



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 2.2

February 16, 2024

Subject: **Closing the Water Right Application Protest Resolution Period**

Requested Action:

Reservoir Committee and Authority Board consider authorizing the Executive Director to submit the protest resolution status report immediately following the end of the protest resolution period on February 28, 2024, requesting the State Water Resources Control Board (SWRCB) close the Sites Project water right application's protest resolution period and implement their hearing process to achieve a Sites Water Right Permit and associated Order/Decision no later than February 1, 2025.

Detailed Description/Background:

The Authority submitted its water right application to the SWRCB in May 2022. The SWRCB accepted the application in August 2022 and requested additional information prior to noticing the application. The Authority completed the analyses requested and responded to the information request on January 6, 2023. The SWRCB noticed the Authority's application on June 1 with protests due on August 31, 2023. The Authority received 15 protests on its application and immediately proceeded in earnest to seek resolution of each. The SWRCB has yet to indicate that all of these are valid protests but the Authority has treated them as such through the past six-months of protest resolution efforts¹. The Authority responded to all of the protests in writing as requested by the SWRCB on October 31, 2023.

Beginning in early September 2023, the Authority reached out to all protestants to schedule meetings and attempt to resolve their protests. Staff have held more than 30 meetings to work to resolve protests and have additional meetings scheduled into the end of February. At this time, one protest has been resolved and Authority staff believes that a handful of additional protests may be resolved by end of month. However, through dozens of meetings, there remain protests that we are not likely to resolve and will need to be addressed in the SWRCB's hearing process.

The 180-day protest resolution period ends on February 28, 2024. The Authority is to file a written status report on its attempts to resolve protests with the SWRCB. Staff is proposing that the written status report be filed as soon as

¹ The Authority recently sent the SWRCB a request to evaluate specific protests to determine if they are valid or should be dismissed and to facilitate expediting the SWRCB process without skipping any steps. No response has been received to date.

possible after February 28 and that the letter request the SWRCB immediately close the protest resolution period and schedule a hearing for the Sites water right application as soon as possible. For those protests where resolution may still be possible, staff would continue to be open to conduct discussions with parties that show willingness and good faith to reach settlement as the hearing process moves forward. However, as there clearly are protests that the Authority will not be able to reach agreement on and will need to be resolved in the SWRCB's hearing process, staff believes it is in the Authority's, and all Storage Partners (includes State and Federal governments) best interest to expedite a decision in the hearing process as soon as possible. Time is of the essence.

Based on staff's estimation, the key components of the hearing and associated expedited schedule are provided below. This is a balanced approach that provides for careful deliberation, opportunity for expressions and consideration of varied public member viewpoints, but achieves the urgency with which a decision is needed. This schedule also aligns with the Governor's Executive Order N-8-23 and his certification of the Sites Reservoir Project as critical water infrastructure eligible for judicial streamlining.

- April/May timeframe – Pre-hearing Conference and Hearing Notice Issued
- June timeframe – Case in Chief Written Testimony Submitted
 - June 2024 – Under judicial streamlining, the CEQA challenge of the Project case CV2023-2626 is scheduled for hearing on May 3, 2024 and decision no later than June 3, 2024
- July through October timeframe – Hearings including Written Rebuttal Testimony Submittal and Rebuttal Hearing Days
- October/November – Post Hearing Briefs Due
- January/February 2025 – AHO SWRCB Issues Order/Decision for SWRCB Board Consideration and SWRCB Board Approves Order and Issues Water Right Permit

Prior Action:

March 2022 – Approval to proceed with using the following approach as the basis of environmental review, permitting and water right application: (1) Alternative 3 as the Preferred Project Alternative instead of Alternative 1; and, (2) adjusting to more restrictive diversion criteria to a level expected to achieve a higher degree of permitting certainty while maintaining Project affordability.

Fiscal Impact/Funding Source:

The water right application efforts, include hearing efforts, are within the revised Amendment 3 Work Plan total budget. Staff is currently not anticipating activities or efforts that would exceed the budgeted amount.

Staff Contact: Ali Forsythe

Primary Service Provider:

Somach/MBK

Attachments: None.