

Frequently Asked Questions Wastewater Change Petitions

Who can file a wastewater change petition?

Only the owner of a wastewater treatment plant can [file a petition](#). For example, if water is delivered from a private water company for use in a city, and the water then goes into the county wastewater treatment facility, the county is the only party that can file a petition. The private water company cannot.

Which wastewater reuse projects require a wastewater change petition?

If a wastewater facility has been discharging into a watercourse, the owner of the wastewater treatment plant needs to [file a petition](#) prior to reducing the discharge for the purpose of re-using the water. For example, a water re-use project that will use treated wastewater to irrigate a city park instead of continuing to discharge the wastewater into a river will require an approved petition. The new place of use is the park, and the new purpose of use is irrigation.

As clarified below, a petition is not needed for changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse, or when the discharge is directly to the ocean or a bay. Also, reductions in discharge associated with reduced plant influent due to water conservation measures are not subject to the petition requirement.

How does the wastewater change petition process fit into the overall project planning process?

To avoid delays in implementing wastewater recycling projects, it is important to coordinate the wastewater petition with other approvals needed for the re-use project. The Division of Water Rights (Division) recommends that this coordination process include pre-consultation with fisheries agencies, downstream water users (this information is available on the Division's [eWRIMS public database](#)) and other interested parties on potential impacts of the reduced flows. It also includes soliciting input from the Division about the project during scoping of the California Environmental Quality Act (CEQA) document.

The plant owner should file the petition early enough in the planning process to provide time for issuing [public notice](#) of the petition and addressing any protest before the applicant hopes to begin construction. A protest sets forth the protestant's objections to approval of the petition. The procedures for addressing protests are set forth in tit. 23, CCR § 1701.3, et seq. However, it is our experience that public understanding of the project is much better if the draft CEQA document is included with the public notice, and

that filing a petition before the CEQA document is available does not result in an earlier decision on the petition.

What issues should be evaluated in the CEQA document to enable the Division to act on a petition?

It is important to [solicit input from the State Water Resources Control Board](#) as a responsible agency in the CEQA process. The petition should identify the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change. Therefore, the CEQA document must include an evaluation of any impacts from the reduced flows. Depending on the individual situation, the Division's review may also require evaluation of other impacts, such as secondary impacts from changing water uses, and groundwater recharge.

What actions does the Division take to process wastewater change petitions?

If the proposed project has the potential to impair the water supply of other legal users of water or instream beneficial uses, the Division provides public notice of the petition. This provides opportunity for interested persons to notify the Division whether approval of the change petition would interfere with any valid rights to the portion of the discharge resulting from native flows and if the petition raises environmental concerns. Native flows do not include imported or stored water. In all other cases, petition noticing is not required.

To approve a petition, the Division must be able to find that the proposed change will not injure any other legal users of water and that the change complies with the requirements of the Fish and Game Code or the federal Endangered Species Act. Also, the Division must find that the requirements of CEQA have been met. Resolution of protests (settlement, dismissal or cancellation) is required in order to make the findings necessary for approval of a petition.

What are some examples of where a petition is not required for a wastewater recycling program?

- If a treatment plant currently discharges directly to a bay or the ocean and will be re-using a portion of the water, a petition is not needed, even where the discharge is reduced.
- If a treatment plant currently discharges to off-stream wastewater percolation ponds that do not contribute to streamflow and plans to re-use a portion of the water instead of percolating it, a petition is not needed.
- Some treatment plants have never discharged to a stream. Re-use projects that are designed to use the treated wastewater from such facilities do not require a petition, provided that there will not be any reductions to instream flow.
- The quantity of water treated at a facility is not static, but may increase over time. If a treatment plant discharges to a stream, but only plans to use increased flow that has never been discharged to the stream for a re-use project, a petition is not required. This only applies to the flow that has not been discharged to the stream. For example, if an existing wastewater treatment plant expands its service to a new subdivision that plans to import water from another watershed, no wastewater change permit is necessary to deliver the increase in treated water.

Do I need to file a petition if I discharge to a surface stream, and will be reducing instream flows, but the stream is subject to tidal influence?

Any reduction in instream flows in a watercourse triggers the need to file a petition. The Water Code provisions related to wastewater change petitions do not provide exceptions due to poor water quality, tidal influence, or other factors.

What if the re-use project uses the stream channel to convey the treated wastewater before re-use?

Water Code section 1211, which covers wastewater change petitions, does not affect the requirement to have or obtain a water right in order to divert from a natural watercourse. Therefore, unless the diverter already has a right to divert the wastewater, this type of project requires a water right application in addition to any wastewater change petition required. The process, timeline, and CEQA requirements for a water right application and for a wastewater petition are similar, but not identical. For more information on water right applications, please see: [/waterrights/water_issues/programs/applications/](#)

How does a Wastewater Change Petition Order affect any Regional Water Quality Control Board (Regional Board) requirements regarding discharged treated effluent?

Approval of a wastewater change petition does not release parties from the obligation to comply with any Regional Board requirements applicable to the new project, such as orders related to any treated wastewater that continues to be discharged to a surface stream or irrigation Waste Discharge Requirements.

Is this type of petition only needed when a project seeks funding under the Water Recycling Funding Program?

No, these Water Code provisions apply regardless of whether the party is seeking financial assistance for their project.

How does the Division determine whether any of the treated wastewater will need to remain instream to satisfy downstream water rights?

The Division notifies downstream legal users of water and the public to allow them to raise any concerns about interference with water use. The Division analyses whether downstream diverters have a valid claim to the treated wastewater, and if this claim could be met if the changes in the petition were approved. This analysis focuses on the source of the wastewater before it arrived at the treatment plant. If the water entering the treatment plant is natural to the stream system, legal users of water could suffer interference with their rights if it were no longer available.

If the water is imported from another watershed (for example), the legal user of water may be considered to have recaptured the water rather than abandoning it to the stream system. The local water users may not be able to claim interference with their water rights for projects involving re-use of foreign water.

What is evaluated in determining whether any of the treated wastewater will need to remain instream to satisfy environmental concerns?

The Division evaluates all claims of instream water needs. All petitioners must send a copy of the petition to the California Department of Fish and Wildlife (CDFW). Information on flow needs may be obtained from CDFW, the CEQA document, protestants, and other sources during public trust review of the project.

Some stream system's flows and the associated ecosystems are dependent on wastewater discharge during portions or all of the year. Due to the variability of stream conditions and species involved, the scope of the analysis is determined on a case by case basis.

Do the provisions governing changes in discharge of treated wastewater set forth in Water Code sections 1210-1212 apply to discharges under an NPDES permit that are not from a wastewater treatment plant?

No, these Water Code provisions apply only to discharges from a wastewater treatment plant. The provisions of sections 1210-1212 do not apply to other discharges under an NPDES permit, such as an NPDES permit issued to an industrial facility.

What if the Division previously approved a wastewater change petition for a project, and the treatment plant owner now wants to change the place of use or purpose of use?

There is no need to obtain another wastewater change petition, unless the proposed project will be further reducing instream flows as a result of the water re-use project. If there will be a further reduction in instream flows, a [wastewater change petition](#) must be filed. Otherwise, the previous Division order can be modified through the [standard change petition](#) process.