



State Water Resources Control Board

August 26, 2022

In Reply Refer to:
JH: A025517X01

Sites Project Authority
c/o Alicia Forsythe
PO Box 517
Maxwell, CA 95955

Dear Alicia Forsythe:

APPLICATION A025517X01 OF SITES PROJECT AUTHORITY TO APPROPRIATE WATER FROM SACRAMENTO RIVER, FUNKS CREEK, AND STONE CORRAL CREEK IN TEHAMA, GLENN, AND COLUSA COUNTIES: ACCEPTANCE OF INCOMPLETE APPLICATION

The water right application submitted by the Sites Project Authority (Applicant) was received by the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on May 11, 2022, and has been assigned application number A025517X01. The Division has determined that the application was submitted in a bona fide attempt to conform to water right application requirements. The Division is accepting the application for filing; however, the application is incomplete because it does not fully disclose all the information required by the application form and associated laws and regulations of the State Water Board. (See Cal. Code Regs., tit. 23, §§ 656, subd. (b), 678, subd. (b), 679.) The Division will proceed with noticing the application after the Division receives an amended application and determines that it is complete. (See Cal. Code Regs., tit. 23, § 684.)

At present, the application does not provide sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation as required by Water Code section 1260, subdivision (k). Specifically, the application's water availability analysis does not assess or consider reasonably foreseeable updates to instream flow and Delta outflow objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan), nor does the application evaluate water availability assuming proposed voluntary agreement provisions for implementing updates to the Bay-Delta Plan. (Section 1.0 of this letter goes into further detail about the application's deficiencies pursuant to Water Code section 1260, subdivision (k).)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

This information is critical to the Board and the public's consideration of the project and is thus necessary before the application is publicly noticed. Failing to incorporate reasonably foreseeable changes or consider potential implication of proposed voluntary agreements to baseline protection and instream flow obligations raises considerable risk of overestimating the frequency and volume of water availability for the project, which could have implications for the economic viability of the project for investors, including the State of California.

Failure to provide this information prior to public notice will deprive the public of information they need to evaluate the project and provide meaningful input, and ultimately will lead to inefficiencies and delays in processing the application. The Applicant can help expedite the application's processing timeline by completing the actions described in the following sections.

This application is likely to require an evidentiary water right hearing to resolve protests. (See Wat. Code, § 1351.) It will be important for the identified water availability information to be produced in advance of the hearing to inform the public and avoid unnecessary delays since appropriate bypass flows for the project are expected to be a key consideration during the hearing. The Applicant should resolve as many protests as possible to minimize the scope and complexity of the hearing, and as such we also advise the applicant to obtain state and federal endangered species act approvals and complete California Environmental Quality Act (CEQA) documentation before the hearing.

1.0 Water Availability (Wat. Code, § 1260, subd. (k).)

Water Code section 1260, subdivision (k) requires that a water right application include sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation. The Applicant included a Water Availability Analysis Report as part of its May 11, 2022, permit application (WAA Report). The application requests to divert up to 1.5 million acre-feet annually from two Points of Diversion on the Sacramento River to a proposed offstream storage reservoir and from two Points of Diversion on Funks and Stone Corral Creeks to onstream storage. The information and analysis in the WAA Report indicates that at least some water is available for appropriation, based on comparison to historical hydrology. However, the WAA Report does not include the full range of variables, data inputs, or operational constraints to adequately demonstrate that the full 1.5 million acre-feet of requested water is available for appropriation as proposed in the application.

The WAA Report contained three separate analyses that evaluate water availability using different methods: a Historical Analysis, a CalSim II Analysis, and a Face-Value Analysis. The methods individually and in combination do not provide the information required by the Water Code. The individual methods used in the WAA Report are missing: (1) points of analysis that demonstrate water availability from the Delta watershed and the project proposed points of diversion on the Sacramento River; (2) a full accounting of existing and reasonably foreseeable instream demands and senior

water right entitlements in the Sacramento and Delta watersheds; and (3) quantitative estimates of the amount of water that could be reasonably diverted given the proposed project's diversion capacity and other known or reasonably foreseeable operational constraints and instream flow requirements, including proposed updates to instream flow and Delta outflow objectives in the Bay-Delta Plan.

As related to item 3, and as the State Water Board commented in the CEQA process for the Sites project (comment letters submitted on January 18, 2018, and January 28, 2022), the State Water Board is currently in the process of updating and implementing revisions to the Bay-Delta Plan, including Sacramento River inflow and Delta outflow objectives, to address significant and precipitous declines in native fish and wildlife species. These CEQA comment letters identified the need for the Applicant to consider proposed updates identified in the Board's 2018 Framework for Sacramento/Delta updates to the Bay-Delta Plan (Framework), which included a Sacramento River inflow and Delta outflow objective of 55 percent of unimpaired flow, with an adaptive range of 45 to 65 percent. The CEQA comment letters also highlighted that the project would benefit from an analysis of the proposed voluntary agreement framework proposed by the State and a consortium of public water agencies (some of which are also proponents of the Sites project).

It is critical that the water availability analysis include an evaluation of proposed Bay-Delta Plan updates identified in the Framework and voluntary agreements, and the bypass flows that may be applied to the project, as described further below. The Sites Reservoir Project has the potential to significantly affect Sacramento River inflow and Delta outflows, including possible voluntary agreement flows. State, federal, and private investment decisions regarding both the Sites Reservoir Project and voluntary agreements are dependent on a robust analysis and an adequate showing that unappropriated water is available for diversion. The Applicant is directed to submit a water availability analysis that incorporates all the variables, data inputs, operational constraints, and decision rules identified in section 1.2 of this letter to complete the missing elements of the application and to satisfy the requirements of the Water Code.

1.1 Consultation on the Water Availability Analysis

State Water Board staff participated in numerous consultation meetings with the Applicant's staff and consultants to assist with development of the application, which is appreciated. The Applicant presented general information describing their intended approach for their water availability analysis during these meetings but did not provide sufficient detail to allow Division staff to provide detailed input or additional guidance on the proposed approach. However, Division staff did note that the Applicant's proposed approach was likely insufficient and emphasized State Water Board's CEQA review comment letters on the proposed project. As indicated above in section 1.0, the Board's comments focused on the need to evaluate reasonably foreseeable updates to the Bay-Delta Plan, including those identified in the Board's July 2018 Framework and a possible voluntary agreement. The information provided in this letter regarding an

adequate water availability analysis reiterates staff's direction and comments from these past interactions and communications with the Applicant.

1.2 Water Availability Analysis

An analysis that includes all the variables, data inputs, and operational constraints listed in this section will satisfy the requirements of the Water Code.

- Points of Analysis and Analysis Interval: The analysis must include a point of analysis at each of the project's proposed points of diversion on the Sacramento River, one point of analysis on the Sacramento River at Freeport, and one point of analysis to evaluate the effect on the project on Delta outflow and water users in the Delta. This shall be done using a daily analysis interval for the full period of record evaluated (i.e., daily timestep).
- Water Supply: The analysis must use the full period of available record for the California Department of Water Resources' unimpaired flow data set for all Central Valley sub-basins and the Sacramento-San Joaquin Delta as an estimate of unimpaired water supply accruing to the four points of analysis identified above. The analysis must include watershed area proration used to estimate unimpaired water supply accruing to the project's points of diversion on the Sacramento River. A climate change supply scenario must also be included. The State Water Board's Fact Sheet [Climate Change Considerations for Appropriate Water Rights Applications](#) provides information on climate change data and tools. Use of the 2035 CT (central tendency, or average amount of change) future is suitable for analysis of near-term conditions. Analysis should also include consideration of a longer time horizon, based on the expected life of the project, including to qualitatively characterize the anticipated change and constraints that might affect the project through the useful life.
- Senior Water Right Demand (Existing and Reasonably Foreseeable): Except to the extent that the Applicant substantiates, and the Division approves exceptions, the analysis must estimate existing senior water right demand. For senior post-1914 appropriative rights, this includes face value, maximum allowable storage amounts, and maximum allowable direct diversion rates. Senior post-1914 appropriative right demand includes all senior pending applications inclusive of a scenario with, and a scenario without, state-filed applications, unless a release from priority is requested. Statement holder demand shall be based on the maximum reported diversion amounts for all statements of water diversion and use located upstream of each point of analysis. The evaluation of the effect of the project on Delta outflow should include all water rights in the Delta watershed.
- Instream Demand (Existing and Reasonably Foreseeable): The analysis must account for the Bend Bridge pulse flows and Wilkins Slough bypass requirements (used in two of the three methods presented in the WAA Report), Revised Water Right Decision D-1641 flow requirements for Net Delta Outflow, and Sacramento

River flow at Freeport, as well as a reasonably foreseeable instream flow requirement of 55 percent of unimpaired flow at each point of analysis. Estimates of reasonably foreseeable instream flow requirements shall also account for any instream flows recommended by the California Department of Fish and Wildlife for recreation and the preservation and enhancement of fish and wildlife resources, if available at the time of analysis. In addition, the analysis must evaluate a project consistent with proposed voluntary agreements and assess the extent to which the project could reduce or otherwise modify proposed voluntary agreement baseline and additive flows.

- Operational Constraints: The analysis must quantify the amount of available water that could be reasonably diverted by the Sites Reservoir Project based on its proposed maximum diversion rate and other known or reasonably foreseeable operational constraints for Sites Reservoir Project's diversion facilities.

The results of the water availability analysis must be presented in a manner that demonstrates the effect of each of the above listed variables, data inputs, and operational constraints on water availability for the project. At a minimum, the analysis must report water availability for each water year in the period of record evaluated; the range, average, and probability of exceedance statistics for the full period of unimpaired flow record evaluated; and each water year type based on the Sacramento River Index described in D-1641.

State Water Board staff are available to discuss this letter in more detail and provide assistance on how to provide the additional information and analysis needed to complete the application. To this end, the Applicant is encouraged to consult with the State Water Board staff to discuss the details of the water availability analysis and other application issues in advance of completing additional work.

2.0 Other

Review of the application found some additional information is either missing, requires revision, or further explanation, including possible supplementation. Please see "Attachment 1: Missing Information" for details.

In addition, provision of the data and information requested above does not foreclose the need or potential request for additional information later in the application review process. For example, additional data and materials may be requested in response to possible protests against the application. (Wat. Code, §§ 1275, 1375; Cal. Code Regs., tit. 23, §§ 683, 685.)

3.0 Accepted Application – Information

3.1 Fees

All initial filing fees have been paid in full. In addition to the initial filing fees, all active applications may be subject to annual fees. If an annual application fee is required, the Division will calculate the annual fee, and the California Department of Tax and Fee Administration will send the Applicant a Notice of Determination requesting payment. For more information, please visit this web site:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/

3.2 Environmental Review

The State Water Board, as a responsible agency under CEQA, will review the final environmental document prepared for this project. The State Water Board submitted comment letters of the draft environmental documents on January 18, 2018, and January 28, 2022.

In addition to consideration of environmental effects under CEQA, the Division must consider the effect of the water right application on public trust resources and avoid or minimize harm to those resources to the extent feasible and in the public interest. Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, riparian habitat, tidelands, and recreation. Similarly, the Division may require environmental analysis needed to demonstrate compliance with other applicable requirements of the Water Code, the Fish and Game Code or the federal Endangered Species Act.

3.2 Responsibility for Completing Technical Activities

The water right application designates engineering consultants, environmental consultants, and attorneys to be involved in the technical activities associated with processing the application. While the Division may complete some of the technical activities required for processing of the water right application, the Applicant is ultimately responsible for ensuring the activities are completed.

The activities may result in decisions to require specific project modifications or actions (water right terms and/or mitigation measures) to: 1) prevent the proposed project from contributing to significant cumulative impacts on aquatic resources (including anadromous fisheries, if applicable) in the watershed; 2) prevent the proposed project from causing or contributing to other significant environmental impacts; 3) resolve protests against the project; and 4) prevent injury to senior water right users.

Project consultants may be required to complete the following items, depending on the unique characteristics of the project and/or the surrounding environment.

- 1) Environmental studies needed for development of a CEQA document and/or public trust analysis;

- 2) WAA or other hydrologic analyses;
- 3) Acquisition of permits for construction and operation of the proposed project, including consultation with the California Department of Fish and Wildlife, National Marine Fisheries Service, and any other federal, state, or local agencies that may have permitting authority over all or part of the project; and,
- 4) Development of plans (such as compliance plans)

For more information regarding the technical activities that may be required, please review this document available on the Division's web site:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/docs/recommendations.pdf

3.3 Assigned Lead Staff

The assigned lead staff for this application is Justine Herrig. If you have any questions, please contact her at (916) 323-5176 or Justine.Herrig@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Justine Herrig, PO Box 2000, Sacramento, CA 95812-2000.

4.0 Amended Application Submittal

Water Code section 1270 provides that when an application made in a bona fide attempt to conform to the State Water Board's rules and regulations but is found incomplete, the applicant shall be allowed 60 days after notice of the defect, or any additional period of time that the State Water Board agrees to, in which to file an amended and perfected application.

Information to address the incomplete aspects of the application identified above shall be submitted within **60 days** of the receipt of this letter. Applicants may submit in less than the amount of time offered. If additional time is needed, please consult with staff to request an extension.

Sincerely,



Erik Ekdahl, Deputy Director
Division of Water Rights

Enclosure: (1) Attachment 1: Information Requested

cc: Alicia Forsythe
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ATTACHMENT 1: MISSING INFORMATION

SECTION 4.1: ENGINEERING MAP

Topic/Citation	Location	Comment	How to address
CCR § 718-719	Maps	CCR Sections 718 and 719 require the project maps to delineate the place of use for municipal and irrigation respectively. The map only delineates the general place of use irrespective of use type.	Indicate which purpose applies to which PLSS sections of the place of use. If it seems unfeasible to do so, provide explanation why.
Power Purpose of Use	Maps	CCR Section 720 lists specific requirements for projects with power listed as a purpose of use. These requirements are not covered by the project maps.	Provide maps showing the location of hydropower facilities and a profile of penstock structure

SECTION 5: PROJECT DESCRIPTION

Topic/Citation	Location	Comment	How to address
Project Photos; Form Field	Item 7	Photos do not include dates.	Resubmit photos with dates of when photos were taken.

SECTION 6: PURPOSE OF USE

Topic/Citation	Location	Comment	How to address
Justification of Water Requested; Form Field	Section 6, attachment 1	It is unclear what the justification is for the water being requested. The storage partners have existing water sources to provide their customers. How does the requested water fill the need of the storage partners to acquire more water? Information could discuss how often	Provide additional information

		the storage partners are unable to receive full CVP/SWP allocations and/or how often storage partners are unable to maximize their current water rights or other water sources.	
Amounts Requested for Each Purpose of Use; Water Code § 1260(c); CCR §§ 696-698	Section 6, attachment 1	Need clarification on the amounts requested for each purpose of use. In section 6, attachment 1 the purposes of use are broken down by participant. As several participants have multiple uses, it is hard to determine how much water will be utilized for each purpose of use. The information in section 6, attachment 1 differs from the estimates provided in section 6 of the application. Specifically, there is no estimated amount for Industrial use.	Provide clarification on the amounts requested for each purpose of use. Provide an estimated annual amount of use for Industrial.
Agricultural Purpose of Use; Water Code § 1262	Section 6	CA Water Code § 1262 requires applications for agricultural purposes to give the legal subdivisions of the land and the acreage to be irrigated, as near as may be. While section 6, attachment 1 lists the acreage amount, it does not give the legal subdivisions of the land to be irrigated.	Provide legal subdivisions of the land that will be irrigated.
Power Purpose of Use; Water Code § 1263	Section 6	Water Code § 1263 requires applications for power purposes to state the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied.	Provide information on the nature of the works by means of which the hydropower is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied.

SECTION 8: POINT LOCATIONS

Topic/Citation	Location	Comment	How to address
Point Numbers	Section 10, Attachment 2	PORDs 21 (Los Vaqueros Dam) and 23 (Del Valle Dam) are labelled as PORDs 16 and 22 on the adjacent tab titled "SOD Reservoir Details". On the same tab, Arroyo del Valle Diversion Structure is also listed as PORD 22. Similarly, PORDs 28-30, 50, and 52-56 are also mismatched.	Confirm point numbers. Once clarified, confirm that reservoir details correspond to the intended PORD.
Proposed or Existing PODs	Section 10, Attachment 2	A majority of PODs do not explicitly say whether they are proposed, existing or partially existing. The application form does not require this information, but it is needed for eWRIMS. Division staff have tentatively labeled these PODs as 'proposed' in eWRIMS due to lack of information. PODs confirmed to be proposed or existing are listed in the 2 nd tab of Section 10 – Attachment 2, SOD Reservoir Details.	Provide clarification
Construction of PODs	Section 10, Attachment 2	Although the applicant lists construction plans in the draft EIR (appendix 2C), construction plans are not noted by POD. It may be beneficial to know specific PODs requiring construction through an organized table, as this can influence whether a facility or canal is considered existing, proposed, or partially existing.	Provide additional information
Rediversion Rates	Section 10, Attachment 2	A majority of PODs/PORDs do not define rediversion rates. These rediversion rates may be necessary to ensure the applicant does not cause injury to other water right holders using shared facilities.	Provide additional information

SECTION 10: POINT AND FACILITIES INFORMATION

Topic/Citation	Location	Comment	How to address
Points 1 and 2; Form field	Section 10	The maximum annual amounts diverted at Golden Gate Dam and Sites Dam shall be limited to the amounts available from Funks and Stone Corral Creeks, respectively, and not the total diversion amount of 1.5 MAF for the project. The annual amounts diverted at Golden Gate Dam and Sites Dam must reflect the maximum annual diversions that will occur from Funks and Stone Corral Creeks, respectively.	Adjust the maximum annual amounts for diversions by onstream dam at Golden Gate Dam and Sites Dam for PODs 1 and 2.
Points of re- diversion; form field	Section 10, Attachment 2	PODs 1 and 2 in “Section 10 - Attachment 2” are listed as PORDs in column A, but aren’t listed as PORDs in column R	Correct 2b under PODs 1 and 2 in the form and update Attachment 2.
South of Delta reservoirs	Section 10, Attachment 2	The South of Delta reservoirs are labeled as points of onstream storage in column T of “Section 10 – Attachment 2”, but are listed only as PORDs in column A. Please clarify how these reservoirs will be used for the project. The relevant point numbers based on the “Point Details” tab are 21, 23, 28, 29, 31, 53, 54, 55, and 56.	Provide additional information regarding the function of the South of Delta reservoirs in the Sites application. Please clarify if any of these reservoirs will have a storage feature for the project besides a PORD.
Points of offstream storage	Section 10, Attachment 2	POD 22 was labeled as a point of offstream storage in the “SOD Reservoir Details” Tab, but not in the primary tab of the attachment.	Confirm whether it is a point of offstream storage for the application.

SECTION 11: ADDITIONAL FACILITIES

Topic/Citation	Location	Comment	How to address
Form field	Section 11	Some form fields in the table in Section 11 were left blank for some facilities (e.g. cross section, material, lift/fall height, capacity).	Provide information for fields that are incomplete

SECTION 16: DEMONSTRATION OF REASONABLE LIKELIHOOD OF WATER AVAILABILITY

Comments on water availability are addressed within the body of the letter.