
State Water Resources Control Board

January 13, 2021

Sent via E-Mail:

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Re: Kings River FAS Hearing

Dear Messrs. Jacobs, Hughes, Kiel, and O'Brien,

On December 2, 2020, the Administrative Hearings Office (AHO) of the State Water Resources Control Board issued a Notice of Public Hearing and Pre-Hearing Conference on two pending petitions to revoke or revise the Declaration of Fully Appropriated Stream Systems (FAS Declaration) with respect to the Kings River System and related issues raised in a complaint (Semitropic Complaint) filed by Semitropic Improvement District of Semitropic Water Storage District (Semitropic) against Kings River Water Association and its member units.

I have received and considered the letter dated December 23, 2020, sent to me on behalf of Kings River Water Association, Alta Irrigation District, Consolidated Irrigation District, and Tulare Lake Basin Water Storage District (Kings River Entities). The letter raises three procedural issues. First, the Kings River Entities request that the AHO postpone the hearing and associated pre-hearing deadlines by three months, noting the current COVID-related restrictions such as the temporary closure of the State Water Board's Water-Rights Records Room. Second, the Kings River Entities request that the issues raised in the Semitropic Complaint be bifurcated from the petitions to revise the FAS Declaration and that the AHO address the issues in the Semitropic Complaint before holding a hearing on the petitions. Third, the Kings River Entities request that

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

the State Water Board “determine whether there are facts tending to support the allegations in the Semitropic complaint” and then, if warranted, issue a “notice of violation” before the AHO holds a hearing on the issues raised in the Semitropic Complaint. (Kings River Entities letter to Nicole Kuenzi, Hearing Officer, December 23, 2020, p. 3.)

I have also received and considered the letter from Kevin O’Brien dated December 31, 2020, on behalf of the Semitropic Water Storage District, in which Semitropic opposes the three requests by the Kings River Entities.

Based on the letters from the Kings River Entities and Semitropic, I am considering whether to structure the proceedings on the petitions and the Semitropic Complaint in the following phases. First, the AHO would conduct a Phase 1A hearing to address the threshold question of whether there is evidence tending to show that Licenses 11517 and 11521 should be revoked or a violation of a requirement described in Water Code section 1831, subdivision (d), is occurring or threatening to occur. The AHO would consider the evidence and determine whether the evidence supports giving notice pursuant to Water Code sections 1675.1 and 1834 with a statement of facts and information on which the Board’s consideration of a proposed revocation of Licenses 11517 and 11521 and a proposed cease-and-desist order would be based.

If the AHO determines after Phase 1A that Semitropic or other parties presented sufficient evidence, the AHO would give notice and provide “statement[s] of facts and information” pursuant to Water Code sections 1675.1 and 1834 and issue a revised hearing notice for a Phase 1B hearing. If these issues are found by the AHO to be sufficiently substantiated to proceed to hearing, the Phase 1B hearing would address whether the Board should revoke Licenses 11517 and 11521 and whether the Board should issue a cease-and-desist order. If the AHO instead determines after Phase 1A that the evidence was insufficient to substantiate notice and “statement[s] of facts and information” pursuant to Water Code sections 1675.1 and 1834, the AHO would proceed directly to Phase 2. In Phase 2 of the hearing, the AHO would receive evidence relevant to the two petitions to revoke or revise the Board’s FAS Declaration with respect to the Kings River.

The procedural issues raised in the letters from the Kings River Entities and Semitropic, and the proposed phasing of the hearing described in this letter, are appropriate topics for the January 26, 2021 pre-hearing conference. I encourage the participants to address the issues identified below in their pre-hearing conference statements, which are to be submitted by January 19, 2021. I will also invite the participants to address these issues during the pre-hearing conference.

In summary, in addition to the issues identified in the Notice of Public Hearing and Pre-Hearing Conference dated December 2, 2020, please address the following questions in your pre-hearing conference statements:

5. Should the AHO conduct the hearing in phases? If so, should the AHO conduct the hearing in Phases 1A, 1B, and 2 as described in this letter or in some other grouping of issues or order of proceeding?
6. If the AHO conducts the hearing in phases, when should the hearing in the first phase begin? What deadline should the AHO set for submission of exhibits for the parties' cases-in-chief and, if appropriate, rebuttal?
7. If the AHO conducts a Phase 1A hearing to determine whether to issue a notice and "statement[s] of facts and information" pursuant to Water Code sections 1675.1 and 1834, what procedures should apply to the Phase 1A hearing?
 - a. Should the AHO conduct the hearing "on the papers" without live presentation of testimony?
 - b. Should the hearing include a presentation of the complaining parties' cases-in-chief on the issues raised in the Semitropic Complaint?
 - c. How can the AHO structure the hearing to avoid duplicate presentation of evidence in Phases 1A and 1B (if a Phase 1B hearing is held)?
8. If the AHO conducts the hearing in phases, should the AHO submit a proposed order to the Board after the first phase and submit a second proposed order to the Board after the second phase? Or should the AHO submit one proposed order to the Board after completion of all phases of the hearing?
9. Regardless of whether the AHO conducts the hearing in phases, what is the appropriate schedule for the hearing and associated pre-hearing deadlines?

I appreciate your thoughtful attention to these issues and your cooperation in structuring a fair and efficient hearing process.

Sincerely,

SIGNATURE ON FILE

Nicole L. Kuenzi
Hearing Officer
Administrative Hearings Office