



DWR Submits Delta Conveyance Project Section 404 Permit Application to the U.S. Army Corps of Engineers

June 18, 2020

The Department of Water Resources (DWR) has submitted a (revised) Department of the Army permit application pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (Section 404 permit application) to the U.S. Army Corps of Engineers (USACE) to request authorization for the proposed Delta Conveyance Project activities in waters of the United States.

Separately, DWR has initiated USACE (and the Central Valley Flood Protection Board) review of the Delta Conveyance Project under Section 14 of the Rivers and Harbor Act, Title 33 United States Code Section 408, as an activity that may affect the Federal-State flood control system. DWR is submitting its Section 404 permit application for the Delta Conveyance Project now in order to formally engage USACE in early coordination with DWR's California Environmental Quality Act (CEQA) process regarding environmental review under USACE's process for compliance with the National Environmental Policy Act (NEPA), as well as Clean Water Act and Rivers and Harbors Act. The USACE permit process will not be concluded until NEPA and all other relevant environmental compliance efforts are complete. Click [here](#) for more information.

Upon receipt of the Section 404 permit application, USACE is expected to coordinate with other federal agencies to identify the appropriate lead agency under NEPA. The appropriate federal lead agency will then issue a Notice of Intent (NOI) announcing the preparation of an Environmental Impact Statement (EIS), which will begin a comment period during which agencies and members of the public have an opportunity to comment on the contents of the permit application and scope and content of the EIS. More information about the federal scoping process will be available at that time of issuance of the NOI.

Delta Conveyance Project USACE Section 404 Permit Application: Q&A

1. Why is DWR submitting the 404 application now?

While a Section 404 permit is clearly required for certain proposed Delta Conveyance Project activities within navigable waters/waters of the U.S. prior to construction, applications can be submitted at various stages of project development. The Department of Water Resources (DWR) is submitting its application for the Delta Conveyance Project now to engage the U.S. Army Corps of Engineers (USACE) in environmental review under the National Environmental Policy Act (NEPA), in coordination with DWR's preparation of the Environmental Impact Report (EIR) for the Delta Conveyance Project in compliance with the California Environmental Quality Act (CEQA). However, USACE would not make a final permit decision until DWR has approved a final

project and USACE has completed review of the proposed project under NEPA. In addition, the USACE permit decision is contingent on completing other compliance components of Section 404 as well as Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. The USACE permit decision must also be supported by the State Water Resources Control Board issuance of water quality certification under Section 401 of the Clean Water Act (CWA). The USACE Section 404 permit decision also requires coordination with review under USACE's Section 408 program.

2. Why does DWR's 404 permit application identify different project details - a single proposed alignment and two intake locations - when the Notice of Preparation (NOP) identified two possible alignments and three intake locations for the proposed project?

The Section 404 permit application identifies only one alignment and two intake locations to comply with USACE permit application requirements that stipulate presentation of a single complete proposal. Therefore, identifying only one of the two alignment options and two intake locations for the proposed Delta Conveyance Project is done for the sole purpose of having a complete application consistent with USACE's requirements. However, it is important to note that the identification of a single corridor and two intakes within the proposed project in the Section 404 permit application is preliminary and should not be construed as a decision by DWR regarding its preferred project. Rather, DWR will need to identify and fully evaluate both of these corridors and all three intake locations, as well as a range of alternatives in sufficient detail in compliance with CEQA, and make a final determination regarding the alternative it approves at the close of that process once a sufficient record has been prepared. The CEQA process is at the beginning stages and both corridors and all three intake locations, as well as other potential alternatives, will be fully analyzed in the EIR in compliance with CEQA, as well as meeting the requirements of other relevant environmental laws and regulations including Section 404 of the CWA and the Endangered Species Act.

3. Why is there more detail in the project description for the proposed Delta Conveyance Project Section 404 permit application than what was included in the NOP?

The timing of preparation of the NOP required presentation of the information developed on the proposed Delta Conveyance Project as of December 2019. As Delta Conveyance Project planning work continues on several fronts, including the Delta Conveyance Design and Construction Authority (DCA) Stakeholder Engagement Committee (SEC), further details have become available since development and publication of the NOP. The DCA is conducting engineering and design activities to support environmental planning for the Delta Conveyance Project and preparation of the EIR under CEQA. Their ongoing work, including with the SEC, has resulted in additional project description details, some of which are reflected in the Section 404 permit application and will be considered in future planning documents. All relevant materials are presented at their monthly board and/or SEC meetings and can be found [here](#).

4. Will USACE notify nearby landowners about public participation opportunities related to the Section 404 permit application and NEPA?

As a public noticing requirement under USACE's Section 404 permit application process, USACE will notify nearby landowners, including those specifically contiguous to the project site, about the availability of information related to the Section 404 permit application as well as the NEPA environmental review process.

5. How come the impacted wetland acreage in the Delta Conveyance Project Section 404 permit application is higher than it was for WaterFix?

Although the Delta Conveyance Project planning process is a fresh start, it does have the benefit of utilizing previous applicable work as well as new information and data provided by the DCA to help in project evaluation and decision making. Comparing the WaterFix Section 404 permit application acreage totals for impacted wetlands to what is included in this application is not a direct comparison because additional details have been developed by the engineering team related to access improvements and logistics (to bring materials to and from construction sites). Additionally, the impacted acreage total is an estimate based on preliminary design of the proposed project and will likely decrease as DWR works with USACE to reduce impacts to wetlands during the Section 404 permit review and NEPA processes.