
State Water Resources Control Board

June 5, 2024

Re: Procedural Ruling in the AHO Proceeding on the Proposed Sites Reservoir Project

TO ALL PARTIES:

On March 1, 2024, the State Water Resources Control Board's (State Water Board) Administrative Hearings Office (AHO) issued a Notice of Public Hearing and Pre-Hearing Conference on the pending petition for assignment of state-filed Application 25517 and accompanying water right Application 25517X01 and the pending petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion) 2235, 23780, and 23781 in favor of water right Application 25517X01 of Sites Project Authority (Applicant or Authority).

The Sites Project Authority, Friends of the River, California Sportfishing Protection Alliance, Sierra Club California, T&M King Farms, LLC, Central Delta Water Agency, South Delta Water Agency, Zuckerman-Mandeville, Inc., Delta Farms Reclamation District No. 2030, Rudy Mussi Investment L.P., and the County of San Joaquin filed pre-hearing conference statements. The AHO held the pre-hearing conference as noticed on April 10, 2024.

Hearing Schedule and Deadlines

The hearing officer revised the hearing schedule, as reflected in the Amended Notice of Public Hearing and copied below, based on the comments by the parties in their pre-hearing conference statements and during the pre-hearing conference. At this time, the hearing officer is scheduling hearing days only for the case-in-chief portion of the hearing. The remaining schedule for this proceeding is contingent on the issuance of incidental take permits for construction and operation of the proposed Sites Reservoir Project by the California Department of Fish and Wildlife (CDFW) and on the timing of other concurrent State Water Board proceedings concerning the Delta watershed. In its pre-hearing conference statement and during the pre-hearing conference, the Authority stated its expectation that CDFW would issue these permits in October 2024. The hearing officer directs the Authority to immediately notify the AHO if the Authority's expectation changes as to when it is likely to receive the incidental take permits.

In their pre-hearing conference statements and during the pre-hearing conference, several parties argued that this proceeding should be delayed until the State Water

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Board completes its update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). The State Water Board does not expect to complete the update to the Bay-Delta Plan before the second quarter of 2025. The State Water Board's process to update the Bay-Delta Plan has, however, produced a substantial amount of scientific information to date concerning flows and other environmental conditions for protection of fish habitat and other instream beneficial uses in the Delta and its tributaries. This information is available to the parties in the State Water Board's Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows (AHO-271); July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan (AHO-272); and September 2023 Draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Bay-Delta Plan (AHO-279). Based on the risk of inordinate delay to the start of the hearing if the AHO were to wait until completion of the update to the Bay-Delta Plan and the substantial amount of scientific information that is currently available to the parties, the AHO will proceed with the case-in-chief portion of the hearing in accordance with the schedule set forth below. The hearing officer will, however, continue to consider the timing of this proceeding in relation to the Bay-Delta Plan update and other concurrent Delta proceedings.

Deadlines / Schedule	Date and Time ¹
Deadline for parties to file case-in-chief witness lists.	June 12, 2024.
Deadline to file pre-hearing conference statements.	June 14, 2024.
Second pre-hearing conference.	June 17, 2024, at 9:00 a.m.
Deadline for parties to file case-in-chief exhibits, exhibit identification indices, and proposed permit terms.	July 1, 2024.
Hearing begins with policy statements and discussion of procedural issues.	August 19, 2024, at 9:00 a.m.
Evidentiary portion of hearing begins.	August 27, 2024, at 9:00 a.m.
Additional case-in-chief hearing days.	August 28-29, September 3, 2024, starting at 9:00 a.m.
Site Visit.	September 9 & 10, 2024.
Additional case-in-chief hearing days (as necessary).	September 6, 9-11 (contingent on the site visit), 16, 18, 23, 24, 30, 2024, and October 2, and 8-10, 2024, starting at 9:00 a.m. (and additional days as necessary).
Hold for additional site visit.	October 22, 2024.

¹ All deadlines for submittal of information are by the end of the day identified (before 11:59 p.m.).

Hearing Issues

The hearing officer revised the hearing issues as reflected in the June 5 Amended Notice of Public Hearing after duly considering the parties' comments in the pre-hearing conference statements and during the pre-hearing conference. The hearing officer's decision not to include certain hearing issues as requested by the parties is not a determination that the issue is not within the scope of this proceeding. Similarly, the hearing officer's decision not to remove or revise existing hearing issues is not a determination as to the legal relevance of the issue, and the relevance of any of the hearing issues may be addressed by any party in its opening statement or closing briefs.

Additional Parties

The hearing officer granted party status to the Department of Water Resources and the United States Bureau of Reclamation during the April 10 pre-hearing conference as requested in their timely filed Notices of Intent to Appear (NOIs) based on potential impacts to the agencies' water rights from any approval of the Authority's application.

On April 17, 2024, Patrick Porgans submitted supplemental information, in the form of a protest to the Authority's application and petitions, in support of the NOI that he timely filed as a representative for Planetary Solutionaries. During the pre-hearing conference and in his supplemental submittal, Mr. Porgans asserted health reasons as the basis for not filing a timely protest to the Authority's application and petitions. In his supplemental submittal, Mr. Porgans opposes the Authority's application and petitions based on potential impacts to public trust resources and other alleged environmental impacts. The hearing officer grants Mr. Porgans' request to participate as a party in this proceeding based on Mr. Porgans' statements during the pre-hearing conference and the supplemental information that he filed on April 17.

On May 9, 2024, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community Council (CICC) filed an NOI seeking to participate as a party in this proceeding. The hearing officer grants CICC's request to participate as a party based on good cause arising from the tribe's interest in the lands and waters that may be impacted by the Authority's water right application.

The hearing officer concludes that the grant of party status to the Department of Water Resources, Bureau of Reclamation, Mr. Porgans (identified as appearing on behalf of Planetary Solutionaries), and CCIC, at this early stage in the proceeding, will not prejudice any other party or impede the orderly conduct of the hearing.

Order of Proceeding

During the pre-hearing conference, the hearing officer discussed a general order of proceeding for presentation of opening statement and case-in-chief witnesses. The

following is a proposed partial order of proceeding for discussion during the June 17 pre-hearing conference:

1. Sites Project Authority (Applicant)
2. Department of Water Resources
3. United States Bureau of Reclamation
4. State Water Contractors
5. Central Delta Water Agency et al., South Delta Water Agency, and County of San Joaquin
6. T&M King Farms LLC
7. Clarke F. Ornbaun
8. Colusa Indian Community Council
9. Winnemem Wintu Tribe
10. Restore the Delta
11. Remaining Non-Governmental Organizations (order to be determined):
AquAlliance, Center for Biological Diversity, California Sportfishing Protection Alliance, Friends of the River, CalWild, California Water Impact Network, San Francisco Baykeeper, Defenders of Wildlife, Golden State Salmon Association, The Bay Institute, Fly Fishers of Davis, Sierra Club California, Save California Salmon, Trout Unlimited Inc., Water Climate Trust, Waterkeeper Alliance, International Rivers, Northern California Council of Fly Fishers International, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, San Francisco Crab Boat Owners Association, North Coast Rivers Alliance.
12. Patrick Porgans (identified as appearing on behalf of Planetary Solutionaries)
13. Richard Morat

The entities identified as "Remaining Non-Governmental Organizations" shall meet and confer about a proposed order of presentation of case-in-chief witnesses and submit a proposed order of presentation to the hearing officer in a pre-hearing conference statement (which may be a joint pre-hearing conference statement) submitted by **June 14, 2024**. All other parties are also encouraged to coordinate the presentation of witnesses and discuss an efficient order of presentation. Parties should submit any proposals for an order of presentation and coordination of witness presentation, or other comments on the order of presentation by **June 14, 2024**.

Court Reporting Services

The parties shall meet and confer regarding the retention of a court reporter for future proceedings in this matter, including how the costs of court reporting services will be

borne. The Authority shall submit information about any agreement regarding court reporting services with its pre-hearing conference statements due **June 14, 2024**.

Time Limits for Presentation of Direct Testimony and Cross-Examination

During the April 10 pre-hearing conference, the hearing officer deferred ruling on time limits for presentation of direct testimony and cross-examination. The parties shall submit estimates of the time needed for presentation of direct testimony with case-in-chief witness lists on **June 12, 2024**. The parties shall submit estimates of the time desired to conduct cross-examination of opposing witnesses by **July 15, 2024**. In estimating the time desired for cross-examination, the parties should meet and confer with other similarly situated parties to avoid overlap in cross-examination questions and eliminate the undue consumption of time to the greatest extent possible.

Request for Supplemental Information

The Applicant shall address the following items in its pre-hearing conference statement submitted by **June 14, 2024**:

1. A summary of the current status and expected timeline for issuance of an incidental take permit (or permits) by CDFW for operation of the proposed Sites Reservoir Project.
2. A summary of the status and expected timeline for public release of a draft and final agreement between the Authority, Department of Water Resources, and Bureau of Reclamation as to the operations of the proposed Sites Reservoir Project.

Sincerely,

/s/ Nicole L. Kuenzi

Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

Attachments:

-Attachment 1 – Service List

**Attachment 1
Service List**

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