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GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

December 9, 2020

VIA ELECTRONIC MAIL

TO: CURRENT SERVICE LIST

EL SUR RANCH HEARING: PROCEDURAL RULING LETTER ON THE SCHEDULE

Thank you for your collective responses to my April 15, 2020 *Ruling Letter on the Applicability of Water Code Section 1004 and Procedural Directive to the Applicant*. After considering your input, I am providing the hearing parties to this proceeding 90 days to reach agreement on interim bypass flows for the protection of steelhead that El Sur Ranch (Applicant) will meet until the State Water Resources Control Board (Board) issues a final decision on the application. If the parties are unable to reach and present such an agreement within 90 days, the Board will schedule a hearing to consider issuance of a Cease and Desist Order (CDO), including appropriately protective interim operating conditions for El Sur Ranch.

In accordance with my directions in the April 15, 2020 ruling letter, the Applicant responded by letter dated June 16, 2020, with a proposed schedule and interim diversion plan. The Applicant proposes 18 months to revise its application to include off-stream storage, 30 months to complete the required environmental documentation, and 24 months to hold a supplemental hearing based on a draft environmental document. The interim diversion plan proposed by the Applicant is the same as their current operations and the interim operation agreement between the Applicant and California Department of Fish and Wildlife (CDFW) included in their proposed April 15, 2019 Draft Settlement Agreement.

In response, CDFW and the Center for Biodiversity, et al., asked the Board by letter dated July 17, 2020, to hold a hearing in the next few months “to resolve the current issues before the Board,” including appropriate bypass flows. CDFW indicated that it did not object to the Applicant’s current operating procedures for the short term but it

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

would likely reassess the interim diversion plan should the supplemental hearing take place years later, as proposed by the Applicant.

If, within 90 days, the parties can reach and submit an agreement on appropriate interim bypass flows to be met while the Applicant completes an amended application and associated environmental documentation, then a hearing on that issue will not be necessary. The parties should assume that the interim bypass flows would apply to the project until either an order acting on the application or another Board order supersedes them, a period which could span several years. If the hearing parties cannot agree upon an interim plan within 90 days, a hearing will be scheduled to consider whether the Board should issue a CDO to impose appropriate remedies—including, but not limited to, interim diversion limits based on claimed riparian rights, interim diversion limits based on Water Code section 1004, and bypass flow requirements.

Parties to this proceeding are directed to submit a statement presenting the conclusion of your discussions to wr_hearing.unit@waterboards.ca.gov by noon on March 10, 2021. If you have any questions about this ruling letter, please contact the hearing team at the email address above.

Sincerely,

ORIGINAL SIGNED BY

Tam M. Doduc, State Water Board Member
El Sur Ranch Project Hearing Officer