



## PAJARO VALLEY WATER MANAGEMENT AGENCY

36 BRENNAN STREET • WATSONVILLE, CA 95076  
TEL: (831) 722-9292 • FAX: (831) 722-3139  
email: [info@pvwater.org](mailto:info@pvwater.org) • <http://www.pvwater.org>

**Special Board of Directors Meeting**  
**Wednesday, November 8, 2017, 12:00 noon**

**Pajaro Valley Water Management Agency**  
**36 Brennan Street**  
**Warren Koenig Conference Room**  
**Watsonville, CA 95076**

### MEETING AGENDA

#### Agenda Item

Note: The Board may take action on any item listed on the agenda.

1. **Call to Order**
2. **Roll Call of the PV WATER Directors:** Rosemarie Imazio (Chair), Amy Newell (Vice-Chair), Dwight Lynn, Dave Cavanaugh, Javier Zamora, Don Bussey, Bob Culbertson
3. **Pledge of Allegiance**
4. **Closed Session – 1 Item: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION: Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: two potential cases, quasi-adjudicatory matters before the State Water Resources Control Board: (1) potential petition for partial assignment of 1958 State water-right filing, Application 18334, to Agency; (2) potential request for release of priority of Application 18334.**

#### Open Session

5. **Report on Closed Session**
6. **Discussion and/or Action Items**
  - A. Consider Staff Recommendation regarding the Proposed College Lake Integrated Resources Management Project: Partial of Assignment of State Filing Water Right and Request for Release from Priority
    1. Introduction by staff
    2. Questions from Board
    3. Public comment
    4. Board discussion and deliberation
    5. Board action
7. **Future Meetings**
  - A. Administrative/Finance Committee, Tuesday, November 14 , 2017, 4:00 p.m., Warren Koenig Conference Room, 36 Brennan Street, Watsonville
  - B. Board of Director's Meeting, **Monday, November 20 , 2017, 7:00 p.m.**, Watsonville City Council Chambers, 275 Main Street, 4<sup>th</sup> Floor **NOTE DATE**
  - C. Project & Facility Operations Committee, **Wednesday, December 6, 2017, 3:00 p.m.**, Water Resources Center, 500 Clearwater Lane, Watsonville **NOTE DATE**
  - D. Administrative/Finance Committee, Tuesday, December 12, 2017, 4:00 p.m., Warren Koenig Conference Room, 36 Brennan Street, Watsonville

- E. Board of Director's Meeting, Wednesday, December 20, 2017, 7:00 p.m., Watsonville City Council Chambers, 275 Main Street, 4<sup>th</sup> Floor, Watsonville

## **Adjournment**

### **NOTES**

*The City Council Chambers is an accessible facility. If you wish to attend a meeting and you will require assistance in order to attend and/or participate, please call the Agency at (831) 722-9292 in advance of the meeting and every effort made to accommodate your attendance and participation.*

*This agenda is subject to revision and maybe amended prior to the scheduled meeting. If amended, a Final Agenda to be posted at PV WATER, 36 Brennan Street, Watsonville and at the location where meeting will be held, 72 hours prior to the meeting. Copies of the Final Agenda will be available at the Board Meeting. This Agenda shall be made available upon request in alternative formats to persons with a disability, as required by the Americans with Disabilities Act of 1900 (42 U.S.C. Sec. 12132) and the Ralph M. Brown Act (Cal. Govt. Code Sec. 54954.2). Persons requesting a disability-related modification or accommodation should contact PV WATER at (831) 722-9292 during regular business hours at least 24 hours prior to the time of the meeting.*

*Agenda documents are available for review, on the Monday following posting of the agenda, in person at PV Water, 36 Brennan St. Watsonville, or on the website: <http://www.pvwater.org/board-and-committees/director-agendas.php>*

### **Translation Services/Servicios De Traduccion**

*Spanish language translation is available on an as needed basis. Please make advance arrangements with the PV Water Board Secretary, 36 Brennan St. Watsonville, CA or by telephone (831) 722-9292.*

*Se proven servicios de interpretacion segun se necesiten. Sirvase contactar a la secretaria de Directiva de la Agencia para hacer preparativos.*

## MEMORANDUM

**DATE:** November 3, 2017  
**MEETING OF:** November 8, 2017  
**TO:** Board of Directors  
**FROM:** General Manager  
**RE:** **DISCUSSION/ACTION ITEM 6A:** Proposed College Lake Integrated Resources Management Project: Petition for Partial Assignment of State Water Right Filing and Request for Release from Priority

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### INTRODUCTION

The intent of this item is to discuss the 1958 State water-right filing for the Pajaro River and to seek direction from the Board of Directors (“Board”) to file a petition for partial assignment of this filing to the Pajaro Valley Water Management Agency (“Agency”), and, as a backup, to file a request for release from the priority of this filing, for the College Lake Integrated Resources Management Project (the “College Lake Project”). If approved by the Board, this authorization and direction will be only for filing and pursuing the petition for partial assignment and request for release from priority and will not be a final decision by the Board on whether to proceed with the proposed project. The Board may not make any final decisions regarding this proposed project until after the project-specific EIR for this proposed project has been certified, which is tentatively scheduled for Board consideration by the end of 2018.

### BACKGROUND

On September 20, 2017, the Board authorized and directed the General Manager to work with the Agency’s water-right attorney to complete, file and pursue the water-right application for the proposed College Lake Project with the State Water Resources Control Board (the “State Water Board”). After that action, State Water Board staff advised the General Manager and the Agency’s water-right attorney that the California Department of Water Resources (“DWR”) had filed a water-right application in 1958 for a water project that would have diverted water from the Pajaro River to off-stream storage, and that the Agency may want to file a petition for partial assignment of that State filing and a request for release from its priority. This memorandum discusses the history of the 1958 State filing and our recommendations for Agency actions.

### 1958 STATE WATER-RIGHT FILING

Water Code sections 10500-10506 authorize the California Department of Water Resources (“DWR”) to file water-right applications that, in DWR’s judgment, may be required for the development of a general plan of development of California’s water resources. Unlike all other applications for water-right permits, these applications by DWR, which often are called “State filings,” are not subject to the Water Code’s requirements that applicants diligently pursue their applications. (Water Code, § 10500.) Instead, these applications are held by the State Water Board, and the Board may assign all or part of any such applications to people or entities that file petitions for such assignments when the Board concludes that the assignment will not conflict

with the general plan of development of the State's water resources. (Water Code, § 10504.) Alternatively, the Board may release the priority of a State filing from the priority of another, later-filed application. (*Ibid.*)

In 1958, following a request from the Santa Cruz County Flood Control and Water Conservation District, DWR filed water-right Application 18334. This State filing was an application for a permit to divert water from the Pajaro River at a point about five miles southeast of Watsonville, at direct-diversion rates up to 200 cubic-feet per second, and to divert up to 21,000 acre-feet per year of water to storage in an off-stream reservoir that would have been constructed in the hills south of the Pajaro River.

In 1996, the Agency filed a petition for partial assignments of Application 18334 for three permits, for the proposed College Lake Project, the Harkins and Watsonville Slough Project and the Murphy's Crossing Project, and a request for release from the priority of the 1958 application (in case the State Water Board did not grant the petition for partial assignment). In 2003, the Agency decided not to pursue this petition or this request.

#### **AGENCY PETITION FOR PARTIAL ASSIGNMENT OF STATE FILING**

The benefit to the Agency of filing a petition for partial assignment of Application 18334 is that, if the State Water Board grants the petition and then issues the Agency a permit on Application 18334, then the permit will have a 1958 priority date. This earlier priority date could be beneficial to the Agency if the State Water Board or a court ever were to issue an order prohibiting diversions with the priority cutoff date for such diversions between 1958 and 2017.

#### **AGENCY APPLICATION FOR NEW WATER-RIGHT PERMIT**

Because it would not be certain whether the State Water Board would grant the Agency's petition for partial assignment of Application 18334, the Agency should also file the separate application for a new water-right permit, not based on the State filing, that the Board of Directors authorized on September 20. If the State Water Board denies the Agency's petition for partial assignment of Application 18334 but grants the new application for a water-right permit, then this permit would have a 2017 priority.

#### **AGENCY REQUEST FOR RELEASE FROM PRIORITY OF APPLICATION 18334**

As discussed above, if the State Water Board does not grant the Agency's petition for partial assignment of Application 18334 but does issue a permit to the Agency based on the Agency's new application, then the State Water Board may release the priority of Application 18334 from the priority of the permit issued on the new application. Under this scenario, the new permit issued to the Agency would have priority over any permit issued in the future to some other entity under Application 18334, notwithstanding the normal water-right priority rules. This could be important if some other entity ever decided to build a major water project in the Pajaro River watershed and obtained a partial assignment of Application 18334 for the water-right permit for the project.

#### **SCHEDULE**

If the Board authorizes and directs the General Manager to proceed with the petition for partial assignment and request for release from priority, then the Agency will file them and the new

application with the State Water Board in November 2017. The project description in the Notice of Preparation for the project-specific Draft EIR for the College Lake Project (scheduled to be issued in late November) then will include descriptions of this petition, the new application and this request.

Within a few months after these filings, the State Water Board will issue a public notice of the petition for partial assignment, the new application and the request for release from priority, and the notice will specify the deadline for interested parties to file protests. As the Agency is working on the Draft EIR (scheduled to be published in the summer of 2018) and Final EIR for this project (tentatively scheduled for Board consideration by the end of 2018), the Agency also will meet with protestants to try to resolve their protests.

If the Agency decides to certify the Final EIR and approve this project (tentatively scheduled for Board consideration by the end of 2018), then the Agency will ask the State Water Board to dismiss any unresolved protests that are not supported by substantial evidence and to hold a hearing and issue a decision.

### **FISCAL IMPACT**

The State Water Board fees for the petition for partial assignment of Application 18334 and request for release from priority are \$5,000 each, for a total of \$10,000. This amount is in addition to the \$45,850 fee for the water-right application, which the Board approved on September 20. Funds to cover these fees are included in the budget.

### **STAFF RECOMMENDATION**

That the Board authorize and direct the General Manager and the Agency's water-right attorney to complete, file and pursue the petition for partial assignment of Application 18334 and, as a backup, complete, file and pursue the request for release from priority.

### **ATTACHMENTS**

Copies of the [draft petition for partial assignment of Application 18334](#) and [request for release from priority](#) are available on the PV Water website at the addresses listed below.

- Draft petition for partial assignment of Application 18334:  
[http://pvwater.org/board-and-committees/board\\_of\\_directors\\_assets/2017\\_bod\\_agendas\\_packets/11\\_08\\_17\\_Petition\\_for\\_Change\\_wAtts\\_DRAFT.pdf](http://pvwater.org/board-and-committees/board_of_directors_assets/2017_bod_agendas_packets/11_08_17_Petition_for_Change_wAtts_DRAFT.pdf)
- Draft request for release from priority:  
[http://pvwater.org/board-and-committees/board\\_of\\_directors\\_assets/2017\\_bod\\_agendas\\_packets/11\\_08\\_17\\_Release\\_from\\_Priority\\_wEncls\\_DRAFT.pdf](http://pvwater.org/board-and-committees/board_of_directors_assets/2017_bod_agendas_packets/11_08_17_Release_from_Priority_wEncls_DRAFT.pdf)