
State Water Resources Control Board

TO: Eileen Sobeck
Executive Director
STATE WATER RESOURCES CONTROL BOARD

FROM: Erik Ekdahl
Deputy Director
DIVISION OF WATER RIGHTS

DATE: February 10, 2020

SUBJECT: TRANSFER OF PETITIONS FOR CITY OF SOLVANG FOR WATER RIGHT PERMIT 15878 (APPLICATION 22423) TO THE ADMINISTRATIVE HEARINGS OFFICE

The Division of Water Rights (Division) proposes to transfer pending petitions for the City of Solvang (City) for Water Right Permit 15878 (Application 22423) to the Administrative Hearings Office (AHO) for resolution. As described below, the City is unable to resolve outstanding protests filed by National Oceanic and Atmospheric Administration/National Marine Fisheries Service (NOAA/NMFS) and California Trout (CalTrout). Additionally, negotiations with two other parties, Alisal Guest Ranch (Alisal) and the Santa Ynez River Water Conservation District, Improvement District No. 1 (ID No. 1), continue and the City hopes to reach a settlement with these protestants. Given the significant number and complexity of pending petitions before the Division, these petitions would be aided by the AHO's role in ensuring water rights matters are resolved in a timely manner. The petitions were previously transferred within the Division from the Petition, Licensing and Registration Section to the Hearings and Special Projects Section.

Project Description and Pending Change Petitions

Currently, the City diverts from the underflow of the Santa Ynez River via two groundwater wells. In order to meet the City's anticipated water demand at full buildout, the City proposes to expand the existing reach of diversion downstream approximately 1.5 miles ("Expanded Reach of Diversion") and install up to six new wells within the proposed expanded reach of diversion. The City proposes to directly divert up to 1,980 acre-feet per year (afa) of river underflow at a diversion rate of up to 5 cubic feet per second (cfs). On May 7, 2015, the City filed a petition for change and a petition for extension of time requesting a 15-year time extension to complete construction of the

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project and apply water to full beneficial use. These petitions were publicly noticed on March 24, 2016, and are still pending.

Background

Permit 15878 was issued to Solvang Municipal Improvement District 1634 (SMID) in 1969 and subsequently assigned to the City on February 27, 1986. The Board previously granted SMID's request to extend the time to complete construction and apply water to beneficial use to December 1, 1990. On December 6, 1990, the City submitted a petition for extension of time, which the Board denied on August 16, 2010, due to time delays associated with the City's preparation of the required California Environmental Quality Act (CEQA) document for its project. The City subsequently released its Final Environmental Impact Report (EIR) in February 2014.

Pending Protests and Current Status of Negotiations

There are four pending protests to the City's petitions:

- NOAA/NMFS claims that increased diversions will have an adverse environmental impact, will not best conserve public trust values, and may result in the taking of federally endangered southern California steelhead.
- CalTrout claims that increased diversions will have adverse impacts to endangered steelhead and their habitat. CalTrout states that decreased flows would impact recreation and other public trust interests. Additionally, CalTrout states that the City's EIR failed to consider an adequate range of alternatives.
- Alisal claims that the petitions, if approved, will cause injury to Alisal's senior priority riparian rights. Alisal also believes the City has not demonstrated due diligence in pursuit of their permit.
- ID No. 1 claims that the changes would cause injury and adverse impacts to ID No. 1's water rights. ID No. 1 also believes the City has not demonstrated due diligence.

By letter dated March 23, 2018, the City provided Division staff with an update on the status of protest negotiations. The City was unable to come to terms of agreement with NOAA/NMFS regarding measures to protect steelhead and has requested that the NOAA/NMFS protest be dismissed as the protestant failed to respond and communicate effectively with the City. The City was also unable to reach agreement with CalTrout and terminated negotiations with CalTrout on December 13, 2017.

In a subsequent email dated April 8, 2019, the City informed Division staff that during the summer of 2018, negotiations with Alisal and ID No. 1 led to a potential settlement agreement based on cooperative well operating criteria. Since then, parties have been working on a draft settlement agreement. The last update from the City regarding protest negotiations was in a November 12, 2019 email, which stated the City was waiting for responses from Alisal and ID No. 1 with their most recent proposed changes to the draft settlement agreement. Division staff sent a follow-up email to the City

requesting another update on the status of negotiations on December 3, 2019; however, the City has not responded.

California Environmental Quality Act and Relevance to Cachuma Order

The City released its Final EIR in February 2014. There is an outstanding question whether the recently adopted Order for the Cachuma Project (Order 2019-0148), which requires additional flows and protection for steelhead, creates a change of circumstances that would trigger additional CEQA analysis. Division staff anticipate that the additional flow requirements and protections for steelhead set by the Cachuma Order may become key hearing issues.

Proceeding before the Administrative Hearings Office

Referring this matter to the AHO will provide a neutral, fair, and efficient forum for resolving issues that may arise during future water rights proceedings.

If you have any questions regarding this memo, please contact Conny Mitterhofer, Program Manager of the Hearings and Special Projects Section, at 916-341-5720 or by email at conny.mitterhofer@waterboards.ca.gov.

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