
State Water Resources Control Board

NOTICE OF ASSIGNMENT

The State Water Resources Control Board's
Executive Director has assigned to the
Administrative Hearings Office
the pending Petition for Assignment of State-filed
Application A005634 and accompanying water-right
Application A005634X01 of

Nevada Irrigation District

and the pending Requests for Release from Priority of
State-Filed Applications A005633 and A005634 in favor
of water-right License 11120 (Application A010221) of

South Sutter Water District.

STATE-FILED WATER-RIGHT APPLICATIONS A005633 AND A005634

On July 30, 1927, the State Department of Finance filed water-right Applications A005633 and A005634 under the statute that now is codified as Water Code section 10500. These applications are for water-right permits for direct diversions and seasonal storage of waters of the Bear River. The April 28, 2021 memorandum from Erik Ekdahl, Deputy Director for the State Water Resources Control Board ("State Water Board" or "Board"), Division of Water Rights ("Division"), to Eileen Sobeck, the State Water Board's Executive Director, a copy of which is in Attachment 1, describes these State-filed applications in more detail.

PETITION FOR PARTIAL ASSIGNMENT OF APPLICATION A005634 AND PROPOSED WATER-RIGHT APPLICATION A005634X01

On August 13, 2014, Nevada Irrigation District ("Nevada ID") filed, under Water Code section 10504.01: (1) a petition for partial assignment of State-filed Application A005634; and (2) proposed water-right Application A005634X01. The April 28, 2021 memorandum from Mr. Ekdahl describes this petition and this proposed application in more detail.

The Division of Water Rights issued a public notice of this petition and proposed application on August 26, 2016. The following parties filed protests: The United

Auburn Indian Community of the Auburn Rancheria, South Sutter Irrigation District, United States Department of Interior, Bureau of Reclamation, American River Watershed Institute, County of Placer, Placer County Water Agency, California Department of Fish and Wildlife, Pacific Gas and Electric Company, Foothills Water Network, Contra Costa Water District, Pacific Forest and Watershed Lands Stewardship Council, Richard and Stephanie Currin, David and Cheryl Sprunck, Diana and Cam Suarez, Celia Hulett, Joan Hoss, and Kristen Mitchell. The Division's files do not indicate that any of these protests have been resolved.

REQUESTS FOR RELEASES FROM PRIORITY

On November 9, 2016, South Sutter Water District ("South Sutter WD") filed requests under Water Code section 10504 for releases from the priorities of Applications A005633 and A005634 in favor of South Sutter WD's water-right License 11120 (Application 10221). License 11120 has a priority date of June 13, 1941. The April 28, 2021 memorandum from Mr. Ekdahl describes South Sutter WD's requests and License 11120 in more detail.

On February 21, 2021, South Sutter WD sent a letter to the Division, which asked for action on its requests for releases from priority and stated that South Sutter WD believed that Nevada ID had abandoned its efforts to petition for assignment of State-filed Application A005634.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the AHO as an independent organizational unit within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO. Water Code section 1114 provides that, after the AHO holds a hearing in an assigned matter, the AHO hearing officer shall prepare a proposed order and transmit it to the Board for the Board's consideration.

Mr. Ekdahl's April 28, 2021 a memorandum to Ms. Sobeck recommended that the Executive Director assign these applications, this petition and proposed application and these requests for releases from priority to the AHO to consider and resolve various issues, which are listed in the memorandum.

On May 18, 2021, Ms. Sobeck transmitted a memorandum to Alan Lilly, Presiding Hearing Officer AHO, which assigned Nevada ID's petition for assignment of State-filed Application A0056334, Nevada ID's proposed Application A005634X01, and Sutter S30531B to the AHO (Attachment 2).

HEARING OFFICER AND HEARING TEAM: NOTICE OF STATUS CONFERENCE

A hearing officer from the State Water Board's Administrative Hearings Office will preside over any status conference or hearing in this matter. Other members of the

AHO may be present and assist the hearing officer throughout these proceedings.

The AHO will be issuing a notice of status conference for this matter.

PROHIBITION ON EX PARTE COMMUNICATIONS

Parties and interested persons are prohibited from having any ex parte communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For a discussion of ex parte communications regarding AHO hearing officers and staff, see the response to FAQ 18 of the AHO FAQs, which are posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021_04_06_webpage_faq.pdf.

If any party or interested person wants to communicate with the AHO regarding a procedural or substantive issue related to this proceeding, the party or interested person shall make the communication in writing, shall serve all parties listed on the service list for this proceeding with copies of the communication, and include a proof of service demonstrating such service with the written communication to the AHO.

Any such communication shall be sent to the AHO by e-mail to: AdminHrgOffice@waterboards.ca.gov, or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
P.O. Box 100
Sacramento, CA 95814-0100

A party or interested person may provide the proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter. Until the AHO issues an updated service list, parties should use the initial service list attached to this notice (Attachment 3).

Please do not attempt to communicate by telephone or in person with AHO staff or any AHO hearing team member regarding these proceedings, because other parties would not be able to participate in such communications. If oral communications with members of the AHO hearing team are necessary to discuss a procedural or substantive issue, the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

UPDATES TO SERVICE LIST

The AHO prepared the attached service list using information in the Division of

Water Rights files for Applications A005633, A005634 and A005634X01, and current information available to the AHO. The AHO requests that all parties listed on the service list provide the AHO with the names, mailing addresses and e-mail addresses of the people who currently are representing the parties and whom the parties want to have on the updated service list. Parties should submit this information to the AHO by e-mail at adminhrgoffice@waterboards.ca.gov on or before **July 2, 2021**. Parties do not need to send copies of these e-mails to representatives of the other parties.

After July 2, the AHO will prepare an updated service list and circulate it to the parties' representatives with the AHO's notice of status conference.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html.

Date: June 17, 2021

SIGNATURE ON FILE

Alan B. Lilly,
Presiding Hearing Officer

Attachments:

- Attachment 1 – April 28, 2021 memorandum from Erik Ekdahl, Deputy Director for the Division of Water Rights
- Attachment 2 – May 18, 2021 memorandum from Eileen Sobeck, Executive Director
- Attachment 3 – Initial Service List (copies of this notice will be sent by e-mail to parties with e-mail addresses listed and by U.S. mail to other parties)

Attachment 1

April 28, 2021 memorandum from Erik Ekdahl, Deputy Director
for the Division of Water Rights

State Water Resources Control Board

TO: Eileen Sobeck
Executive Director
State Water Resources Control Board

FROM: Erik Ekdahl 
Deputy Director
DIVISION OF WATER RIGHTS

DATE: April 28, 2021

SUBJECT: PENDING PETITION FOR ASSIGNMENT OF STATE-FILED APPLICATION A005634 WITH ACCOMPANYING APPLICATION A005634X01 AND PENDING REQUESTS FOR RELEASE FROM PRIORITY OF STATE-FILED APPLICATIONS A005633 AND A005634 IN THE BEAR RIVER WATERSHED

The State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) proposes assignment of the pending petition for partial assignment of state-filed Application A005634 and accompanying Application A005634X01 filed by Nevada Irrigation District (NID) and the related petitions for release from priority of state-filed Applications A005633 and A005634 filed by South Sutter Water District (SSWD) to the Administrative Hearings Office (AHO) for further proceedings and an adjudicative hearing.

Background

State Filed Application A005634

State-filed Application A005634 has a calculated face value of 399,591 acre-feet per year. The following is a summary of the state-filed application (as filed). Application A005634 has not been assigned in part to any other party and there are no other pending petitions for assignment other than the petition filed by NID. The Division noticed the NID petition and accompanying application on August 26, 2016. Protests were received and are pending. The following description of the petition and Application A005634X01 was included in the public notice.

STATE FILED APPLICATION A005634 (AS FILED)

Source	Bear River tributary to Feather River thence the Sacramento River in Nevada and Placer Counties
Point of Diversion	Located within the NW¼ of Section 30, T14N, R9E, MDB&M
Season of Diversion	Direct Diversion: January 1 through December 31 Storage: January 1 through December 31
Amount	Direct Diversion: 400 cubic feet per second Storage: 110,000 acre-feet per year
Purposes of Use	Domestic, Irrigation, Flood Control, Salinity Control and Navigation
Place of Use	2,500,000 acres on the floor of the Sacramento and San Joaquin Valleys

Summary of Petition for Partial Assignment of A005634 (Application A005634X01)

Source	Bear River tributary to Feather River thence the Sacramento River
Point of Diversion ¹	51) <u>Centennial Reservoir Dam</u> on Bear River located within the SW¼ of NW¼ of Section 30, T14N, R9E, MDB&M 57) <u>Centennial Pump Station</u> on Bear River located within SE¼ of NE¼ of Section 32, T15N, R9E, MDB&M
Points of Rediversion ¹	32) <u>Combie Reservoir Dam</u> located within the SW¼ of NW¼ of Section 2, T13N, R8E, MDB&M 30) <u>Auburn Ravine I Canal</u> located within the NE¼ of NE¼ of Section 14, T12N, R7E, MDB&M 31) <u>Hemphill Canal</u> located within the NW¼ of NE¼ of Section 13, T12N, R6E, MDB&M 33) <u>Orr Creek Diversion Dam</u> located within the SE¼ of NE¼ of Section 18, T13N, R8E, MDB&M 34) <u>Camp Far West Canal</u> located within the SW¼ of SW¼ of Section 13, T13N, R7E, MDB&M 35) <u>Doty South Canal</u> located within the SW¼ of NE¼ of Section 36, T13N, R6E, MDB&M 24) <u>Wolf-Hannaman Diversion Dam</u> located within the NW¼ of NE¼ of Section 28, T14N, R7E, MDB&M 53) <u>Whiskey Diggins Canal</u> located within the SW¼ of NW¼ of Section 23, T13N, R7E, MDB&M 52) <u>Rock Creek Dam</u> located within the SE¼ of SW¼ Section 28, T13N, R8E, MDB&M

¹ The points of diversion and points of rediversion numbering is the same numbering system as identified on other NID water rights/change petitions.

	54) <u>Camp Far West Reservoir Dam</u> located within the NE¼ of SW¼ of Section 21, T14N, R6E, MDB&M
Season of Diversion	Direct Diversion: January 1 through December 31 Storage: January 1 through December 31
Amount	Direct Diversion: 400 cubic feet per second, with an annual total of 111,400 acre-feet Storage: 110,000 acre-feet per year Total Diversion of 221,400 acre-feet per year
Purposes of Use	Irrigation, Municipal, Industrial, Domestic, Stockwatering, Recreation, and Incidental Hydropower Generation
Place of Use	Irrigation, municipal, industrial, domestic, stockwatering, recreation within 198,205 total acres within the existing service area boundaries of NID as authorized under NID's existing water rights and under License 11118 (Application 14804) held by SSWD as shown on the map accompanying the application. Incidental hydropower generation at Centennial Powerhouse, Combie North Powerhouse, Combie South Powerhouse, Wise #1 Powerhouse, Wise #2 Powerhouse and Camp Far West Powerhouse.

Petitions for Release from Priority of A005633 and A005634

SSWD filed a protest and remains an active protestant to the NID petition for assignment of Application A005634 and accompanying Application A005634X01.

On November 9, 2016, SSWD filed petitions for release from priority of state-filed Applications A005633 and A005634 in favor of SSWD's water-right License 11120 (Application 10221). Applications A005633 and A005634 have a priority date of July 30, 1927. License 11120 has a priority date of June 13, 1941. SSWD seeks a release of priority in favor of License 11120 for the storage of 40,000 acre-feet per year at Camp Far West Reservoir on the Bear River in Yuba and Placer Counties. The effect of the requested release from priority is that any water-right resulting from the assignment of Applications A005633 and A005634 would have a lower priority than up to 40,000 acre-feet per year of water diverted to storage under License 11120.

On February 25, 2021, SSWD submitted a letter to the Division requesting action on its petitions for release from priority and an update on the status of the petitions. In that letter, SSWD indicated its view that NID had abandoned its effort to petition for assignment of A005634.

Summary of SSWD's License 11120 (Application 10221)

Source	Bear River tributary to Feather River thence the Sacramento River
Point of Diversion	<u>Camp Far West Dam</u> on Bear River located within the NE¼ of SW¼ of Section 21, T14N, R6E, MDB&M
Season of Diversion	Direct Diversion: March 1 through June 30 and September 1 through October 31 of each year Storage: October 1 of each year to June 30 of the succeeding year
Amount	Direct Diversion: 250 cubic feet per second Storage: 40,000 acre-feet per year
Purposes of Use	Irrigation and Domestic
Place of Use	Domestic use and irrigation of 59,000 acres within a gross area of 65,796 acres, within the boundaries of SSWD; and irrigation of a net area of 4,180 acres (including 102 acres located outside SSWD boundaries and served by contract) within Camp Far West Irrigation District, as shown on maps filed with the State Water Board.

Summary of State-Filed Application 5633

The following is a summary of state-filed Application A005633. The calculated face value of A005633 is 196,877 acre-feet per year. The application has not been assigned in part to any other party and there are no pending petitions seeking assignment of the filing. Application A005633 is not part of NID's petition for assignment. The point of diversion and location of storage of A005633 is at the same reservoir as A005634 but is for the purpose of use of power generation.

Source	Bear River tributary to Feather River thence the Sacramento River in Nevada and Placer Counties
Point of Diversion	Located within the NW¼ of Section 30, T14N, R9E, MDB&M
Season of Diversion	Direct Diversion: January 1 through December 31 Storage: January 1 through December 31
Amount	Direct Diversion: 120 cubic feet per second Storage: 110,000 acre-feet per year
Purpose of Use	Power

Issues to be Considered by the Administrative Hearings Office

While staff have engaged extensively on NID's petition in the past, current low levels of permitting staffing have not provided sufficient resources to focus on this project over the last several years.

Given the size and complexity of this project and high level of public interest, this matter would be aided by the AHO's expertise in conducting adjudicative hearings and ensuring water rights disputes are resolved in a timely manner. Therefore, the Division proposes that the AHO address the following issues and draft a proposed order for the Board, the Executive Director, or the Deputy Director for Water Rights, for consideration:

- 1) Whether NID seeks to continue to pursue the petition for assignment of state-filed Application A005634 and Application A005634X01.
- 2) The status of the NID petition and accompanying Application A005634X01, including but not limited to the status of completion and submission of a:
 - a. Water availability analysis,
 - b. Required environmental documentation, and
 - c. Resolution of pending protests.
- 3) Whether the Board should approve the NID petition for assignment of state-filed Application A005634 and whether the Board should approve Application A005634X01, in whole or in part, and if so, with what terms and conditions.
- 4) Should the Board continue to process the petitions for release from priority filed by SSWD if NID withdraws its petition (and accompanying application) for assignment of state-filed Application A005634 or its petition (and accompanying application) is cancelled or rejected by the Board.

If NID's petition and accompanying application or the SSWD petitions for release from priority remain pending after adoption of any proposed order resulting from the AHO's proceeding(s), the Division will continue processing the petitions for release from priority and the petition for assignment (and accompanying application) in accordance with all applicable rules and regulations related to permitting and state-filed applications. Alternatively, the AHO may manage the process in coordination with the Division.

Conclusion and Recommendation

Given the complexity and controversial nature of the petition for assignment and accompanying application and petitions for release from priority, resolution of these issues would be most effectively achieved through a proceeding conducted by the AHO. Therefore, I am recommending assignment of this matter to the AHO for noticing and further proceedings and an adjudicative hearing to address the issues identified in this memo.

Attachment 2

May 18, 2021 memorandum from Eileen Sobeck, Executive Director

State Water Resources Control Board

TO: Alan Lilly
Presiding Hearing Officer
Administrative Hearing Office

FROM: Eileen Sobeck
Executive Officer
State Water Resources Control Board



DATE: May 18, 2021

SUBJECT: ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE OF PENDING PETITION AND ACCOMPANYING APPLICATION A005634X01 FOR ASSIGNMENT OF STATE-FILED APPLICATION A005634 AND PENDING REQUEST FOR RELEASE FROM PRIORITY OF STATE FILED APPLICATIONS A005633 AND A005634 ON THE BEAR RIVER

The State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) has recommended that the Board assign the pending petition for assignment of state-filed Application A005634 and accompanying Application A005634X01, filed by Nevada Irrigation District, to the Administrative Hearings Office (AHO) because of the lack of progress by Nevada Irrigation District. The Division has also recommended that the Board assign the related petitions for release from priority of state-filed Applications A005633 and A005634 filed by South Sutter Water District to the AHO. I have attached the Division's memorandum which summarizes the Nevada Irrigation District petition and accompanying application and the related South Sutter Water District petitions for release from priority.

Based upon the Division's recommendation, I assign the Nevada Irrigation District petition for partial assignment and accompanying application and the South Sutter Water District petitions for release from priority to the AHO for further proceedings. Such proceedings may include, but are not limited to, noticing the petitions filed by South Sutter Water District and conducting an adjudicative hearing.

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

If you have any questions regarding this memo, please contact Amanda Montgomery, Manager of the Permitting Section at 916-341-5438 or by email at Amanda.Montgomery@waterboards.ca.gov.

cc: Erik Ekdahl, Deputy Director, Division of Water Rights
Jule Rizzardo, Assistant Deputy Director, Permitting and Enforcement Branch
Michael Lauffer, Chief Counsel
Conny Mitterhofer, Hearings Section Chief, Division of Water Rights

**ATTACHMENT 3
INITIAL SERVICE LIST**

Tina Bartlett
Department of Fish and Game
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Tina.bartlett@wildlife.ca.gov

Marylisa Lynch
Department of Fish and Game
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Marylisa.lynch@wildlife.ca.gov

Lauren Mulloy
Department of Fish and Game
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Lauren.mulloy@wildlife.ca.gov

Traci Sheehan Van Thull,
Coordinator Foothills Water Network
traci@foothillswaternetwork.org

Chandra Ferrari
Trout Unlimited
2239 Berkeley, CA 94710
cferrari@tu.org

Chris Shutes
California Sportfishing Protection
Alliance
1608 Francisco Street
Berkeley, CA 94703
blancapaloma@msn.com

Allan Eberhart, Chair
Sierra Club - Mother Lode Chapter
24084 Clayton Road
Grass Valley, CA 95949
vallialli@wildblue.net

Sarah Lose
sarahannlose@gmail.com

Patricia Rusert Gillette
prgmessage@gmail.com

Sarah H. Sigman
Shute, Mihaly & Weinberger LLP
sigman@smwlaw.com

Leslie Dilloway
20601 Woodbury Drive
Grass Valley, CA 95949

Howard Brown
National Marine Fisheries Service
howard.brown@noaa.gov

Camp Far West Irrigation District
c/o Wagner and Bonsignore CCE
dhouston@wbecorp.com

South Sutter Water District
c/o MBK Engineers
kienlen@mbkengineers.com

Andy Fecko
Placer County Water Agency
afecko@pcwa.net

Curt Aikens,
General Manager
Yuba County Water Agency
caikens@ycwa.com

Steve Peirano
Hydro Licensing, Relicensing Supervisor
Pacific Gas and Electric Company
SLP2@Qge.com

Ron Stork
Friends of the River
rstork@friendsoftheriver.org

Dave Pellone, President
Northern California Federation of Fly
Fishers
44dpellone@gmail.com

Dave Steindorf
American Whitewater
dave@americanwhitewater.org

Nancy Quan
Department of Water Resources
nancy.guan@water.ca.gov

Dianna and Cam Saurez
1331 Sierra Oak Lane
Colfax, CA 95713
saureztribe@yahoo.com

Remleh Scherzinger
Nevada Irrigation District
1036 W. Main Street
Grass Valley, CA 95945

Kevin M. O'Brien
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Leslie Dilloway
20601 Woodbury Drive
Grass Valley CA, 95949

Sarah H. Sigman
Shute, Mihaly and Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

Caleb Dardick
South Yuba River Citizen League
313 Railroad Ave
Nevada City, CA 95959

Richard D. Plecker
City of Roseville
Environmental Utilities Administration
2005 Hilltop Circle
Roseville, CA 95747

Einar L. Maisch
Placer County Water Authority
175 Fulweiler Avenue
Auburn, CA 95603
generalmanager@pwca.net

David Boesch
County of Placer
175 Fulweiler Avenue
Auburn, CA 95603

Nicolaus J. Markevich
Pacific Gas and Electric
P.O. BOX 770000 N13E
San Francisco, CA 94177

Marsha A. Burch
131 South Auburn Street
Grass Valley, CA 95945

David Sprunk
1948 Peacefully Valley Road
Colfax, CA 95713
sparkyman244a@gmail.com

Daniel Kelly
Placer County Water Agency
P.O. BOX 6570
Auburn, CA 95604

Otis Wollen
American River Watershed Institute
otiswallen@gmail.com

South Sutter Water District
2464 Pacific Avenue
Trowbridge, CA 95659

Karen Slakey Hull
8559 country Club Lane
Auburn, CA 95602
karenslakeyhull@gmail.com

Gene Whitehouse
United Auburn Indian Community of the
Auburn Rancheria
Tribal Office
10720 Indian Hill Road
Auburn, CA 95603

Richard and Stephanie Curin
1845 Buck Ridge Ct.
Colfax, CA 95713

Doug E. Coty
Bold, Polsner, Maddow, Nelson and
Judson
500 Ygnacio Valley Road, suite 325
Walnut Creek, CA 94596-3840

Leah Orloff
Contra Costa Water District
1331 Concord Ave
Concord, CA 94520

Pacific Forest and Watershed
Stewardship Council
3300 Douglas Blvd, ste 250
Roseville, CA 95661

H. Gordon Ainsleigh
P.O. BOX 1087
Meadow Vista, CA 95722

Andre J. McClure
Minasian, Meith, Soares, Sexton and
Cooper LLP
1681 Bird Street
Oroville, CA 95965-1679