
State Water Resources Control Board

September 4, 2020

VIA ELECTRONIC MAIL

TO: CURRENT SERVICE LIST

COLLEGE LAKE PROJECT HEARING: PROCEDURAL RULING ON UPDATED ORDER OF PROCEEDING, HEARING TEAM QUESTIONS, AND REVISED DRAFT PERMIT

This letter updates the procedures for the hearing on Application A032881 (Application) and request for release from priority of State Filed Application (SFA) A018334 filed by Pajaro Valley Water Management Agency (PV Water). The hearing is currently scheduled to be held on September 22, 2020. These updated procedures are intended to ensure that the hearing proceeds efficiently and can be completed on the scheduled day. Unless explicitly modified herein, all other aspects of the Hearing Notice and the procedural ruling letter of July 24, 2020, remain in effect.

To further facilitate an efficient hearing, an amended draft permit and a list of questions to be directed to the witnesses, including witnesses from California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS), are also enclosed with this ruling letter. The questions will be asked of the witnesses by staff of the State Water Resources Control Board (State Water Board) hearing team during the hearing as needed to clarify specific information and are being provided to the parties in advance as a courtesy. We initially requested CDFW and NMFS to provide a witness knowledgeable of their protest dismissal terms. Our current list of questions also concerns the project's impacts to wetlands and we would greatly appreciate a witness familiar with this subject. Written responses to these questions will be accepted if received by noon on September 18, 2020, but are not required. This list of questions does not limit the scope of questions that we or staff of the hearing team may ask of witnesses during the hearing.

1. Procedural Background

On January 5, 2018, the State Water Board publicly noticed PV Water's Application and request for release from priority of SFA A018334. The Board received four protests to the Application. Two of these protests were resolved contingent on the inclusion of negotiated terms and conditions in any permit issued on PV Water's Application. One was withdrawn without conditions.

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

On June 10, 2020, the State Water Board issued a notice of public hearing (Hearing Notice). The Hearing Notice described the process for parties to participate in the hearing. Three parties indicated an intent to participate in the hearing: PV Water, John Diffenbaugh,¹ and Mr. Busch. Mr. Busch requested an opportunity to participate in the hearing even though he had not filed a protest to the Application. We granted Mr. Busch's request for party status on a limited basis to allow him to offer evidence relevant to the project's alleged adverse impacts to fish, wildlife, or other public trust resources.

On August 2, 2020, PV Water submitted a Notice of Stipulation and Dismissal of Diffenbaugh Family Farms, LLC Protest. On August 7, 2020, at our request, Mr. Diffenbaugh provided written clarification that he no longer intended to participate in the hearing in any capacity. There are now no outstanding protests to PV Water's Application or the request for release from priority of SFA A018334. PV Water and Mr. Busch are the only remaining parties to the hearing. Despite the resolution of all remaining protests, we have questions for the remaining parties, CDFW, and NMFS, and thus, we are proceeding in the modified manner outlined below to expedite the hearing process.

2. Scope of the Hearing and Order of Proceeding

The hearing will commence with any oral policy statements. Given the resolution of all outstanding protests and the limited issues in dispute, there will be no opening statements or oral summaries of written testimony. Witnesses will be asked to confirm that their written testimony is true and correct and then we will proceed directly to cross-examination, starting with the cross-examination of PV Water's witnesses by Mr. Busch, followed by questions from us and staff of the hearing team. We will then proceed with cross-examination of Mr. Busch by PV Water, followed by questions from us and staff of the hearing team. Finally, we and staff of the hearing team will ask questions of the witnesses from CDFW and NMFS seated as a panel. PV Water and then Mr. Busch will also be allowed the opportunity to ask questions of the witnesses from CDFW and NMFS. After hearing from those witnesses, PV Water will be allowed to offer rebuttal evidence to Mr. Busch's case-in-chief evidence and we will allow Mr. Busch to cross-examine any witnesses offering rebuttal testimony. PV Water and Mr. Busch will also be afforded an opportunity to respond to changes in the revised draft permit.

An updated Order of Proceeding is provided at the end of this ruling letter.

3. Revised Hearing Dates and Deadlines

The following revised schedule and deadlines apply to this hearing:

¹ John Diffenbaugh submitted a Notice of Intent to Appear presumably on behalf of Diffenbaugh Family Farms, LLC.

- **September 18, 2020, 12:00 p.m. (Noon)** – Deadline to serve cross-examination exhibits and optional written responses to questions from Board staff on all other parties, and for receipt of these documents by the Board. These documents may be submitted via an FTP account². Please note that rebuttal exhibits are not required to be submitted in advance, but parties are encouraged to submit rebuttal exhibits by noon on September 18, 2020, to facilitate presentation via Zoom.
- **September 21, 2020, 2:00 p.m. (Optional)** – Opportunity to participate in a dry run of the hearing procedures on the Zoom platform³. Participation is not required.
- **September 22, 2020, beginning at 9:00 a.m.** – Hearing to be conducted remotely via Zoom³. Written policy statements by interested persons may be submitted to the Board before the end of the hearing.

4. Revised Service List

Mr. Diffenbaugh has requested to remain on the service list as an interested person. Monica Oey and Joel Casagrande, of CDFW and NMFS, respectively, are also added to the service list as interested persons. A revised service list is attached to this letter.

Thank you for your continued cooperation in this hearing. Questions regarding non-controversial procedural matters may be directed to wr_hearing.unit@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Tam M. Doduc
State Water Board Member
College Lake Project Co-Hearing Officer

ORIGINAL SIGNED BY

Laurel Firestone
State Water Board Member
College Lake Project Co-Hearing Officer

Enclosures:

Revised Order of Proceeding and Summary of Time Limits
Preliminary Hearing Team Questions for Witnesses
Revised Draft Permit
Revised Service List

² Instructions to use the FTP accounts are available at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/collegelake/docs/ftp_accounts.pdf.

³ Information for remote attendance of the dry run of the hearing procedures and the hearing will be provided to the parties separately at a later date.