
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
will hold a Public Hearing to consider

**Application A032881 and Release of State Filed Application (SFA)
A018334 from Priority in Favor of Application A032881**

College Lake and Salsipuedes Creek

Santa Cruz County

A **Pre-Hearing Conference Call** will commence on
July 10, 2020 at 1:00 p.m.¹

(Call-in information will be circulated to parties and interested persons
who timely submit a Notice of Intent to Appear for the hearing)

The **Public Hearing** will commence on
August 24, 2020 at 9:00 a.m.
and continue, if necessary, on
August 25, 2020

in the Coastal Hearing Room²
Joe Serna, Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, California

(Hearing may be conducted via video conference due to COVID-19)

¹ As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, the pre-hearing conference will occur solely via teleconference. There will not be a physical location for the meeting due to the current limitations on public gatherings and requirements for social distancing in order to protect public health.

² Should the COVID-19 emergency cause continued restrictions on public gatherings and require social distancing to be maintained on the scheduled hearing dates, the Public Hearing may be held via video and teleconference, relocated, or postponed, in order to protect public health and safety. The State Water Board will provide notice of any such change at least **14 calendar days** in advance of the hearing.

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence relevant to determining whether to approve Application A032881 filed by Pajaro Valley Water Management Agency (PV Water) and whether to release SFA A018334 from priority in favor of Application A032881.

PRE-HEARING CONFERENCE CALL

The goal of the pre-hearing conference call is to ensure that the hearing proceeds in an orderly and expeditious manner. The hearing officers will conduct this call on July 10, 2020, at 1:00 p.m., to discuss the following issues with the parties and their representatives:

- The schedule for conducting the hearing;
- Whether a remote hearing is feasible and appropriate; and
- Other procedural issues.

The pre-hearing conference call will **not** include discussion of the merits of the specific issues raised in the application or other substantive hearing issues unless the parties agree prior to the pre-hearing conference call to resolve a hearing issue by stipulation.

Because of the current COVID-19 emergency, no in-person appearances will be allowed for this pre-hearing conference call. Prior to the call, the hearing team will circulate the call-in information to all parties who have filed Notices of Intent to Appear (discussed below). The hearing team will also provide call-in information on the State Water Resources Control Board's (State Water Board or Board) [College Lake Hearing webpage³](#) and will circulate this information to the Water Rights Hearings LYRIS email list.

A court reporter will record the conference call electronically and prepare a transcript. Following the pre-hearing conference call, the hearing officers may issue a procedural ruling letter and the State Water Board may at its discretion modify this notice in whole or in part.

All parties intending to participate in the evidentiary portion of this hearing are required to participate in the pre-hearing conference call. Participants who plan to present policy statements only and will not participate in the evidentiary portion of the hearing are encouraged but not required to participate in the conference call.

³https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/collegela ke/

BACKGROUND

State Filed Applications

The Legislature has authorized the filing of applications by the State to appropriate water that “is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state.” (Wat. Code, § 10500.) These “state filed applications” are held by the State Water Board, which may release from priority or assign any portion of an application when “the release or assignment is for the purpose of development not in conflict with such general plan or coordinated plan or with water quality objectives established pursuant to law.” (*Id.*, § 10504.) The State Water Board must hold a public hearing prior to releasing from priority or assigning any portion of State Filed Applications. (*Id.*, § 10504.1.) The recipient of the release from priority does not acquire the priority date of the State Filed Application or any other priority date different from the priority of its date of filing. (See State Water Board Order WR 83-1, at p. 15.) The State Water Board may not release from priority or assign a state filed application if the county in which the water originates would be deprived of water necessary for its development. (*Id.*, §§ 10505 & 10505.5.)

SFA A018334 and A032881

Table 1. Comparing Key Information between A018334 and A032881

	SFA A018334	Proposed under A032881
Source:	Pajaro River	Salsipuedes Creek
Maximum Rate of Direct Diversion:	200 cubic feet per second ⁵	30 cubic feet per second
Direct Diversion Season:	Year-round	Year-round
Combined Maximum Diversion Amount: ⁴	21,000 acre-feet per annum	3,000 acre-feet per annum
Maximum Diversion to Storage Amount:	21,000 acre-feet per annum	1,764 acre-feet per annum
Diversion to Storage Season:	1/1 – 12/31	9/1 – 6/30
Storage Reservoir:	Watsonville Dam	College Lake
Purposes of Use:	Municipal, Domestic, Irrigation, Recreational, Industrial	Irrigation, Fish and Wildlife Preservation and Enhancement

⁴ Combined Maximum Diversion Amount refers to the amount of direct diversion plus diversion to storage.

On September 24, 1958, the Department of Water Resources filed SFA A018334 (also known as A018334SF) at the request of the Santa Cruz County Flood Control and Water Conservation District to reserve unappropriated water from Pajaro River until water development projects could be constructed. SFA A018334 allows 200 cubic feet per second (cfs) of direct diversion from the Pajaro River and storage of up to 21,000 acre-feet per annum (afa).⁵ The reserved appropriation is year-round and for domestic, irrigation, municipal, industrial, and recreational uses.

On November 14, 2017, PV Water filed Application A032881, seeking to divert surface water from Salsipuedes Creek and College Lake to supplement regional water supplies. Specifically, PV Water requested that the State Water Board grant Application A032881 and release SFA A018334 from priority in favor of Application A032881.⁶

Project Description

The project proposed by PV Water is located in Pajaro Valley—a region along the Central Coast, which encompasses numerous communities within Santa Cruz, Monterey, and San Benito counties. Over the past several decades, groundwater pumping for agricultural and municipal uses in the Pajaro Valley area has led to overdraft of the aquifers beneath the valley. PV Water filed Application A032881 for the College Lake Integrated Resources Management Project (College Lake Project) in order to deliver surface water from Salsipuedes Creek and College Lake for irrigation use in lieu of pumping an equivalent amount of groundwater. The project would divert up to 3,000 afa year-round from Salsipuedes Creek and College Lake for irrigation and fish and wildlife preservation and enhancement purposes. Of the total amount diverted, up to 1,764 afa may be diverted to storage between September 1 and June 30 of the succeeding year.

The proposed diversion point for the College Lake Project is on Salsipuedes Creek, which is a tributary to the Pajaro River, thence the Pacific Ocean. The proposed storage reservoir, College Lake, is a naturally occurring lake draining into Salsipuedes Creek. It is seasonally fed by Green Valley, Casserly, and Hughes Creeks. Under current conditions, the College Lake Reclamation District controls an existing weir and drains water from College Lake into Salsipuedes Creek during the spring, and intermittently during the summer and fall, to allow row crops to be farmed on the lake bottom during the summer. To use College Lake as a storage reservoir, PV Water plans to construct a new weir and an intake pump station at the south side of College Lake, which will raise the lake level by 2.4 feet and increase the capacity of the lake from approximately 1,150 acre-feet (af) to approximately 1,800 af. To distribute water for irrigation use, PV Water proposes to construct a new water treatment plant and new pipelines connecting the treatment plant to existing distribution networks.

⁵ The maximum rate of diversion to storage is limited to 200 cfs.

⁶ PV Water initially petitioned for partial reassignment of SFA A018334 or, in the alternative, a release of SFA A018334 from priority in favor of Application A032881. PV Water modified its request in a December 21, 2017 letter to rescind its petition for partial reassignment.

Application Protests

On January 5, 2018, the State Water Board publicly noticed PV Water’s water right Application A032881 and the request to release SFA A018334 from priority in favor of Application A032881 and received four protests. The status of each of these protests are shown in the table below:

Table 2. Statuses of Protests Received

Protestant	Status
Diffenbaugh Family Farms, LLC	Active
Janet Braycovich Banovac Separate Property Trust	Withdrawn Without Conditions
California Department of Fish and Wildlife (CDFW)	Conditionally Withdrawn
National Marine Fisheries Service (NMFS)	Conditionally Withdrawn

CDFW and NMFS withdrew their protests conditioned upon the inclusion of terms and conditions provided to the State Water Board in any permit issued for Application A032881 to protect public trust resources and fish and wildlife. These terms and conditions have been incorporated in part and with modifications in the draft permit attached to this notice and may be further modified through the hearing process.

Water Availability Information

PV Water has submitted a water availability analysis for its proposed diversions from Salsipuedes Creek watershed to demonstrate that a sufficient amount of water is available to issue a water right permit pursuant to Application A032881 if the State Water Board releases the higher priority of SFA A018334 in favor of the application.

Environmental Information

PV Water is the lead agency for the project under the California Environmental Quality Act (CEQA). The State Water Board is a responsible agency. As lead agency, PV Water prepared an Environmental Impact Report (EIR) for the College Lake Project pursuant to CEQA section 21000 et seq. (State Clearing House # 2017112063.) In October 2019, PV Water adopted a Final EIR. On October 18, 2019, PV Water filed a Notice of Determination.

Draft Permit

A draft permit under consideration by the State Water Board is provided with this notice. The State Water Board may deny Application A032881 and reject the draft permit, approve Application A032881 and adopt the permit as drafted, or approve Application A032881 and adopt the draft permit with modifications.

Parties to this proceeding who oppose issuance of the permit as drafted must propose modified or new terms, or demonstrate that there are no terms and conditions adequate to support approval of Application A032881. Further instructions are provided on the Exhibit Identification Index and Response to Draft Permit form attached to this notice.

KEY ISSUES

The State Water Board's decision on whether to approve Application A032881 and whether to release SFA A018334 from priority in favor of Application A032881 will be based upon the evidentiary record developed during the hearing. Parties to the proceeding may submit exhibits and testimony responsive to the following issues to be considered during the hearing. Parties must, however, identify the specific term in the draft permit, proposed amended term, or proposed new term that the evidence is intended to support. Alternatively, the party may identify the key issue, below, to which the evidence is relevant and offered to show that no term or condition would be adequate to justify approval of the application.

1. Release from priority of SFA A018334

- a. Would a release from priority of SFA A018334 in favor of Application A032881 be for purposes of development not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state, or with water quality objectives established pursuant to law?
- b. Would a release from priority of SFA A018334 in favor of Application A032881 deprive the county or counties in which the water originates of water necessary for the counties' development?
- c. Would a release from priority of SFA A018334 in favor of Application A032881 result in adverse environmental impacts, including water quality impacts or adverse impacts on fish, wildlife, or public trust resources?
- d. Should the State Water Board approve the release from priority of SFA A018334 in favor of A032881? If so, what conditions, if any, should be included in the approval?

2. Consideration of Application A032881

- a. Is water available for appropriation? If so, when and under what circumstances is water available?
- b. Would the proposed appropriation injure the exercise of water rights by other legal users of water? If approved, what terms and conditions should be included to prevent injury to the exercise of water rights by other legal users of water?
- c. Would the water diverted under the proposed appropriation be put to reasonable and beneficial use? If approved, what terms and conditions should be included to ensure that the diversion and use of water is reasonable and beneficial?
- d. Would the proposed appropriation cause adverse impacts to water quality, fish, wildlife, or public trust resources? If approved, what terms and conditions should be included to protect water quality, fish, wildlife, and public trust resources?
- e. Is the proposed appropriation in the public interest? If approved, what terms and conditions should be included to ensure that the diversion and use is in the public interest?
- f. Is there a feasible alternative or are there feasible mitigation measures within the authority of the State Water Board that would substantially

lessen or avoid any significant effect of the project identified in the Final EIR? If approved, what additional terms and conditions should be included in the permit to mitigate or avoid environmental impacts identified in the Final EIR?

- g. What modifications, if any, should the State Water Board make to the draft permit attached to this Notice if Application A032881 is approved?

HEARING OFFICERS AND HEARING TEAM

State Water Board Members Tam Doduc and Laurel Firestone will preside as the hearing officers for this proceeding. Other members of the Board may be present during the hearing.

A hearing team will assist the hearing officers by providing legal and technical advice. The hearing team members will be: Lisa Hong, Water Resource Control Engineer; Mara Irby, Environmental Scientist; and Nicole Kuenzi, Attorney IV. The hearing team and their supervisors will assist the hearing officers and other members of the State Water Board throughout this proceeding.

HEARING PARTICIPATION PROCEDURES

IF YOU WANT TO TAKE PART IN THIS EVIDENTIARY HEARING, you should carefully read the enclosure titled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, **anyone wishing to participate in this hearing (beyond presenting a policy statement) must submit a Notice of Intent to Appear (NOI)**, which must be received by the Board no later than the deadline listed below. **If you did not file a protest to Application A032881 or to the request for release from priority of SFA A018334 and you wish to participate in the hearing as a party, you must submit a request for designation as a party** with your NOI that includes information demonstrating good cause as to why you should be allowed to participate in the hearing beyond presentation of a policy statement.

Persons desiring only to present policy statements at the hearing are requested, but not required, to submit an NOI.

Within one week after the deadline to submit NOIs, the State Water Board will mail out a list of those designated as parties to the hearing with a copy of the NOIs submitted by the parties. Copies of all parties' exhibits associated with direct testimonies, corresponding exhibit identification indices, and proposed modifications or additions to the terms of the draft permit that the evidence is intended to support must be served on each of the other parties to the proceeding and be received by the State Water Board with the statements of service on all parties no later than the deadline listed below.

Deadlines for Hearing Participation

Deadline for the Board to receive all NOI forms and requests for designation as a party.	July 1, 2020, 12:00 noon
Deadline for service of all parties' case-in-chief exhibits, exhibit identification indices, proposed permit terms, and statements of service to all other parties, and receipt of these documents by the Board.	August 6, 2020, 12:00 noon

SUBMITTALS TO THE STATE WATER BOARD

All documents submitted to the State Water Board, including NOIs, exhibits, exhibit identification indices, proposed permit terms, and statements of service, should be addressed as follows:

How to Submit Documents to the Board

By Email:	wrhearing@waterboards.ca.gov With Subject of " College Lake Project Hearing "
By Mail:	State Water Resources Control Board Division of Water Rights Attention: Michael Buckman, Hearings Unit Supervisor P.O. Box 2000 Sacramento, CA 95812-2000
By Hand Delivery (Appointment only; see note below):	Joe Serna Jr. CalEPA Building Water Rights Records Room 1001 I Street, 2 nd Floor Sacramento, CA 95814

Note: Due to COVID-19, all persons hand delivering submittals must first schedule an appointment with staff by contacting DWR@waterboards.ca.gov. All hand delivered submittals must be date and time stamped by the Division of Water Rights' Records Unit on the second floor of the Joe Serna Jr. CalEPA Building (CalEPA Building) at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely date and time stamp from the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officers.

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered into evidence, by reference, as staff exhibits during the hearing:

1. SWRCB-1: All Division of Water Rights files, including correspondence, related to SFA A018334.
2. SWRCB-2: All Division of Water Rights files, including correspondence, related to Application A032881.
3. SWRCB-3: Consolidated Final Environmental Impact Report for the College Lake Integrated Resources Management Project, dated December 2019.

DOCUMENT AVAILABILITY

Documents that do not meet state accessibility requirements, including exhibits and correspondence, cannot be posted on the State Water Board's website. Because the State Water Board cannot ensure that all documents are accessible, the State Water Board will not be posting hearing submittals on its website. Copies of documents will be maintained by the State Water Board, but parties are responsible for maintaining their own respective copies of any documents. If you wish to request a specific document, you may contact wrhearing@waterboards.ca.gov. Please note that a response to document requests may take up to a week or longer depending on the complexity of the request and the number of requests pending with the Division.

Additional information regarding accessibility requirements are available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB434.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants. (Gov. Code, §§ 11430.10-11430.80.) Questions concerning non-controversial procedural matters should be directed to Lisa Hong at (916) 323-5175, or by e-mail at lisa.hong@waterboards.ca.gov; or to Nicole Kuenzi at (916) 322-4142, or by email at nicole.kuenzi@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

TRAVEL TO AND ACCESSIBILITY AND SECURITY AT THE CALEPA BUILDING

A map to the Joe Serna Jr. CalEPA Building (CalEPA Building) and parking information are available at <http://www.calepa.ca.gov/headquarters-sacramento/location/>. The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact

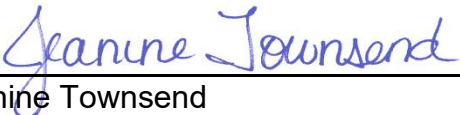
Moises Moreno-Rivera at (916) 341-5261 or by e-mail at moises.moreno-rivera@waterboards.ca.gov.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To register, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, sign in and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in.

WEBCAST OF HEARING

Broadcasts of the water rights hearings will be available via the internet and can be accessed at: <https://video.calepa.ca.gov/>.

June 10, 2020
Date



Jeanine Townsend
Clerk to the Board

Enclosures

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board or Board) is available upon request.

Unless otherwise determined by the hearing officers, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval, unless all parties are signatories to the settlement agreement.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties

in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officers will determine future steps for the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. PARTIES: The current parties to the hearing are the **Pajaro Valley Water Management Agency** and **Diffenbaugh Family Farms, LLC**.

Current parties are required to file a Notice of Intent to Appear if they wish to participate in the hearing beyond presenting a policy statement. Additional parties may be designated in accordance with the procedures for this hearing. For purposes of this proceeding, those persons and entities who filed a protest to Application A032881 (NMFS, CDFW, and Janet Braycovich Banovac Separate Property Trust) and who timely file a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement, shall be designated as a party. Persons or entities who did not file a protest to Application A032881 or to the request for release from priority of State Filed Application A018334, or those who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate conditions as determined by the hearing officers.

Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence. The hearing officers may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).)

4. INTERESTED PERSONS: Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.

b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7 for details regarding electronic submittal of policy statements.

5. NOTICE OF INTENT TO APPEAR AND REQUESTS FOR PARTY DESIGNATION:

Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of the Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. Persons or entities who did not file a protest to Application A032881 or to the request for release from priority of State Filed Application A018334 must submit a request for designation as a party with the Notice of Intent to Appear. The request should include supporting information demonstrating good cause for designation as a party to this proceeding.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements are requested but not required to file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed case-in-chief testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.¹ Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, notice will be sent to those parties on the service list and interested persons that

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.

have filed a Notice of Intent to Appear expressing their intent to present a policy statement only.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing as part of a case-in-chief shall submit such testimony in writing.² Written testimony shall be designated as an exhibit and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board an electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index and identify the specific permit term in the draft permit, proposed amended permit term, or new permit term that the evidence is intended to support, or indicate that the evidence is intended to support rejection of the application because no terms or conditions would be adequate to justify approval. Evidence intended to support amendments to the draft permit will only be admitted if accompanied by specific proposals for modified or new terms. Proposed modified or new terms must be received by the State Water Board by August 6, 2020. Failure to provide this information by the deadline may result in the exclusion of the evidence. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The case-in-chief exhibits and indices for this hearing, proposed modifications or additions to the draft permit, and a statement of service, must be received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officers have discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State

² The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered into evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

- c. A party seeking to enter into evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers such exhibits may be submitted to the State Water Board, using a file format designated by the hearing officers.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are also admitted as exhibits.

- 7. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are required to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Documents submitted or served electronically must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft Office-supported format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indices. Electronic submittals to the State Water Board of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "**College Lake Project Hearing**". Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD), digital versatile disc (DVD), universal serial bus (USB) flash drive, or through a platform authorized by the State Water Board. **Each electronically submitted exhibit must be saved as a separate file.**

- 8. PRE-HEARING CONFERENCE:** Information regarding the scheduled pre-hearing conference is located on page 2 of the Hearing Notice. At the hearing officers' discretion, additional pre-hearing conferences may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
- 9. ORDER OF PROCEEDING:** Hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing

events. The time limits specified below may be changed by the hearing officers for good cause.

- a. **Policy Statements within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. **Oral summaries of the policy statements will be limited to five (5) minutes** or such other time as established by the hearing officers.
- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the Hearing Notice. A party's case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and their cross-examination of witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept a party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements will be limited to 20 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. **Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to one (1) hour total to summarize or emphasize all of its written testimony on direct examination.**³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officers will decide whether the party's witnesses will be cross-examined as a panel. **Cross-examiners initially will be limited to one (1) hour per witness or panel of witnesses.**

³ The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. For example, the hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party to designate a person technically qualified in the subject being considered to examine a witness.

- iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officers. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officers may establish time limits for any permitted redirect and recross examination.
- v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing unless the hearing officers require otherwise. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. **If the hearing officers authorize the parties to file briefs, an electronic copy of each brief shall be submitted to the State Water Board, and a copy shall be served on each of the other participants on the service list.** A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

10. EX PARTE CONTACTS: During the pendency of this proceeding, commencing no later than the issuance of the Hearing Notice, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties

may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request.

11. RULES OF EVIDENCE: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Division of Water Rights

NOTICE OF INTENT TO APPEAR FORM

(Name of Participant) _____ plans to participate in the water right hearing regarding the College Lake Hearing.

Scheduled to commence on: August 24, 2020 at 9:00 a.m. and continue, if necessary, on August 25, 2020

1) Check only one of the following boxes:

- Option 1: I/we intend to present a policy statement only and, therefore, to not participate as a party.
Option 2: I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination, and/or rebuttal.

2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to instruction #3 below.

Table with 5 columns: Witness Name, Expert Witness? (Yes/No), Subject of Proposed Testimony, and Estimated Length of Oral Direct Testimony (1 hour total). It contains three empty rows for data entry.

(If more space is required, please add additional pages.)

3) Fill in the following information of the participant, attorney, or other representative:

Name (type or print): _____
Mailing Address: _____
Phone Number: _____ Fax Number: _____
E-mail Address: _____

Optional:
I/we decline electronic service of hearing-related materials.

Signature: _____ Date: _____

Division of Water Rights

**EXHIBIT IDENTIFICATION INDEX AND
RESPONSE TO DRAFT PERMIT**

Hearing to Consider
Application A032881 and Release of State Filed Application (SFA)
A018334 from Priority in Favor of Application A032881

The Public Hearing will commence on
August 24, 2020 at 9:00 a.m. and continue, if necessary, on August 25, 2020

PARTICIPANT: _____

For each exhibit and topic of direct testimony submitted in support of your case-in-chief, identify the specific permit term in the draft permit, proposed amended permit term, or new permit term that the evidence is intended to support, or indicate that the evidence is intended to support rejection of the application because no terms or conditions would be adequate to justify approval. **Evidence intended to support amendments to the draft permit will only be admitted if you provide specific proposals for modified or new terms. Proposed modified or new terms must be received by the State Water Board by August 6, 2020.** Failure to provide this information by the deadline may result in the exclusion of your evidence.

Exhibit Identification Number	Exhibit Description	Permit Term #	Status of Evidence (for Hearing Team use only)		
			<i>Introduced</i>	<i>Accepted</i>	<i>By Official Notice</i>

