
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 filed by

McMullin Area Groundwater Sustainability Agency

to revoke or revise the
Declaration of Fully Appropriated Stream Systems
with respect to the Kings River System.

PETITION BY THE MCMULLIN AREA GSA

On November 24, 2021, the McMullin Area Groundwater Sustainability Agency (GSA) submitted a petition to the State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) to revoke or revise the Declaration of Fully Appropriated Stream Systems (FAS Declaration) with respect to the Kings River and submitted an accompanying application for a permit to appropriate water from Fresno Slough and James Bypass (A033259). Eileen Sobeck, the State Water Board's Executive Director, has assigned McMullin Area GSA's petition to the Administrative Hearings Office (AHO) for further proceedings.

BACKGROUND

In 2017, the Division received a joint petition from Consolidated Irrigation District, Alta Irrigation District, and Fresno Irrigation District and a second petition from Semitropic Improvement District of Semitropic Water Storage District (Semitropic) to revoke or revise the FAS Declaration with respect to the Kings River.

In 2018, Semitropic filed a complaint with the Division in support of its petition to revoke or revise the FAS Declaration.

On May 29, 2020, Ms. Sobeck assigned the two petitions to revoke or revise the FAS Declaration with respect to the Kings River to the AHO for further proceedings.

On October 29, 2020, Ms. Sobeck assigned Semitropic's complaint to the AHO for further proceedings in coordination with the pending petitions.

Additional background information about the petitions, the complaint, and the Kings River system is available in the memorandum issued by the AHO titled “Public Hearing on Petitions to Revise the Declaration of Fully Appropriated Stream Systems with Respect to the Kings River System; Related Complaint by Semitropic,” dated November 30, 2020, and the Notice of Public Hearing and Pre-Hearing Conference dated December 2, 2020. The memorandum and the notice are available on the AHO’s webpage at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/kings_river.html

PROCEEDINGS BEFORE THE AHO

The AHO is conducting the hearing on the petitions to revoke or revise the FAS Declaration with respect to the Kings River and Semitropic’s complaint in phases. Phase 1A of the hearing addressed the threshold question of whether there is evidence tending to show that Licenses 11517 and 11521, held in trust by the Kings River Water Association, 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 held Phase 1A of the hearing on June 2, 3, 4, 17 and 18, 2021. McMullin Area GSA was a party to Phase 1A of the hearing. The AHO has not yet issued a ruling or draft proposed order on the hearing issues in Phase 1A.

Phase 2 of the hearing will address whether to revoke or revise the FAS Declaration with respect to the Kings River. The AHO has not yet set hearing dates or a schedule for Phase 2 of the hearing.

ASSIGNMENT TO THE AHO

Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO.

On March 2, 2022, Erik Ekdahl, Deputy Director for the Division, recommended to Ms. Sobeck that she assign the McMullin Area GSA’s petition to the AHO so that the AHO can incorporate the petition into the existing proceeding that will address whether to revise or revoke the fully-appropriated status of the Kings River System. Based on the evidence identified by the McMullin Area GSA with its petition and the evidence related to the two pending petitions before the AHO, the Deputy Director found that the petition showed reasonable cause to conduct a hearing on the question of whether the FAS Declaration should be changed. On March 2, 2022, Ms. Sobeck issued a memo to the AHO assigning the McMullin Area GSA’s petition to the AHO.

HEARING OFFICER AND HEARING TEAM

AHO Hearing Officer Nicole Kuenzi will preside over any hearing in this matter. Other members of the AHO may be present and assist the hearing officer throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Board's Division of Water Rights and the Board's Office of Research, Planning, and Performance, attorneys in the Board's Office of Chief Counsel, 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

The AHO's administrative record in this matter is available on the State Water Board's FTP site in the AHO-FTP folder. Instructions about how to access the AHO-FTP folder on this FTP site are on the AHO's webpage at:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-09_ftp_sites.pdf.

PROHIBITION ON EX PARTE COMMUNICATIONS

All 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.) The AHO has posted a discussion of ex parte communications on the AHO's webpage:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-06_webpage_faq.pdf (See response to FAQ 16.)

If any party or interested person wants to communicate with the AHO regarding any procedural or substantive issue related to this matter, then that party or interested person shall make such communication to the AHO in writing (by e-mail or letter) and, except as otherwise provided in this notice, shall serve all other parties with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. The service list attached to this notice is the AHO's service list for this matter. For emails, the verification of service 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 of service shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter. The AHO will post copies of all such communications to the AHO-FTP folder described above. Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this hearing, because other parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a Zoom conference in which representatives of all parties may participate. Any party or interested person may request such a conference at any time using the written communications protocols described above.

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_offi ce/](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.ht ml](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html).

Date: March 10, 2022

SIGNATURE ON FILE

Nicole L. Kuenzi,
Hearing Officer

Attachments:

- Attachment 1 – 2022-03-02 Memo from E. Ekdahl to E. Sobeck (MAGSA petition)
- Attachment 2 – 2022-03-02 Memo from E. Sobeck to AHO (MAGSA petition)
- Attachment 3 – Service List



State Water Resources Control Board

TO: Eileen Sobeck
Executive Officer
State Water Resources Control Board

FROM: Erik Ekdahl 
Deputy Director
Division of Water Rights

DATE: March 2, 2022

SUBJECT: RECOMMENDATION TO ASSIGN MCMULLIN AREA GROUNDWATER SUSTAINABILITY AGENCY'S PETITION TO REVISE STATUS OF KINGS RIVER SYSTEM ON THE FULLY APPROPRIATED STREAM SYSTEMS DECLARATION TO THE ADMINISTRATIVE HEARING OFFICE

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) recommends that the Executive Director assign the recently-filed petition by McMullin Area Groundwater Sustainability Agency (MAGSA) to revoke or revise the Declaration of Fully Appropriated Stream Systems (FASS Declaration) with respect to the Kings River System to the Administrative Hearings Office (AHO) for further proceedings. The Executive Director assigned two related petitions to amend the FASS Declaration with respect to the Kings River System in a memorandum to the AHO dated May 29, 2020, based on the recommendation by the Division in a memorandum from the Division to the Executive Director dated May 26, 2020. The Division finds that MAGSA's petition shows reasonable cause to conduct a hearing on the question of whether the declaration should be changed and recommends that the AHO incorporate MAGSA's petition into the existing proceeding to address whether to revise or revoke the fully-appropriated status of the Kings River System.

MAGSA Petition to Revise the FASS Declaration

The FASS Declaration, adopted by the State Water Board in Order WR 89-25 and most recently updated in Order WR 98-08, identifies the Kings River System and Fresno Slough as fully appropriated year-round. On November 24, 2021, MAGSA submitted a petition, and an accompanying application for a permit to appropriate water (A033259),

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

which requests that the State Water Board revise the FASS Declaration with respect to the Kings River to allow the Board to accept MAGSA's application, in accordance with California Code of Regulations, title 23, section 871.

MAGSA seeks to appropriate water from Fresno Slough and the James Bypass. The proposed diversion locations are within the geographic scope of the Kings River System identified as fully appropriated in the FASS Declaration. MAGSA cites the flood control function of the James Bypass and historical gauge data of flows in the James Bypass, amongst other items, as evidence that water is available for appropriation within the James Bypass and Fresno Slough. Based on this evidence and in consideration of the existing recommendation of the Division to the Executive Director dated May 26, 2020, the Deputy Director of the Division finds that the petition shows reasonable cause to conduct a hearing on the question of whether the FASS Declaration should be changed.

On December 9, 2021, the Division of Water Rights informed the AHO, via email transmittal, that it had received the MAGSA FASS petition and accompanying application. The email stated that the application form and petition materials were publicly available for viewing within the Board's e-WRIMS database.

On January 13, 2022, the Division of Water Rights transmitted a letter to MAGSA confirming receipt of the FASS petition and accompanying application. The letter informed MAGSA that the application will be retained and not accepted until the State Water Board acts in response to the petition in a manner which would make the application acceptable.

The Division of Water Rights also received a temporary permit application from MAGSA which appears to be a smaller version of the project described in A033259. The Division of Water Rights is currently processing the temporary permit application and does not recommend transfer of that matter to the AHO.

Kings River Hearing Background

In 2017, the State Water Board received two petitions to revise the Kings River's status in the FASS Declaration. On May 9, 2017, Consolidated Irrigation District, Alta Irrigation District, and Fresno Irrigation District filed a joint water-right application and a petition to revise the FASS Declaration. On May 25, 2017, Semitropic Water Storage District filed a water-right application and a petition to revise the FASS Declaration.

On July 2, 2018, Semitropic Water Storage District filed a complaint with the State Water Board in support of its petition to revoke or revise the Declaration (Semitropic Complaint). The Semitropic Complaint alleges that the Kings River Water Association and its member units: (1) forfeited, abandoned, or failed to perfect their water rights under Licenses 11517 and 11521 and any pre-1914 water rights that cover the same points of diversion, purposes of use, and places of use described in the licenses; and (2) are diverting water in violation of Water Code section 1052 and the terms and conditions of Licenses 11517 and 11521.

The Division determined that the petitions showed reasonable cause to conduct a hearing on whether the FASS Declaration should be revised. On May 26, 2020, the Deputy Director of the Division transmitted a memorandum to the Executive Director, which concluded that the hydrologic and water usage data submitted by the petitioners and other information contained in the record presented a possibility that Kings River water may be available for appropriation. The Deputy Director of the Division determined that there was reasonable cause to conduct a hearing on the question whether the fully appropriated status of the Kings River System should be revoked or revised, and recommended that the Board assign the matter to the AHO for hearing. On May 29, 2020, the Board's Executive Director transmitted a memorandum to the AHO that assigned the petitions to the AHO for further proceedings.

On October 29, 2020, the Deputy Director of the Division transmitted a memorandum to the Executive Director recommending that the Executive Director assign Semitropic's Complaint to the AHO for further proceedings with the already-assigned petitions because of common and interrelated legal and factual issues. The Executive Director assigned Semitropic's Complaint to the AHO for further proceedings by memorandum dated October 29, 2020.

The AHO is conducting a public hearing on the two pending petitions to revise the FASS Declaration and Semitropic's Complaint. The AHO held an initial phase of 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. MAGSA is a party to the pending proceeding before the AHO and participated in Phase 1A of the hearing.


The AHO has not yet held any portion of the hearing to address whether the Board should revise or revoke the FASS Declaration with respect to the Kings River system to allow the Division to accept the applications to appropriate water from the Kings River.

Recommendation for Assignment

I recommend that the Executive Director assign the MAGSA petition to the AHO for further proceedings so that the AHO can incorporate MAGSA's petition into the existing proceeding to address whether to revise or revoke the fully-appropriated status of the Kings River System.

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: March 2, 2022

SUBJECT: ASSIGNMENT OF MCMULLIN AREA GROUNDWATER
SUSTAINABILITY AGENCY'S PETITION TO REVISE STATUS OF
KINGS RIVER SYSTEM ON STATE WATER BOARD DECLARATION OF
FULLY APPROPRIATED STREAM SYSTEMS

The State Water Resources Control Board, Division of Water Rights (Division), recommended assignment of the recently-filed petition by McMullin Area Groundwater Sustainability Agency (MAGSA) to revoke or revise the Declaration of Fully Appropriated Stream Systems (FASS Declaration) with respect to the Kings River System to the Administrative Hearings Office (AHO) for further proceedings. The Deputy Director of the Division determined that MAGSA's petition shows reasonable cause to conduct a hearing on the question of whether the FASS Declaration should be changed.

I assigned two similar petitions to amend the FASS Declaration with respect to the Kings River System to the AHO in a memorandum dated May 29, 2020. The Division recommended that the AHO incorporate MAGSA's petition into this existing proceeding to address whether to revise or revoke the fully-appropriated status of the Kings River System. Based upon the Division's recommendation, I assign MAGSA's petition to the AHO for further proceedings.

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

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

Eileen Sobeck
Alan Lilly

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cc: Erik Ekdahl, Deputy Director, Division of Water Rights
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