
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 petition for assignment of state-filed Application 25517 and
accompanying water right Application 25517X01 and
petitions for release from priority of state-filed Applications 25513,
25514, 25517 (unassigned portion), 22235, 23780, and 23781 in
favor of water right Application 25517X01 of

Sites Project Authority.

PETITIONS AND APPLICATION

On May 11, 2022, the State Water Resources Control Board (State Water Board) Division of Water Rights (Division) received a petition for partial assignment of state-filed Application 25517 (priority date of September 30, 1977) and accompanying water right Application 25517X01 from Sites Project Authority (Authority) and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 2551X01. The Authority filed amended application materials on January 6, 2023, in response to a request from the State Water Board for more information, and application errata on May 4, 2023, to correct or otherwise clarify information contained in the initial and amended application filings.

In its water right application, the Authority seeks to divert water from September 1 of each year to June 14 of the succeeding year from the Sacramento River, Funks Creek, and Stone Corral Creek. Funks Creek is tributary to Stone Corral Creek, which is tributary to the Sacramento River. The water would be diverted to storage in a newly constructed reservoir (Sites Reservoir) with a capacity of 1,500,000 acre-feet and a surface area when full of 13,200 acres. The main impounding structures proposed by the Authority to create Sites Reservoir are Golden Gate Dam on Funks Creek, which is proposed to be 2,221 feet long and 287 feet high, and Sites Dam on Stone Corral Creek, which is proposed to be 781 feet long and 267 feet high. The Authority seeks to divert water from the Sacramento River near Red Bluff and Hamilton City for conveyance to storage in Sites Reservoir using the existing Red Bluff Pumping Plant,

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

which pumps water into the Tehama-Colusa Canal, and the existing Hamilton City Pump Station, which pumps water into the Glenn Colusa Irrigation District Main Canal.

The maximum amount of water requested for diversion is 1,500,000 acre-feet per year, to be diverted from the Sacramento River at a rate not to exceed 4,200 cubic feet per second, and from Funks Creek and Stone Corral Creek at rates equivalent to the inflows of these creeks at Golden Gate Dam and Sites Dam. The application proposes rediversion at Sites Dam, Golden Gate Dam, and fifty-two other points located in Alameda, Colusa, Contra Costa, Fresno, Kern, Los Angeles, Madera, Merced, Riverside, Sacramento, San Bernardino, San Joaquin, Solano, and Yolo Counties.

The proposed purposes of use are irrigation, municipal, domestic, industrial, water quality, fish and wildlife preservation and enhancement, and recreational. The application also identifies incidental uses of power, aquaculture, frost protection, stockwatering, and fish and wildlife preservation and enhancement. The proposed place of use consists of 32,691,036 acres within Glenn, Colusa, Sutter, Yolo, Yuba, Sacramento, Napa, Solano, Contra Costa, San Joaquin, Alameda, Stanislaus, Santa Clara, Santa Cruz, San Benito, Merced, Madera, Fresno, Kings, Tulare, Monterey, San Luis Obispo, Kern, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial Counties.

On June 2, 2023, the Division issued public notice of the Authority's water right application, the associated petition for partial assignment of a state-filed application, and petitions requesting release from priority of other state-filed applications. The notice provided instructions to file a protest to the water right application and associated petitions. On July 12, 2023, the Division issued a revised notice extending the deadline to file a protest.

The Division received protests to water right Application 2551X01 and the associated petitions from the individuals and entities listed in Attachment 1.

PUBLIC HEARING AND ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

The State Water Board must conduct a public hearing before assigning a state-filed application or releasing a state-filed application from priority. (Wat. Code, § 10504.1.) The Board also anticipates that the Authority will not be able to resolve by the close of the protest resolution period all of the protests received by the Board against the approval of water right Application 2551X01 and the associated petitions for assignment and release from priority. An evidentiary hearing will likely be necessary to resolve contested issues of fact raised by the protestants.

Water Code section 1110 established the Administrative Hearings Office (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.

On November 13, 2023, Eileen Sobeck, Executive Director of the State Water Board, transmitted a memorandum (Attachment 2) to Nicole Kuenzi, Presiding Hearing Officer of the AHO, assigning, in whole, the application and petitions submitted by the Authority to the AHO for further proceedings and an adjudicative hearing pursuant to Water Code section 1112, subdivision (c)(2).

The AHO will issue a notice of public hearing for this proceeding after the close of the protest resolution period on February 28, 2024. The notice of public hearing will describe the process for protestants and interested persons to participate in the hearing, provide tentative hearing dates and a tentative pre-hearing schedule, and describe the hearing procedures. Portions of the public hearing may be conducted in person in Sacramento and the remainder of the hearing will be conducted by Zoom teleconference. All portions of the hearing will be live-streamed. At this time, the AHO expects that the public hearing could begin as early as spring 2024.

HEARING OFFICER AND HEARING TEAM

An AHO Hearing Officer will preside over any hearing in this matter. The Hearing Team will include State Water Board staff from the AHO, Division, and the Board's Office of Chief Counsel. These staff may be present and assist the hearing officer throughout these proceedings and may consult with members of the executive management of the State Water Board and State Water Board members to discuss or deliberate on matters relevant to this proceeding.

ADMINISTRATIVE RECORD AND FTP SITE

The AHO will maintain the administrative record for this proceeding on the State Water Board's FTP site. The AHO has moved documents maintained by the Division for the Authority's application and petitions and saved them in a folder for this proceeding. The AHO will save in this folder all future communications and documents submitted by the parties; any notices and rulings issued by the AHO; recordings of any pre-hearing conferences and days of hearing; and any other materials received by the AHO that are relevant to this proceeding. The folder on the State Water Board's FTP site for this proceeding is named "Sites Reservoir Hearing" and may be accessed at <https://ftp.waterboards.ca.gov/>.

Anyone may view and download documents from the FTP site. To access the Sites Reservoir Hearing folder, please email the AHO at sites-wr-application@waterboards.ca.gov with "Request for Sites-ftp login credentials" in the subject line. After receiving the e-mail request, the AHO will send a reply e-mail with a username and password to access the folder. It is not necessary to cc the service list for such an e-mail request. Please be aware that the login credentials to access the Sites Reservoir Hearing download folder differ from the login credentials to access the administrative record folders for other AHO matters.

PROHIBITION ON EX PARTE COMMUNICATIONS

Parties and interested persons are prohibited from having any ex parte communications (i.e., off-the-record communications) with any members of the Hearing Team, including executive management of the State Water Board and State Water Board members. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For additional information about ex parte communications, see the response to FAQ No.16 of the AHO FAQs, which are posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2022/aho-faq.pdf.

If any party or interested person wants to communicate with the AHO or any member of the Hearing Team regarding a procedural or substantive issue related to this proceeding, with the limited exception for communications about non-controversial procedural matters described below, 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 sites-wr-application@waterboards.ca.gov or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
RE: Sites Reservoir Hearing
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).

Communications concerning non-controversial procedural issues are not subject to the prohibition on ex parte communications. (Gov. Code, § 11430.20, subd. (b).) Parties and interested persons may communicate with members of the Hearing Team about non-controversial procedural matters such as requests for log-in credentials, assistance accessing documents or uploading documents to the FTP site, or requests to update the service list. These communications should be sent to the AHO using the e-mail address or physical address listed above and may be sent without serving all parties on the service list with copies of the communication.

Please do not attempt to communicate by telephone or in person with AHO staff or any member of the Hearing Team about these proceedings. If oral communications with members of the Hearing Team are necessary to discuss a procedural or substantive issue, the AHO may 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 with a copy to the service list.

UPDATES TO SERVICE LIST

The AHO prepared the attached service list using information in the Division's files for Application 25517X01 and current information available to the AHO. If any party or interested person on the service list wants to change any of their information included in the current service list, the party or interested person should submit this information by e-mail to sites-wr-application@waterboards.ca.gov. The party or interested person does not need to send copies of the e-mail to the service list.

AHO WEBPAGE AND NOTICES

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

Any interested person may sign up to receive all AHO notices related to this proceeding at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html by selecting "Sites Reservoir Public Hearing" in the Administrative Hearings Office subscription topic group.

Date: December 5, 2023

/s/ Nicole Kuenzi
Nicole Kuenzi,
Presiding Hearing Officer
Administrative Hearings Office

Attachments:

- Attachment 1 - List of Protests and Protestants
- Attachment 2 - November 13, 2023, Memo from the Executive Director
- Attachment 3 - Service List

ATTACHMENT 1

LIST OF PROTESTS AND PROTESTANTS TO APPLICATION 25517X01

1. California Sportfishing Protection Alliance
AquAlliance
California Water Impact Network
CalWild
Fly Fishers of Davis
Friends of the Swainson's Hawk
Friends of the River
Northern California Council of Fly Fishers International
Restore the Delta
Save California Salmon
Sierra Club California
The Winnemem Wintu Tribe
Water Climate Trust
2. CalWild
3. Center for Biological Diversity
4. Central Delta Water Agency
Delta Farms Reclamation District No. 2030 (McDonald Island)
Rudy Mussi Investment L.P.
South Delta Water Agency
Zuckerman-Mandeville, Inc.
5. Clarke F. Ornbaun
6. Contra Costa Water District
7. County of San Joaquin
8. North Coast Rivers Alliance
Pacific Coast Federation of Fishermen's Associations
San Francisco Crab Boat Owners Association
The Institute for Fisheries Resources
The Winnemem Wintu Tribe
9. Richard Morat
10. San Francisco Baykeeper
The Bay Institute
Defenders of Wildlife
Golden State Salmon Association
11. State Water Contractors

12. Stephen Owens
13. T&M King Farms LLC
14. Trout Unlimited, Inc.
15. Water Climate Trust
International Rivers
The Winnemem Wintu Tribe
Water Keeper Alliance

ATTACHMENT 2



State Water Resources Control Board

TO: Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

FROM: Eileen Sobeck
Executive Director
State Water Resources Control Board

A handwritten signature in blue ink, appearing to read "Eileen Sobeck".

DATE: November 13, 2023

SUBJECT: ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE OF PENDING APPLICATION A025517X01 OF SITES PROJECT AUTHORITY AND ACCOMPANYING PETITIONS FOR PARTIAL ASSIGNMENT AND/OR RELEASE FROM PRIORITY OF STATE-FILED APPLICATIONS A025517, A025513, A022514, A022235, A023780, AND A023781

On May 11, 2022, Sites Project Authority (Authority) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) an application to appropriate water by permit (A025517X01). The application was filed in conjunction with a petition requesting partial assignment of state-filed application A025517 (priority date of September 30, 1977) to application A025517X01; and petitions requesting release from priority of state-filed applications A025513, A022514, A022235, A023780, A023781, and any unassigned portion of state-filed application A025517 in favor of application A025517X01 of the Authority. If approved, the permit would authorize the Authority to store water in Sites Reservoir for subsequent beneficial uses.

By letter dated August 26, 2022, the Division accepted application A025517X01, but determined that it was incomplete and requested additional information. On January 6, 2023, the Authority submitted an amended application in response to the Division's request. The Division found the amended application substantially complete and issued a public notice of the application and accompanying petitions on June 2, 2023, with a 60-day period for filing protests. The period for filing protests was subsequently extended by an additional 30 days. The protest period ended on August 31, 2023. The Water Code requires Protestants and the Applicant to make a good faith effort to resolve the protests within a 180-day protest resolution period for all new water right applications. The protest resolution period will conclude on February 28, 2024.

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

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An evidentiary hearing will likely be necessary to resolve material issues of fact raised by protestants that are not timely resolved. In addition, Water Code section 10504.1 requires the State Water Board to hold a public hearing before acting on a petition requesting assignment or release from priority of a state-filed application. In an abundance of caution, the State Water Board has considered an adjudicative proceeding on the subject application and accompanying petitions to be impending commencing with the issuance of the public notice of the application, and as such, a prohibition on ex parte communications has been in effect since June 2, 2023.

I assign the subject application and accompanying petitions to the Administrative Hearings Office (AHO) to conduct an adjudicative hearing and prepare a draft water right decision for consideration by the State Water Board pursuant to Water Code section 1112, subdivision (c)(2). The draft water right decision to be prepared by the AHO shall not be a proposed order under Water Code section 1114 and shall not be deemed adopted or otherwise become a final decision absent formal action by the State Water Board. Staff from the Division and the Office of Chief Counsel (OCC) will be part of the hearing team for this project and will provide expertise on matters related to, but not limited to, protest resolution, water availability, water quality, environmental analysis, and water right petition and permitting requirements. The hearing team will prepare and issue public notice of the adjudicative hearing, conduct the hearing, and facilitate voluntary protest negotiations up until the time the hearing begins. The assigned hearing officer from the AHO, working with the Division and OCC, is authorized to issue rulings on procedural and other matters necessary to conduct the hearing and prepare a draft water right decision for the State Water Board's consideration.

The Division, AHO, and OCC, will brief the Executive Office and Board Members regarding significant substantive and procedural issues that arise during the course of the hearing. The Board Members may provide direction to the hearing team concerning disposition of significant hearing issues, as appropriate. In addition, at their discretion, individual Members may attend all or part of the hearing, or otherwise monitor its progress.

cc: Erik Ekdahl, Deputy Director for Water Rights
Diane Riddle, Assistant Deputy Director for Water Rights
Michael Lauffer, Chief Counsel

ATTACHMENT 3 SERVICE LIST

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