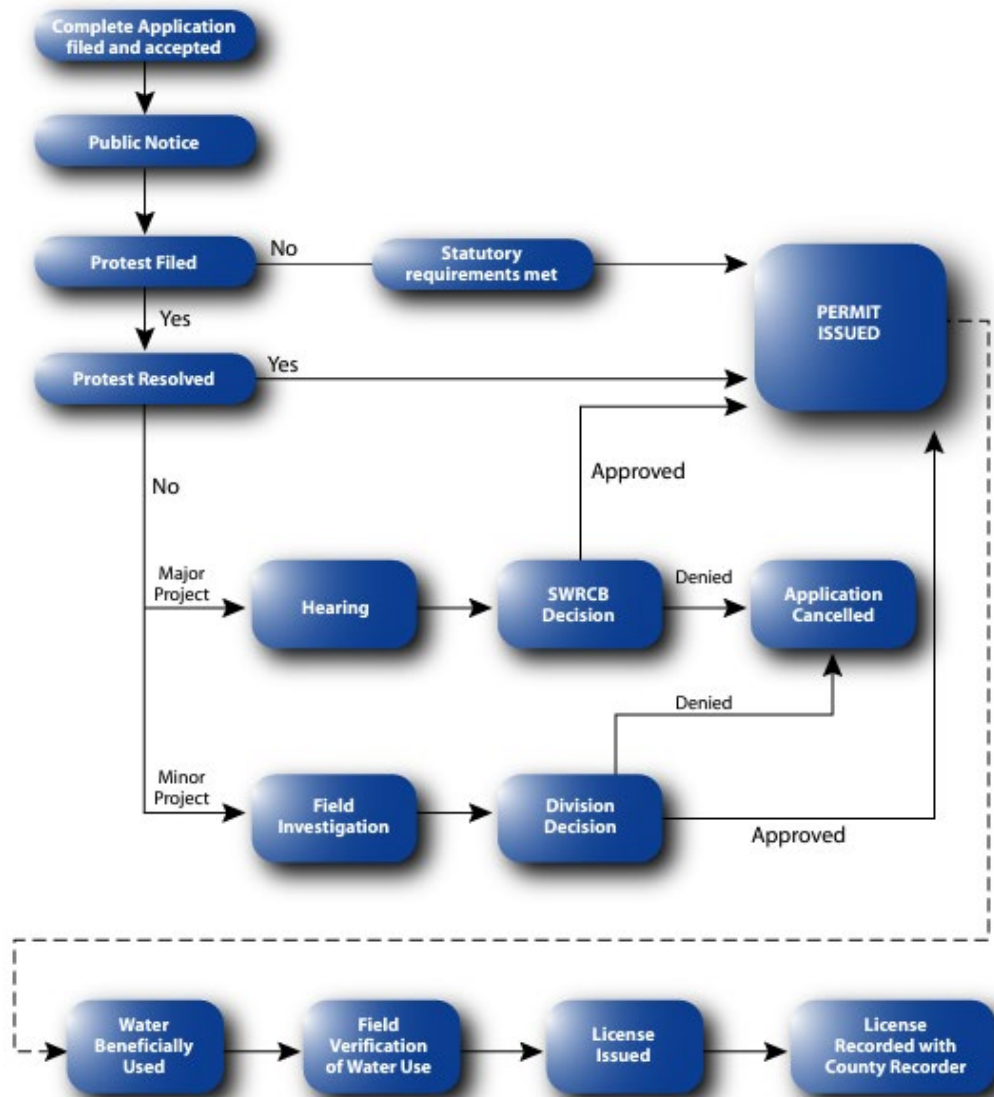


Figure 2: SWRCB Figure of Process to Obtain a Water Right (source: https://www.waterboards.ca.gov/waterrights/board_info/docs/wr_process.pdf)

Streamlined Standard Permit – Groundwater Recharge

The SWRCB has established a “streamlined pathway” for groundwater recharge applications, which accelerates the timeline for permitting and provides a 25% discount off the cost of a standard permit. The “streamlined pathway” requires the applicant to follow certain criteria which are designed to protect ecosystem functions, instream needs, and senior water right holders by limiting diversions to times of high flows, wet water year types, and winter storm events. The criteria for the “streamlined pathway” are:

- (a) The application must be for diversion of water only between December 1 and March 31 except no restriction on season for diversion for flood flows per part (e);

(b) The application must be primarily for diversion to underground storage in a groundwater basin identified in Bulletin 118;

(c) The applicant must be a Groundwater Sustainability Agency or local agency as defined in Water Code section 10721;

(d) The applicant has completed all environmental documents required under the California Environmental Quality Act (CEQA);

(e) The application proposes diversions only when either the streamflow at the point(s) of diversion is above the 90th percentile calculated from gage data during the period-of-record and the diversion rate is limited to 20 percent of the total streamflow (90/20 Method), or when flows in the source waterbody at or near the point of diversion exceed thresholds that trigger flood control actions necessary to mitigate threats to human health and safety according to established written flood management protocols adopted by a flood control agency (Threat of Flood Conditions Method)

The SWRCB's primary option for the "streamlined pathway" WAA methodology is the 90/20 Method which utilizes a gage record, of at least 30-years, to establish 90th percentile daily flow thresholds. When flows exceed the daily threshold, diversions will be limited to the lesser of the actual total flow in excess of the daily 90th percentile measured at the gage or 20% of the total daily flow measured at the gage. Recent experience and analysis indicates significantly limited opportunities for diversion when using the 90/20 Method. There are ongoing discussions related to options for protective diversion criteria other than the SWRCB's 90/20 Method that could increase the opportunity for groundwater recharge.

The second "streamlined pathway" WAA methodology is the Threat of Flood Conditions Method which relies on the presence of an imminent threat of flood conditions to demonstrate water availability. This may be demonstrated by proposing to divert when flows exceed thresholds that trigger flood control actions necessary to reduce threats to human health and safety. These thresholds and actions need to be established in written flood management protocols adopted by a flood control agency. However, this method has seen minimal adoption in permits as the conditions that correspond to such criteria generally only occur during exceptional hydrologic conditions and/or during flood emergencies.

Temporary Permits (Including Streamlined) – Groundwater Recharge

A temporary water right permit is less expensive than a standard water right permit, and generally involves less risk and fewer processes. However, temporary permits are not water rights. Temporary permits are a conditional approval to divert and use available water that has not been claimed by a water right holder. Temporary permits are junior to all water rights and include terms and conditions that prohibit diversions in times of water shortage when the demands of other right holders may not be met. Using a temporary water right permit for groundwater recharge projects gives the diverter the ability to refine its project and water use before putting forth the effort to file a standard water right application. This has been an appropriate option for recharge projects that are utilizing existing facilities (typically recharge through percolation).

There are temporary permits available for 180-days or 5-years. To receive multiple subsequent 180-day temporary permits, the applicant needs to show effort is being made to obtain a standard permit. The Division has recently noted that 5-year temporary permits can only be issued once, then a standard permit would need to be obtained for continuation of the project. The SWRCB's website identifies the estimated processing time for 180-day temporary permits and 5-year temporary permits to be 3-4 months and 9-12 months⁸, respectively. For both 180-day and 5-year temporary permits, if the application is submitted at least 120 days prior to the requested season of diversion, the application fee is 15% of the standard permit fee. If the application is submitted less than 120 days prior to the requested season of diversion, the application fee is 25% of the standard permit fee. For 180-day temporary permits, the CDFW fee is an additional \$850. For 5-year temporary permits, the \$850 CDFW fee also applies, but there is an additional fee as follows:

(i) For a petition to divert less than 10,000 acre-feet of water per year, \$3,000 plus \$0.10 per acre-foot of water applied for; or

(ii) For a petition to divert 10,000 acre-feet of water per year or more, \$5,000 plus \$0.10 per acre-foot of water applied for.

The “streamlined pathway” described in the prior section also applies for temporary permits for groundwater recharge. For temporary permits using the “streamlined pathway”, the timeline for permitting is accelerated and a 25% discount is given off the cost of the temporary permit.

The Governor's Executive Order B-39-17 and N-7-22 temporarily suspends CEQA requirements for groundwater recharge projects targeting high flows in counties with an Emergency Drought Proclamation. Monterey County is not included in the current Emergency Drought Proclamation. The CEQA suspension applies for 180-day and 5-year temporary permits, but an applicant should not rely on the CEQA suspension for standard permits because although it may be available at the time of application submittal, it may not be available at the time of permit issuance (years later).

Flood Exemptions

On July 10, 2023, Senate Bill 122 added section 1242.1 to the California Water Code (Water Code § 1242.1) with the dual purpose of managing floods and providing opportunity for groundwater recharge. Water Code § 1242.1 allows for diversion of flood water without a water right during extreme flood events for the purpose of reducing flood impacts and conducting groundwater recharge. Water Code § 1242.1 includes reporting requirements and other protective conditions that are intended to prevent impacts to sensitive infrastructure, ecosystems, and existing water rights holders. The general requirements for diverting water under Water Code § 1242.1 are:

⁸ Source:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/groundwater_recharge/pending_applications.html

- Diversions can only occur if a local or regional agency has issued a public notice that flows downstream of the point of diversion are at imminent risk of flooding and inundation of lands, roads, or structures.
- Diversions must comply with Water Code § 1242.1’s specified protective conditions, including noticing and reporting requirements.
- Section 1242.1 expires on January 1, 2029.

On January 31, 2025, Governor Gavin Newsom issued Executive Order N-16-25 to facilitate the use of flood waters to recharge California’s aquifers by suspending certain requirements of Water Code § 1242.1. The suspension only applies to counties with an Emergency Drought Proclamation (does not include Monterey County). The Executive Order suspends the need for agencies to determine the imminent risk of flooding based off of local planning documents and instead allows the agencies to determine the presence of flood conditions by other means. This includes the use of readily available information and expertise to determine imminent risk. Agencies continue to be required to issue a public notification that flows are at imminent risk of flooding and inundation of lands, roads, or structures.

Water Code § 1242.1 does not create a water right or any right to ownership or control of the water diverted to underground storage. The diverted surface water goes toward the net benefit of the groundwater basin. If one exists, the GSA may choose to establish a crediting program or individual groundwater pumpers can use the water consistent with overlying and appropriate groundwater rights. Parties wishing to assert a right to ownership or control of the diverted surface water need a standard or temporary water right.

State Filed Applications

State Filed Applications are applications that were filed by a state agency for the development of water resources based on preliminary predictions of potential future project locations. A major benefit of acquiring a State Filed Application is acquiring the priority date of that filing. Parties may petition the SWRCB for assignment of all or part of a State Filed Application. To petition for assignment of an application, the proposed use of water must be consistent with the State Filed Application (rate of diversion, season of use, place of use, etc.). In addition, a proposed use under a State Filed Application must not be in conflict with a general or coordinated plan or water quality objectives established pursuant to law. In the Salinas Watershed, there are three State Filed Applications, all of which are for surface storage and have not been assigned. These State Filed Applications are summarized below.

Summary of State Filed Applications in the Salinas River Watershed				
Water Right	Source	County	Storage Quantity	Year of Priority
A025863SF	Arroyo Seco	Monterey	250,000 AF	1978
A024388SF	Jack Creek	San Luis Obispo	25,000 AF	1973
A024389SF	Santa Rita Creek	San Luis Obispo	15,000 AF	1973

During the late 1970’s and early 1980’s, MCWRA was considering the construction of a dam along the Arroyo Seco through a partial assignment (125,000 acre-feet [AF]) of A025863SF. MCWRA called this project concept the Arroyo Seco Dam Project and was planning to include

the Castroville Canal Intake and East Side Canal Intake as integral parts of the project to provide additional water. However, MCWRA has not pursued the Arroyo Seco Dam Project due to significant local opposition.

MCWRA and the Salinas Valley Basin GSA are considering projects that could increase surface water supply during the irrigation season, which would decrease groundwater pumping. Therefore, these State Filed Applications could potentially be used to construct and operate reservoirs to capture water during the winter for use during the irrigation season. Additional research of these State Filed Applications would be needed.

Shallow Well Field

California Water Code indicates that underflow and subterranean streams are to be regulated by California's surface water rights system (through the SWRCB). Under California law, landowners can assert a right to extract groundwater for a beneficial use on land overlying the groundwater basin from which the water was extracted without a permit from the SWRCB or a court. Since surface water and groundwater are often physically interconnected, it can be difficult to determine what category of water is being pumped by a shallow well field. Any projects considering a shallow well field need to determine which category of water would be pumped by the shallow well field. If the shallow well field was to divert underflow or water from a subterranean stream, a water right with the SWRCB would be needed. This could include use of Permit 11043 if the shallow well field is located at an authorized point of diversion, or could include acquisition of a new water right through the process discussed in the new water right section of this report.

Summary of Cost, Time, and Risks

This report evaluates multiple options relative to the use of water from the Salinas River and/or its tributaries by means of diversion under existing water rights held by MCWRA, or other potential approaches. This report focuses on the use of Permit 11043, for which a Petition for Extension of Time and Petition for Change are pending. For the SWRCB to approve a Petition for Change, it must be found that the action won't injure other legal users of water, doesn't create a new water right, and is in the public interest. We anticipate the petition process to take a long time and involve many stakeholders. In the following table, we have summarized water rights and water supply options to potentially support projects being considered by the Salinas Valley Basin GSA and MCWRA. This table also includes approximate cost and time estimates for each water right option to help the Salinas Valley Basin GSA determine feasibility, although there is significant uncertainty relative to these estimates.

Summary of Options for Water Rights / Supplies for Potential Projects

Potential Approach	Estimated Time to Obtain Water Right (authorization to divert)	Estimated Cost (SWRCB Filing Fees, Engineering Support to Complete Filings, Environmental Support to Complete CEQA/EIR)	Key Requirements
Permit 11043 (A013225)			
Using Permit 11043 as currently defined in the amended permit	2-5 Years	SWRCB - N/A (assumes new petitions are not needed) Engineering ~ \$75,000 Environmental ~ \$1M+	Would need approval of the existing Petition for Extension of Time and Petition for Change with required updates to timeframes; Would need to conduct CEQA (only NOP was completed); Could potentially require a hearing
Using Permit 11043 with modifications (e.g. to add underground storage)	4-6 Years	SWRCB ~ \$21,000 (assumes new petitions are needed) Engineering ~ \$200,000 Environmental ~ \$1M+	Would need an approved Petition for Extension of Time and Petition for Change with required updates to timeframes plus additional changes; Would need to conduct CEQA; Could potentially require a hearing
A032263C, A032263D, and A032263E			
A032263C	3-5 Years	SWRCB ~ \$2,500 Engineering ~ \$75,000 Environmental ~ \$450,000 - \$550,000	Has been publicly noticed; Would need to respond to outstanding protests; Would need a Petition for Change; Would need to conduct CEQA; Could potentially require a hearing
A032263D	2-4 Years	SWRCB - N/A Engineering ~ \$100,000 Environmental ~ \$550,000 - \$650,000	Has not been publicly noticed; Could need updated Water Availability Analysis; Would need to conduct CEQA; Could potentially require a hearing
A032263E	2-4 Years	SWRCB - N/A Engineering ~ \$100,000 Environmental ~ \$550,000 - \$650,000	Has not been publicly noticed; Could need updated Water Availability Analysis; Would need to conduct CEQA; Could potentially require a hearing
Alternatives			
Standard Permit	5-10 Years	SWRCB ~ \$650,000 Engineering ~ \$500,000 Environmental - Estimate not available	Submit application and obtain approval from SWRCB; Would need to conduct CEQA
Streamlined Standard Permit	2-5 Years	SWRCB ~ \$500,000 Engineering ~ \$200,000 Environmental - Estimate not available	Submit application and obtain approval from SWRCB; Would need to conduct CEQA
Temporary 180-Day Water Right Permit	3-4 Months	SWRCB ~ \$100,000 (\$75,000 with streamlined pathway) Engineering ~ \$50,000 Environmental - Estimate not available	Submit application and obtain approval from SWRCB; Would need to conduct CEQA
Temporary 5-Year Water Right Permit	9-12 Months	SWRCB ~ \$100,000 (\$75,000 with streamlined pathway) Engineering ~ \$75,000 Environmental - Estimate not available	Submit application and obtain approval from SWRCB; Would need to conduct CEQA
Groundwater Recharge with Flood Exemptions (Water Code § 1242.1)	Immediate - no water right (once facilities are constructed)	SWRCB - N/A Engineering - N/A Environmental - Estimate not available	Diversions must be to reduce downstream flooding; Does not create a water right or any right to ownership or control of the water diverted to underground storage
State Filed Application	4-10 Years	SWRCB ~ \$290,000 - \$840,000 Engineering ~ \$500,000 Environmental - Estimate not available	Conform with State Filed Application and related plans; Submittal of petition for assignment and permit issuance by SWRCB; Would need to conduct CEQA
Shallow Well Field (percolating groundwater)	Immediate - no water right (once facilities are constructed)	SWRCB - N/A Engineering - N/A Environmental - Estimate not available	It would need to be determined that water pumped is percolating groundwater and not from underflow or a subterranean stream; Would need to conduct CEQA
Shallow Well Field (underflow or subterranean stream)	See applicable water right potential approach.	See applicable water right potential approach.	See applicable water right potential approach.

Notes:

- Filing fees with SWRCB are estimated based on face value for existing water rights and 135,000 acre-feet for new water rights.
- Estimated engineering costs includes rough estimates based on experiences with water right processes, including preparation of the appropriate documents for submittal.
- Estimated environmental costs are rough estimates intended to provide an initial sense of potential costs. Actual costs, including anticipated expenses for supporting technical analyses, may vary significantly depending on the scope of work, level of technical analysis required, and agency coordination.
- Estimated Implementation Timing is an estimate based on experiences with water right processes, including preparation of the appropriate documents for submittal.
- Key Requirements are not exhaustive.
- Legal counsel should be contacted for guidance regarding any/all of the potential options and for specific aspects of a proposed project.