STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DECISION 165X

In the Matter of Application 32881 and Release of State Filed Application 18334 from Priority in Favor of Application 32881

SOURCE: College Lake and Salsipuedes Creek

COUNTY: Santa Cruz

DECISION CONDITIONALLY APPROVING APPLICATION 32881 AND RELEASE OF STATE FILED APPLICATION 18334 FROM PRIORITY IN FAVOR OF APPLICATION 32881

BY THE BOARD:

1.0 Summary

In 2017, Pajaro Valley Water Management Agency (PV Water) filed Application 32881 with the State Water Resources Control Board (State Water Board or Board), Division of Water Rights, seeking a water right permit and the release of State Filed Application (SFA) 18334 from priority in favor of Application 32881 to develop the College Lake Integrated Resources Management Project (College Lake Project or Project).

This decision conditionally approves PV Water's application and grants the release of SFA 18334 from priority in favor of the application.

2.0 Procedural Background

Legal Authorities

After receiving an application to appropriate water and holding a hearing, the State Water Board may grant or refuse to grant a permit after considering the application, or reject the application. (Wat. Code, § 1350.) When approving an application to appropriate water, the State Water Board must make findings regarding water availability, beneficial use, public trust resources, and the public interest. In addition to making a determination of water availability, which is discussed in more detail below, the State Water Board must consider the relative benefit to be derived from all beneficial uses of water concerned, including the preservation and enhancement of fish and

wildlife, and uses protected in a relevant water quality control plan. (Wat. Code, § 1257.) The State Water Board may impose terms and conditions that will best develop, conserve, and utilize in the public interest the water sought to be appropriated, protect fish and wildlife, and carry out water quality control plans. (*Id.*, §§ 1253, 1257, 1257.5, & 1258.) In evaluating a water right application, the State Water Board also must ensure the protection of public trust uses, including fish and wildlife habitat, whenever feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)

The state may file an application (known as a "state filed application") 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 a state filed application from priority or assign any portion of a state filed application to another applicant 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 Water Code requires that the State Water Board hold a public hearing prior to releasing from priority or assigning any portion of a state filed application. (*Id.*, § 10504.1.) A recipient of a release from priority does not acquire the priority date of the state filed application or any other priority date different from the priority of the recipient's application filing date. (State Water Board Order WR 83-1, p. 15.) The State Water Board is not authorized to 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. (Wat. Code, §§ 10505 & 10505.5.)

SFA 18334

On September 24, 1958, the Department of Water Resources (DWR) filed SFA 18334 (also known as A018334SF) at the request of the Santa Cruz County Flood Control and Water Conservation District and in accordance with the 1957 California Water Plan to reserve unappropriated water from the Pajaro River in anticipation of future water demands within the county. (SWRCB-1, Application 18334 & Letter from Santa Cruz County Flood Control and Water Conservation District to DWR dated December 2, 1957.)[1] SFA 18334 reserves in priority the appropriation of up to 200 cubic feet per

[1] This decision provides citations to the record to support statements and conclusions. These citations are not necessarily the only support in the record for the contention. There is often other supporting evidence in the record or other references to an argument that is not specifically cited in the decision. The State Water Board has reviewed and considered the record as a whole in reaching its conclusions.

The coastal part of the basin has experienced substantial increases in chloride concentration due to seawater intrusion. (*Ibid.*)

PV Water is the groundwater sustainability agency (GSA) for the Pajaro Valley Groundwater Basin under SGMA. PV Water submitted its 2014 Basin Management Plan Update as an alternative to a groundwater sustainability plan under SGMA, which was approved by DWR in July 2019. The College Lake Project is one element of the 2014 Basin Management Plan Update. (SWRCB-3C, pp. 2-2–2-4.) If fully implemented, it will provide water supply to alleviate 25% of the average annual overdraft. (*Id.*, pp. 2-2, 2-22.)

PV Water filed Application 32881 for the College Lake Project to deliver surface water from Salsipuedes Creek and College Lake for agricultural purposes, mainly in the coastal region, in lieu of pumping groundwater. (SWRCB-2, Application 32881, Attachment 12; SWRCB-3C, Appendix NOP-2.) The application seeks a permit to appropriate water from Salsipuedes Creek and College Lake for irrigation and fish and wildlife preservation and enhancement purposes. (*Ibid.*) The proposed appropriation is for direct diversion of up to 30 cfs year-round and diversion to storage of up to 1,764 afa between September 1 and June 30 of the succeeding year, not to exceed a total of 3,000 afa of water taken from the source. (*Ibid.*) PV Water intends to construct a new water treatment plant to filter and disinfect diverted water and new pipelines connecting the treatment plant to its existing distribution networks to distribute the water. (*Id.*, p. S-3.)

The proposed storage reservoir, College Lake, is a naturally occurring lake draining into Salsipuedes Creek, thence the Pajaro River, thence the Pacific Ocean. (SWRCB-3C, p. 3.3-3.) An existing weir and pump on the south end of College Lake spans the Salsipuedes Creek channel and can be operated to control the lake level. (*Ibid.*) College Lake is seasonally fed by Green Valley, Casserly, and Hughes Creeks, with Casserly Creek delivering the majority of the inflow to the lake. (*Ibid.*; see Figure 1.) Under most conditions, outflow from College Lake drains into Salsipuedes Creek; however, during wet weather, the direction of flow in the reach of Salsipuedes Creek between College Lake and Corralitos Creek can reverse due to high flows in Corralitos Creek, and surface water may enter the lake as backflow from Salsipuedes Creek. (SWRCB-3C, p. 3.3-3.)

5.1.3 Reasonable and Beneficial Use

PV Water plans to use water appropriated for the College Lake Project for irrigation and fish and wildlife preservation and enhancement in accordance with California Code of Regulations, title 23, sections 661 and 666.

PV Water plans to deliver water diverted under the permit for consumptive uses to growers in the Pajaro Valley for irrigation. (SWRCB-2, Application 32881, Attachment 1.) Brian Lockwood, the General Manager of PV Water, testified that the region currently produces over $1 billion per year of high-value fruit, vegetable, flower, and other crops on approximately 28,500 irrigated acres. (PVW-1, p. 3.) Enhancement of surface water supplies is planned to reduce the region's reliance on groundwater pumping which has resulted in seawater intrusion and chronic lowering of groundwater levels. (SWRCB-2, Application 32881, Attachment 1; SWRCB-3C, p. 2-17.) PV Water seeks to reduce groundwater pumping by 12,100 afa by 2040 in order to eliminate the current overdraft. (PVW-1, p. 6.) To contribute to groundwater sustainability in the basin, PV Water intends to operate the College Lake Project to offset pumping of equivalent amounts of groundwater. Permit Term 7 limits the diversion of water under the permit for irrigation to that amount for which there is a corresponding reduction in the extraction of groundwater within the place of use.

Water diverted and stored in College Lake will also be released into Salsipuedes Creek for fish and wildlife preservation and enhancement. NMFS states in its letter of March 27, 2020, that operation of the project, in compliance with the bypass requirements agreed to by NMFS, CDFW, and PV Water and incorporated into the permit, would "substantially improve migratory passage success through the lake as well as use of the lake as seasonal rearing habitat for steelhead relative to the current conditions and management of the lake." (PVW-10, p. 2.) The impact of the project on fish and wildlife, including the use of stored water for fish and wildlife preservation and enhancement, are further discussed in Section 5.1.5.

PV Water requests a development period ending in 2040 to fully apply water diverted under this permit to beneficial use. Although the College Lake Project is expected to be operational by 2025, PV Water must expand its distribution system to access additional properties for use. (PVW-1, p. 10.) In addition, to receive surface water from the Project, growers must construct their own facilities to connect to PV Water's distribution system. PV Water's prior recycled water project placed a similar burden on water users and available supplies were not fully utilized until approximately ten years after the project came into operation. (PV Water Hearing Brief, p. 7.) Given the time necessary for project construction and for construction of infrastructure by end-users, the permit provides PV Water until 2040 to apply the full amount of authorized diversions to beneficial use.

The evidence in the record supports PV Water's claim that it will apply water diverted under this permit to reasonable and beneficial use within the authorized development period.

5.1.4 Water Quality

In acting upon an application to appropriate water, the Board must consider applicable water quality control plans and may subject an appropriation to terms and conditions as it finds necessary to carry out such plans. (Wat. Code, § 1258.)

Construction of the College Lake Project includes demolition of existing facilities and construction of new facilities within College Lake, Salsipuedes Creek, and areas that drain to Pinto Creek, Salsipuedes Creek, Corralitos Creek, and the Pajaro River. (See Figure 1; SWRCB-3C, pp. 3.3-45 & 3.3-51.) These construction activities could result in soil erosion, sediment discharge, and incidental hazardous material discharge, leading to degraded water quality, reduction in channel stability, and impacts to aquatic and riparian habitats. (*Ibid*.) However, impacts from construction activities are expected to be less than significant. (*Ibid.*)

To avoid impacts to water quality and the environment, the permit requires PV Water to develop an erosion control and revegetation plan for approval by the Deputy Director of the Division of Water Rights (Deputy Director) prior to the construction of the point of diversion and associated infrastructure. (Permit Term 25.) The permit requires the plan to be implemented before diversion of water begins. (*Ibid*.) The permit also prohibits any debris, soil, silt, cement that has not set, oil, or other such foreign substances to be allowed to enter into or be placed where it may be washed by rainfall runoff into any waters of the State. (Permit Term 26.) PV Water must obtain and comply with a water quality certification under section 401 of the Clean Water Act or waste discharge requirements, issued by the State Water Board or the Central Coast Regional Water Quality Control Board, for the construction of the project facilities. (Permit Term 27.) Compliance with these terms and conditions, and implementation of the MMRP (Permit Term 33), will minimize or prevent impacts to water quality from construction of the project.

Project operations could also affect surface water quality in the Pajaro River watershed. (SWRCB-3C, p. 3.3-49.) Under the proposed operations, College Lake would be inundated for a longer period of time which could result in the formation of toxic cyanobacterial blooms (also known as Cyanobacterial Harmful Algal Blooms) and other impacts. (*Id.*, p. 3.3-51.) The permit requires PV Water to develop a monitoring and reporting plan for water quality in College Lake and downstream waterbodies and obtain approval of the plan from the Central Coast Regional Water Quality Control Board, CDFW, and the Deputy Director. The plan must include methods for monitoring the potential growth of aquatic vegetation, algae, and the formation of toxic cyanobacterial

blooms, and include adaptive measures to minimize conditions that may negatively impact water quality. (Permit Terms 29 & 33.) As part of the project, PV Water will construct a bypass pipeline to pump water out of College Lake and into Salsipuedes Creek as needed in summer and fall for maintenance, predator control, or to prevent water quality issues from developing such as low dissolved oxygen and algal blooms. (SWRCB-3C, p. 3.3-52; PV Water Hearing Brief, p. 8.) The Board finds that compliance with these terms and conditions and implementation of the MMRP (Permit Term 33) will minimize or prevent impacts to water quality from operation of the Project.

5.1.5 Fish, Wildlife, and Other Public Trust Resources

The State Water Board has an independent obligation to consider the effect of approving PV Water's application on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419.) Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. In addition, it is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects that would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & G., §§ 2053 & 2055.)

Fish

The Final EIR evaluates fish species in three regions that may be affected by the College Lake Project: 1) Pajaro River; 2) Salsipuedes Creek and the Corralitos Creek sub-watersheds, which includes College Lake; and 3) Pajaro River Lagoon. (SWRCB-3C, pp. 3.4-17–3.4-24.) The Pajaro River provides important habitat for the south-central California coast Distinct Population Segment of steelhead, which are listed as a threatened species under the federal Endangered Species Act. (SWRCB-3C, p. 3.4-17.)

The Pajaro River serves as a migration pathway for adult steelhead migrating upriver to spawning and nursery habitat in the upper watershed and for steelhead smolts migrating downriver from that habitat to the ocean. (*Ibid*.) It also provides habitat for other native fish species such as Pacific lamprey (*Lampetra tridentata*) and hitch (*Lavinia exilicauda*). (*Ibid*.)

The Salsipuedes Creek and Corralitos Creek sub-watersheds provide important habitat for steelhead. (SWRCB-3C, p. 3.4-19.) Upstream of College Lake, Casserly Creek and Green Valley Creek support steelhead and resident rainbow trout. (*Id.*, p. 3.4-19.)

College Lake itself provides significant steelhead habitat benefits typically associated with estuaries and floodplains. (*Id.*, p. 3.4-20.) Downstream of College Lake, Salsipuedes Creek, and Corralitos Creek are considered critical habitat for steelhead, although Salsipuedes Creek does not provide suitable spawning or summer rearing habitat. (*Id.*, p. 3.4-22.)

The Pajaro River Lagoon, located at the mouth of the Pajaro River where it reaches the Pacific Ocean, provides a transition estuary to migrating smolts. (SWRCB-3C, pp. 3.3-7 & 3.4-22.) Smolts may spend several weeks feeding in the estuary and adjusting to the seawater before outmigration. (*Ibid*.) The lower reach of the Pajaro River and Pajaro River Lagoon are also considered critical habitat for tidewater goby (*Eucyclogobius newberryi*), another federally-listed endangered species. (*Id.*, p. 3.4-23.)

Construction activities for the Project could negatively impact fish in College Lake and downstream due to sedimentation, construction noise, and drainage of the lake to construct the new weir. (SWRCB-3C, pp. 3.4-40–3.4-43.) Construction impacts to fish are expected to be reduced or eliminated by implementation of the permit terms and the MMRP. Before beginning construction, the permittee must comply with Fish and Game Code section 1602, which requires the permittee to provide written notification to CDFW and obtain a Lake and Streambed Alteration Agreement. (Permit Term 17.) The permit requires PV Water to implement an erosion control and revegetation plan prepared by a licensed civil engineer and approved by the Deputy Director before beginning construction at the point of diversion or associated infrastructure. (Permit Term 25.) In addition, the permit terms discussed in section 5.1.4, Water Quality, require the permittee to obtain permits and maintain water quality objectives that protect beneficial uses identified in the Water Quality Control Plan for the Central Coast Basin. Beneficial uses of the Pajaro River watershed include, but are not limited to, the fish-related beneficial uses of commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; migration; and spawning, reproduction, and early development of aquatic organisms. (Water Quality Control Plan for the Central Coast Basin, dated June 2019, Table 2-1.) Additional mitigation measures required in the MMRP, such as fish relocation prior to dewatering of College Lake, will reduce impacts to fisheries from construction to a less-than-significant level and protect public trust resources to the extent feasible.

Operation of the College Lake Project will alter lake levels and flows in Salsipuedes Creek, which may affect flows downstream to the Pajaro River and the Pajaro River Lagoon. Overall, the Project is expected to result in an improvement in passage opportunities for migrating steelhead. Fisheries biologist, Mike Podlech, prepared the fisheries portion of the project's Final EIR and Biological Assessment on behalf of PV Water and submitted written testimony in which he concluded that the proposed College Lake Project would benefit steelhead migration. (PVW-21, pp. 2-3.) Currently, College

Lake is drained around mid-March each year to grow crops on the lake bottom. (*Ibid*.) Draining the lake lowers the water surface elevation below the elevation of the existing weir which may strand juvenile steelhead upstream of the weir. (*Ibid*.) After construction of the College Lake Project, the lake will not be drained as quickly and the risk of stranding is expected to be reduced. (*Ibid*.) The College Lake Project's proposed weir design, water management operations, and required bypass flows are expected to improve steelhead passage through Salsipuedes Creek and through the weir at College Lake. (*Ibid*.)

Permit Terms 10 through 12 limit PV Water's ability to divert water for irrigation or withdraw water from storage based on the surface elevation of College Lake and flows in Salsipuedes Creek at critical times for steelhead migration. The operational limits are designed to facilitate different phases of steelhead passage that occur between December 15 and May 31, and incorporate the protest dismissal terms between PV Water, CDFW, and NMFS. (PVW-10; PVW-11.) Joel Casagrande, a fisheries biologist and witness from NMFS, explained that adult steelhead along the central coast enter freshwater from December into May, with the primary migration period between January and March. (SWRCB-4, p. 1.) Unlike other salmonid species, steelhead do not necessarily die after spawning, so some will also migrate downstream to the ocean as kelts (a salmon that has spawned)—sometimes several weeks after spawning. (*Ibid*.) Steelhead smolts (juveniles that have undergone physiological changes that adapt them to a life in saltwater) migrate primarily in February through May, with peaks in late March through early May. (*Ibid*.)

Permit Terms 10 through 12 prohibit direct diversions and withdrawals from storage based on the lifecycle needs of steelhead. Specifically, Permit Term 11 prohibits direct diversions and withdrawals from storage during April when flows in lower Salsipuedes Creek are between 18 and 21 cfs and 8 cfs or below. April is a transition period during which smolt outmigration is at its peak and adult migration is in decline. (SWRCB-4, p. 1.) A critical riffle analysis[5] for adult steelhead passage found that adult steelhead generally require 21 cfs to migrate through Salsipuedes Creek, while smolts only require 8 cfs to migrate. (SWRCB-3C, p. 3.4-69.) Mr. Casagrande clarified that critical riffle analyses often produce conservative flows for passage and do not mean that adult steelhead are incapable of migrating at a lower flow rate. (SWRCB-4, p. 1.) Permit Term 11 prohibits PV Water from diverting water when the flow in lower Salsipuedes Creek is between 18 and 21 cfs, to provide adult steelhead the maximum migration opportunity during April when natural runoff and streamflow are typically in decline. When the flow is less than 18 cfs, adult steelhead passage through lower Salsipuedes

[5] A critical riffle analysis is an analysis to determine the minimum depth of water across the most difficult shallow riffles for migration.

Creek is likely not possible; therefore Permit Term 11 allows PV Water to divert as long as the flow at lower Salsipuedes Creek is maintained at a minimum of 8 cfs for smolt migration. (*Ibid.*)

NMFS and CDFW concur that implementation of their protest dismissal terms (Permit Terms 9-17 & 29) is "expected to substantially improve migratory passage success through the lake as well as use of the lake as seasonal rearing habitat for steelhead relative to current conditions." (PVW10; PVW11.) In addition, PV Water must monitor impacts to steelhead from operation of the Project over time through implementation of a steelhead monitoring plan approved by CDFW, NMFS, and the Deputy Director. (Permit Term 16.) If this future monitoring demonstrates that the operation of the Project results in adverse impacts to steelhead or their designated habitat, NMFS intends to work with PV Water and the State Water Board to modify operations to reduce or avoid the impacts. (PVW-10, p. 2.) The permit also requires PV Water to prepare and implement an invasive species management plan to address non-native species in College Lake that may have an adverse impact on native species such as steelhead. (Permit Term 14.)

Finally, the permit requires PV Water to install and operate a fish screen at the water-supply intake in College Lake and a structure for fish passage at the College Lake weir to assist in fish passage and avoid entrainment. (Permit Term 9.) These updated structures will replace the existing pump station, which lacks a fish screen approved by NMFS, and the existing weir, which lacks any mechanism for fish passage such as a fish ladder or bypass channel. (PVW-10.)

The project operation would also affect freshwater inflow into the Pajaro River Lagoon. (SWRCB-3C, p. 3.4-71.) The lagoon forms when wave energy causes a sand bar to form across the river mouth, and opens when either the river or waves overtop the sand bar and cause the river to cut a new opening. (*Id*., p. 3.3-7.) The lagoon's status as open or closed is influenced by, but not fully dependent on, the amount of water passing down the Pajaro River. (*Ibid*.) At most central California lagoons, the closure timing varies greatly from year to year. (*Id*., p. 3.4-71.) Furthermore, the Pajaro River Lagoon receives additional contribution from water sources other than College Lake. (*Id*., p. 3.4-59.) Though the project operation could result in an earlier closure to the lagoon in some years, the impact to steelhead is expected to be less-than-significant. (*Id*., p. 3.4-71.)

Based on the evidence in the record, the State Water Board finds that the Project is expected to benefit steelhead in the Pajaro River Watershed and the mitigation measures required by the Final EIR will reduce the Project impacts to fish to the extent feasible and a less-than-significant level.

Other Species, Riparian Areas, and Wetlands

Impacts of the Project on non-fish species, riparian areas, and wetlands may occur due to construction or operational changes that modify the level of College Lake and flows downstream. Riparian vegetation occurs along portions of the edge of College Lake and emergent wetland vegetation occurs in the seasonally wet depression of the lakebed during the winter and spring. The amount of wetland in and around College Lake at any particular time depends on rainfall and the status of the seasonal drawdown of lake levels. (SWRCB-3C, p. 3.4-5.) Downstream of College Lake, Salsipuedes Creek flows through a series of high grassy terraces contained by levees. (*Ibid.*) The Pajaro River downstream of the confluence with Salsipuedes Creek includes areas of densely vegetated river terraces and grassy levee slopes, until the Pajaro River reaches the Pajaro Lagoon. (*Id.*, p. 3.4-4.) These areas (College Lake, Salsipuedes Creek, and the Pajaro River) serve as potential migratory, nursery and foraging sites for special-status terrestrial wildlife species, including California red-legged frog, western pond turtle, western red bat, San Francisco dusky-footed woodrat, and many bird species. (SWRCB-3C, p. 3.4-62.)

Project operations will change the seasonal inundation patterns within College Lake, resulting in some changes of habitat type, particularly in the lower elevations within the lakebed. (SWRCB-3C, p. 3.4-55.) Farmed wetlands below 59 feet North American Vertical Datum of 1988 (NAVD88) will no longer be farmed due to the longer inundation period. Instead, these areas will provide open water habitat for a longer period of the year followed by mudflat and seasonal wetland vegetation in the late summer or fall. (*Id.*, p. 3.4-61.) Between 62.5 feet NAVD88 and 63.5 feet NAVD88, annual grassland habitat will likely be converted to seasonal wetland and farmed wetlands. (*Ibid.*) Despite these changes, the total amounts of wetland and riparian habitats in and around College Lake are not expected to decrease, though species composition at the lowest elevations may shift to species that are more tolerant of inundation. (*Ibid.*)

Construction of the weir and pump station at the point of diversion will result in a net loss of wetlands, creek, and riparian forest of 0.029 acres, which will be offset by Mitigation Measures BIO-1c and BIO-1d. (SWRCB-3C, p. 3.4-51.) Changes in flows downstream of College Lake are not expected to result in a change in the composition or extent of wetland or riparian habitat because the seasonal flow pattern will stay generally the same. Minimum required flows will ensure continuous flow through April and May followed by low or no flows during the summer and fall. (*Id.*, p. 3.4-60.) Because the general flow pattern will remain the same even with some change in average amount, the College Lake Project will likely maintain current conditions downstream of College Lake for terrestrial species such as California red-legged frog and western pond turtle. The impacts of the Project on flow are also relatively less significant further downstream from College Lake along the Pajaro River and in the

Pajaro River Lagoon because of the contribution of other water sources. (*Id.*, p. 3.4-59.) Therefore, the Project is not likely to cause changes in habitat downstream of College Lake along Salsipuedes Creek, the Pajaro River, or in the Pajaro River Lagoon. (*Id.*, p. 3.4-64.)

Mitigation measures BIO-2i, 2j, and 2k in the MMRP and Permit Term 32 require PV Water to prepare an Adaptive Management Plan for waterfowl management and multi-species mitigation in consultation with the State Water Board, CDFW, and NMFS. (SWRCB-3C, pp. 3.4-63 & 3.4-64.) In the final EIR, PV Water further commits to consulting with College Lake stakeholders in preparing the Adaptive Management Plan. (SWRCB-3C, pp. 3.1.1-3 & 3.1.1-4.) Mr. Busch agreed to withdraw his participation in the hearing if PV Water included the following elements in the Adaptive Management Plan: (1) systematic studies of fish, wildlife, and vegetation and (2) measures to preserve waterfowl habitat quality as part of the required Adaptive Management Plan. (Notice of Stipulation and Dismissal of Jerry Busch Participation in Water Right Hearing, September 16, 2020.) Permit Term 32 requires PV Water to include these elements in accordance with the agreement with Mr. Busch.

The State Water Board finds that approving the application for the College Lake Project with implementation of the permit terms and mitigation measures described above will avoid significant adverse impacts to fish or wildlife and that the terms of the permit will protect public trust resources to the extent feasible.

5.1.6 Public Interest

The Water Code states that the State Water Board shall allow the appropriation of unappropriated water for beneficial purposes under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated. (Wat. Code, § 1253.) The Board may subject an appropriation to terms and conditions as in its judgment will best conserve, and utilize in the public interest, the water sought to be appropriated. (Wat. Code, § 1257.)

The State Water Board considered the benefits of the College Lake Project in providing an alternative water supply to reduce groundwater overdraft, and management of College Lake levels and releases to enhance passage opportunities and habitat for steelhead. The Board received seven policy statements in support of approval of the permit sent by local agencies, the non-profit organization Watsonville Wetlands Watch, and a local resident within the Pajaro Valley. The Board also considered the protests to and comments on the Project concerning the impact of increased lake levels and longer seasonal inundation. The Board concludes that the appropriation of water for the College Lake Project authorized by this decision is in the public interest.

The importance of achieving groundwater sustainability and halting further seawater intrusion into the basin is in the public interest. This permit is issued for the purpose of reducing the region's unsustainable dependence on groundwater as a source of supply. Permit Term 7 requires water diverted under this right for irrigation to be limited to that amount for which there is a corresponding reduction in the extraction of groundwater within the authorized place of use. Water delivered from the College Lake Project must be used to offset current groundwater use and may not be used to support new water demands. PV Water will be required to develop a methodology for inclusion in its compliance plan to demonstrate that water diverted and used under the permit will result in a one-to-one increase in stored groundwater (also described as in-lieu recharge).

In addition to providing important regional water supply benefits, management of water levels in College Lake and releases of stored water during critical periods are expected to enhance habitat for steelhead as further described in Section 5.1.5.

With the terms and condition of the permit and the MMRP, construction and operation of the Project is not likely to cause adverse impacts to fish and wildlife habitat or unmitigated reduction in wetlands or riparian areas. There will, however, be impacts to local landowners from construction and operation of the Project from increased periods of inundation of approximately 314 acres of land within College Lake and construction of diversion structures, a water treatment plant, and pipelines. (SWRCB-3C, p. 3.2-3, Table 3.2-1.) Noise impacts associated with construction activities are expected to be significant and unavoidable. (*Id.*, p. 3.8-13.) However, PV Water will develop and implement a construction noise reduction plan with measures to lessen the construction noise impacts and will offer hotel accommodations to residents substantially affected by nighttime construction within the immediate vicinity. (*Id.*, pp. S-22 & S-23.) The traffic impacts during construction are expected to be less than significant with the development and implementation of a traffic management plan. (*Id*., pp. S-24–S-26.) Project operation is expected to affect local landowners by increasing the inundation period of parcels within College Lake. (*Id*., p. 3.4-55, Table 3.4-4.) The inundation period varies depending on the elevation of the parcel. (*Ibid*.) Parcels at the bottom of the lake may be inundated for up to five additional months compared to existing conditions. (*Ibid*.) PV Water plans to work with affected landowners to acquire the properties, easements, and rights-of-ways necessary for construction and operation of the project. (*Id.*, p. 2-50.) If necessary, the agency may exercise eminent domain to acquire necessary rights of access, for which the right holders must be provided just compensation. Permit Term 28 prohibits the diversion of water under the right unless PV Water has obtained a right of access to occupy the property that will be inundated by water stored in College Lake or where infrastructure necessary for the diversion and use of water will be located.

5.2 Comments on the Draft Permit

The Draft Permit released by State Water Board staff on September 4, 2020 (September Draft Permit), proposed to require PV Water to measure flows in Casserly Creek upstream of College Lake and in lower Salsipuedes Creek downstream of the confluence with Corralitos Creek. (Permit Term 13.) The September Draft Permit allowed PV Water to calculate the flow rate in Salsipuedes Creek upstream of the Corralitos Creek confluence using an existing nearby gage. (The proposed gage locations are shown in PVW-27.) In response to the September Draft Permit, PV Water requested that the permit allow PV Water to submit a flow measurement plan for approval by the Deputy Director of Division of Water Rights, CDFW, and NMFS rather than requiring specific gage locations. PV Water indicated that they are currently investigating potential improvements to their original flow measurement proposal. (PV Water Hearing Brief, p. 3.) CDFW and NMFS affirmed during the hearing that flow gages may require relocations or adjustments to ensure that the data collected are accurate and useful. (R.T. 43:16–45:22.) Based on this information, Permit Term 13 was modified to allow PV Water to update the flow measurement methodology in the future with approvals from the Deputy Director, CDFW, and NMFS.

5.3 Release of SFA 18334 from Priority

To grant a release from priority of a state filed application, the State Water Board must determine that the release is for the purpose 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 and not in conflict with water quality objectives. (Wat. Code, § 10504.) No priority of a state filed application may be released in favor of an application that will, in the judgment of the Board, deprive the county in which the water covered by the application originates of water necessary for the development of the county. (Wat. Code, § 10505.) The Board must also consider any impacts on public trust resources and protect those resources whenever feasible. (Wat. Code, §§ 1243, 1243.5.)

The College Lake Project is consistent with the 1957 California Water Plan, a state-wide plan referenced in SFA 18334.[6] The 1957 California Water Plan recognized the

[6] We take official notice of Bulletin No. 3, The California Water Plan, Department of Water Resources, May 1957 (1957 California Water Plan); California Water Plan, Update 2013, vol. 2, Central Coast Hydrologic Region (2013 California Water Plan Update); and California Water Plan, Update 2018, Department of Water Resources, June 2019 (2018 California Water Plan Update); and the Pajaro Valley Basin Management Plan Update, Pajaro Valley Water Management Agency, February 2014, pursuant to California Code of Regulations, title 23, section 648.2 (authorizing the State Water Board to take official

problem of seawater intrusion caused by the overdraft of aquifers in the Pajaro Valley and proposed storage of surplus flows from the Pajaro River to alleviate groundwater overdraft. (1957 California Water Plan, p. 64.) The groundwater overdraft recognized by the 1957 California Water Plan persists in the Pajaro Valley today. In fact, the overdraft condition has worsened from 4,000 afa estimated by the 1957 California Water Plan to approximately 12,100 afa documented in the Final EIR. (SWRCB-3C, pp. 2-17.) The purpose of the College Lake Project is consistent with the intent of the 1957 California Water Plan, cited in SFA 18334. The project will help to curb groundwater overdraft in the Pajaro Valley by supplying stored surface water from the Pajaro River Watershed to areas where groundwater overdraft is occurring.

The proposed project is also consistent with the 2013 California Water Plan Update, which included a regional report for the Central Coast, and the current 2018 California Water Plan Update. Two of the goals identified in the 2013 California Water Plan Update for the Pajaro River Watershed are the improvement of regional water supply reliability and restoration of steelhead habitat. (2013 California Water Plan Update, vol 2., Central Coast Region, p. 117.) The College Lake Project will enhance regional water supplies while protecting, and possibly enhancing, steelhead habitat. The 2018 California Water Plan identifies goals and recommended actions to achieve sustainable management of the state's water resources. The College Lake Project is consistent with and will advance these goals and specific recommended actions by promoting sustainable groundwater management practices through the development of alternative water supplies to offset groundwater use. The project is also a central element of the 2014 Pajaro Valley Basin Management Plan Update which was approved by DWR as an alternative to a groundwater sustainability plan under SGMA. (SWRCB-3C, pp. 2.2–2-4.)

As discussed in section 5.1.4, the permit includes conditions to prevent and monitor impacts to surface water quality from the construction and operation of the project and to ensure that water quality objectives are met. Furthermore, by reducing groundwater overdraft in the basin, the project will help protect groundwater quality by reducing further seawater intrusion into the basin.

For these reasons, the Board finds that releasing SFA 18334 from priority in favor of the College Lake Project is for the purpose 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.

notice of matters that may be judicially noticed) and pursuant to Evidence Code section 452, subdivision (c) (authorizing judicial notice of the official acts of administrative agencies).

The College Lake Project will divert water that originates in Santa Cruz County and deliver the water for use primarily for irrigation within Santa Cruz and Monterey Counties. Although PV Water will deliver some of the water diverted by the project for use outside of Santa Cruz County, Santa Cruz and Monterey County share a common source of groundwater in the Pajaro Valley Groundwater Basin. Because water diverted under the project will offset groundwater extractions from the basin, Santa Cruz County will benefit from the overall reduction in overdraft of the basin's supplies. The Board of Supervisors for Santa Cruz County adopted a resolution in support of PV Water's release from priority request and no party protested PV Water's request for release from priority. (PVW-14; PVW-14A.) The release from priority of SFA 18334 in favor of the College Lake Project will not deprive Santa Cruz County of water necessary for its development.

The release from priority will not in itself impact public trust resources. Potential impacts from diversion and storage of water as authorized by the permit are discussed in section 5.1.5. Based on the evidence in the record and the EIR, the terms and conditions of the permit will protect public trust resources to the extent feasible.

The recipient of a release from priority must submit any substantial changes in the project to the State Water Board for approval. (Wat. Code, § 10504.5, subd. (a).) The Board will approve such a change only if it determines that the change does not conflict with the general or coordinated plan or with water quality objectives. Permit Term 23 of the permit requires that the permittee submit to the Board for approval any changes in the project that are determined by the Board to be substantial.

Based on the foregoing, the Board grants the request to release SFA 18334 from priority in favor of application 32881 without additional conditions.

5.4 California Environmental Quality Act (CEQA)

PV Water is the lead agency for the preparation of environmental documents required by CEQA for the College Lake Project. The State Water Board is a responsible agency in considering whether to approve PV Water's water right application and request to release SFA 18334 from priority in favor of PV Water's application. Once a lead agency has completed an EIR, it is presumed legally adequate and the lead agency's certification of an EIR as complying with the requirements of CEQA is presumed correct. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th, pp. 899, 924-925.) However, the State Water Board must review and consider the environmental effects of the project identified in any CEQA document prepared by PV Water and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., title 14, § 15096, subd. (a).)

On April 16, 2014, PV Water certified a program environmental impact report (EIR) for its Basin Management Plan Update (BMP Update PEIR). A program EIR is a first-tier environmental document that assesses and documents the broad environmental impacts of a program though a more detailed site-specific review may be required to assess projects implemented under the program. The Basin Management Plan Update and associated program EIR evaluated seven components at a program level of detail. One of these components was the College Lake Project. On October 16, 2019, PV Water adopted the Final EIR for the College Lake Project. The Final EIR tiers from the BMP Update PEIR and incorporates parts of the PEIR by reference. For purposes of the Final EIR, the mitigation measures identified in the BMP Update PEIR and adopted by PV Water are considered part of the project. (SWRCB-3C, p. 3.1-1.)

For each significant environmental effect identified in the Final EIR that is within the Board's area of responsibility, the Board must make one or more of the following findings: (1) changes have been required in the project that mitigate or avoid the significant effect, (2) such changes are within the responsibility and jurisdiction of another public agency and have been or can and should be adopted by that agency, or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or project alternatives identified in the FEIR infeasible. (Pub. Resources Code, §§ 21002.1, 21081; Cal. Code Regs, tit. 14, §§ 15091, 15093.) If a public agency makes changes or alterations in a project to mitigate or avoid the significant adverse environmental effects of the project, it must adopt a monitoring or reporting program to ensure compliance with the changes or alterations. (Cal. Code Regs, tit. 14, § 15091, subd. (d).) This decision contains terms and conditions to implement a mitigation and monitoring plan for mitigation measures required to avoid or lessen significant environmental effects of the project that are within the State Water Boards responsibility.

The Final EIR for the College Lake Project identifies the following significant environmental effects that are within the jurisdiction and responsibility of the State Water Board: impacts to surface water, groundwater, water quality, and biological resources.

The Final EIR identifies the following potentially significant impacts to surface water, groundwater, and water quality: (1) project construction could violate water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality (Impact HYD-1); (2) project operation could adversely affect surface water quality (Impact HYD-2); (3) the project will alter drainage patterns and change erosion and sedimentation patterns in College Lake and downstream waterbodies (Impact HYD-4); and the project could conflict with or obstruct the implementation of a water quality control plan or sustainable groundwater management plan (Impact HYD-6). The following mitigation measures identified in the Final EIR are

required by the State Water Board in the MMRP as a condition of the permit approved by this order: Mitigation Measures BR-1b, HYD-1, HYD-2a, and HYD-2b. These mitigation measures will reduce the potential impacts to less than significant.

The Final EIR identifies the following potentially significant impacts to biological resources for which the mitigation measures are within the jurisdiction and responsibility of the State Water Board: (1) construction of the project could result in a substantial adverse effect on special-status species (Impact BR-1); (2) construction of project components would result in a substantial adverse effect on riparian habitat or other sensitive natural community or on state or federally protected wetlands or waters through direct removal, filling, hydrological interruption, or other means (Impact BR-2); (3) project operations could result in a substantial adverse effect on terrestrial special-status species (Impact BR-5); and (4) project operations could result in a substantial adverse effect on special-status fish species (Impact BR-6). The following mitigation measures identified in the Final EIR are within the jurisdiction and responsibility of the State Water Board: Mitigation Measures BR-1a, BR-1b, BIO-1c, BIO-1d, BR-1c, BR-1d, BIO-1e, BIO-2i, BIO-2j, BIO-2k, and BR-2. The MMRP requires these mitigation measures as a condition of the permit approved by this order. These mitigation measures will reduce the potential impacts to less than significant.

The Final EIR identifies the conversion of important farmland and exceedance of construction noise standards as significant and unavoidable environmental impacts even with mitigation. PV Water, as the lead agency under CEQA, found that the benefits associated with the project outweigh its impacts and, therefore, issued a Statement of Overriding Considerations. Significant and unavoidable environmental impacts identified in the College Lake FEIR do not include impacts to water resources and related biological resources directly within the State Water Board's purview as a responsible agency. The State Water Board has evaluated the Project's potential impacts to water resources and related biological resources and its determinations are reflected in this decision.

6.0 Conclusion

For the reasons discussed herein, Application 32881 is approved and SFA 18334 is released from priority in favor of Application 32881, subject to terms and conditions specified in the permit.

ORDER

IT IS HEREBY ORDERED THAT Application 32881 and the Petition for release of State Filed Application 18334 from priority in favor of Application 32881 is approved with terms and conditions. The Division shall issue the attached permit.