
State Water Resources Control Board

NOTICE OF ASSIGNMENT

The State Water Resources Control Board
Administrative Hearings Office
has been assigned
the pending petitions for partial assignment of
State-Filed Applications 12919 and 12920
and
Water-Right Applications 12919C and 12920B of
**Mendocino County Russian River Flood Control and Water Conservation
Improvement District**

PETITIONS AND APPLICATIONS

On February 28, 2003, the State Water Resources Control Board (State Water Board) Division of Water Rights (Division) received petitions for partial assignment of state-filed Applications 12919 and 12920 and accompanying water-right Applications 12919C and 12920B from Mendocino County Russian River Flood Control and Water Conservation Improvement District (District).

The District seeks to appropriate water from the East Fork of the Russian River by direct diversion at Coyote Valley Dam and redirection of stored water from the west shore of Lake Mendocino. Application 12919C is for appropriation of 2,600 acre-feet for municipal, industrial, and domestic uses and Application 12920B is for appropriation of 3,400 acre-feet for irrigation, domestic, flood control, frost protection, and heat protection uses. The place of use for both applications include Lake Mendocino, Southern Mendocino County from Coyote Valley Dam to the county line in the Russian River Valley, and Redwood Valley. The water the District seeks to appropriate pursuant to these applications is in addition to 8,000 acre-feet of combined direct diversion and redirection of water stored in Lake Mendocino authorized under License 13898.

The Division issued a public notice of the petitions and applications on July 29, 2008, and received numerous comment letters and protests. The Division facilitated discussions between the District and the protestants to attempt to resolve the protests, but the parties were unable to reach agreement.

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

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

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. 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.

On March 5, 2021, Erik Ekdahl, Deputy Director of the Division of Water Rights, transmitted a memorandum (Attachment 1) to Eileen Sobeck, Executive Director of the State Water Board, recommending the State Water Board assign the pending petitions and applications to the AHO. On March 9, 2021, Ms. Sobeck transmitted a memorandum (Attachment 2) to Alan Lilly, Presiding Hearing Officer of the AHO, assigning, in whole, the petitions and applications to the AHO for further proceedings and an adjudicative hearing, pursuant to Water Code section 1112, subdivision (c)(2).

HEARING OFFICER AND HEARING TEAM; NOTICE OF STATUS CONFERENCE

Hearing officer Nicole Kuenzi, from the State Water Board's Administrative Hearings Office, will preside over any hearing in this matter. Other members of the AHO may be present and assist the hearing officer throughout these proceedings, with the exception of Alan Lilly, Presiding Hearing Officer of the AHO, who will not participate in this matter. No member of the AHO hearing team will discuss any substantive or major procedural issues, including any controversial procedural issue, regarding the petitions or applications with Mr. Lilly.

The AHO will issue 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 State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at:

http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

These rules regarding ex parte communications apply to all members of the AHO hearing team.

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 initial service list (Attachment 3) using information in the Division of Water Rights files for Applications 12919C and 12920B, 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 **May 28, 2021**. Parties do not need to send copies of these e-mails to representatives of the other parties.

After May 28, 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: May 4, 2021

SIGNATURE ON FILE
Nicole Kuenzi, Hearing Officer

Attachments:

- Attachment 1 – 2021-03-05 E. Ekdahl Memo to E. Sobeck
- Attachment 2 – 2021-03-09 E. Sobeck Memo to A. Lilly
- Attachment 3 – Service List

ATTACHMENT 1



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: March 5, 2021

SUBJECT: PENDING PETITIONS FOR PARTIAL ASSIGNMENT OF STATE FILED APPLICATIONS IN THE RUSSIAN RIVER WATERSHED AND ACCOMPANYING APPLICATIONS A012919C AND A012920B

The Division of Water Rights (Division) proposes assignment of pending petitions for partial assignment of state filed applications A012919 and A012920 and accompanying applications (A012919C and A012920B) filed by Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) to the Administrative Hearings Office (AHO) for further proceedings and an adjudicative hearing.

Background

State Filed Application A012919

State Filed Application A012919 has a calculated face value of 388,810 acre-feet per year. The following is a summary of the state filed application (as filed); partial assignments; and current status of the remaining portion of the filing.

STATE FILED APPLICATION A012919 (As Filed)

Table with 6 columns: Source Number, Source Stream, Rate of Direct Diversion (cubic feet per second), Season of Direct Diversion, Diversion to Storage Amount (acre-feet per year), Season of Diversion to Storage. Row 1: 1, East Fork Russian River, 550, 1/1 - 12/31, 200,000, 1/1 - 12/31

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

PARTIAL ASSIGNMENT: Permit 12947A (Application A012919A)

Source Number	Source Stream	Rate of Direct Diversion (cubic feet per second)	Season of Direct Diversion	Diversion to Storage Amount (acre-feet per year)	Season of Diversion to Storage
1	East Fork Russian River	92	1/1 – 12/31	122,500 combined with A012919B	1/1 – 12/31

PARTIAL ASSIGNMENT: License 13898 (Application A012919B)

Source Number	Source Stream	Rate of Direct Diversion (cubic feet per second)	Season of Direct Diversion	Diversion to Storage Amount (acre-feet per year)	Season of Diversion to Storage
1	East Fork Russian River	28	1/1 – 12/31	85,667 (licensed)	1/1 – 12/31

STATE FILED APPLICATION A012919 (Current Status)

Source Number	Source Stream	Rate of Direct Diversion (cubic feet per second)	Season of Direct Diversion	Diversion to Storage Amount (acre-feet per year)	Season of Diversion to Storage
1	East Fork Russian River	430	1/1 – 12/31	77,500	1/1 – 12/31

Petition and Accompanying Application for Partial Assignment of A012919

The Division noticed the District's petition and accompanying application on July 29, 2008. In Application 012919C, the District seeks to withdraw water from Lake Mendocino in addition to the amount authorized by Permit 12947B. The District asserts that the additional water requested by Application 012919C has not been assigned under state filed application A012919. The following description of the petition and Application 012919C was included in the public notice:

Summary of Petition to Acquire A012919 (Application A012919C):

Source:	East Fork Russian River tributary to Russian River thence Pacific Ocean
Point of Diversion:	NE ¼ of SW ¼ of Section 34, T16N, R12W, MDB&M
Point of Rediversion:	NW ¼ of NE ¼ of Section 27, T16N, R12W, MDB&M

Amount:	53 cubic feet per second (cfs) by direct diversion, with an annual limit of 2,600 acre-feet; existing 122,500 acre-feet per annum (afa) by storage in Lake Mendocino. [Permit 12947B (Application 12919B) authorizes direct diversion of 53 cfs and storage of 122,500 af. The combined direct diversion and rediversion of stored water under Permit 12947B shall not exceed 8,000 af. Application 12919C requests an additional 2,600 afa of combined direct diversion and rediversion of stored water.]
Season:	January 1 through December 31
Purpose of Use:	Municipal, Industrial and Domestic
Place of Use:	At Lake Mendocino and within Southern Mendocino County from Coyote Valley Reservoir to the County line in the Russian River valley and in Redwood Valley as authorized by State Water Board Order 79-15. The place of use is shown on a map on file with the Division of Water Rights.

State Filed Application A012920

State Filed Application A012920 has a calculated face value of 598,188 acre-feet per year. The following is a summary of the state filed application. The state filed application has had no previous assignments and has one pending petition for assignment (A012920B).

STATE FILED APPLICATION A012920 (Current Status)

Source Number	Source Stream	Rate of Direct Diversion (cubic feet per second)	Season of Direct Diversion	Diversion to Storage Amount (acre-feet per year)	Season of Diversion to Storage
1	East Fork Russian River	550	1/1 – 12/31	200,000	1/1 – 12/31

Petition and Accompanying Application to Acquire Portion of A012920

The Division noticed the District's petition and accompanying application on July 29, 2008. In Application 012920B, the District seeks to withdraw water from Lake Mendocino in addition to the amount authorized by Permit 12947B. The District asserts that the additional water requested has not been assigned under state filed application A012920. The following description the petition and Application 012920B was included in the public notice.

Summary of Petition to Acquire Application A012920 (A012920B):

Source:	East Fork Russian River tributary to Russian River thence Pacific Ocean
Point of Diversion:	NE ¼ of SW ¼ of Section 34, T16N, R12W, MDB&M
Point of Rediversion:	NW ¼ of NE ¼ of Section 27, T16N, R12W, MDB&M
Amount:	53 cubic feet per second (cfs) by direct diversion, with an annual limit of 3,400 acre-feet; existing 122,500 acre-feet per annum (afa) by storage in Lake Mendocino. [Permit 12947B (Application 12919B) authorizes direct diversion of 53 cfs and storage of 122,500 af. The combined direct diversion and rediversion of stored water under Permit 12947B shall not exceed 8,000 af. Application 12920B requests an additional 3,400 afa of combined direct diversion and rediversion of stored water.]
Season:	January 1 through December 31
Purpose of Use:	Irrigation, Domestic, Flood Control, Frost Protection, and Heat Control
Place of Use:	At Lake Mendocino and within Southern Mendocino County from Coyote Valley Reservoir to the County line in the Russian River valley and in Redwood Valley as authorized by State Water Board Order 79-15. The place of use is shown on a map on file with the Division of Water Rights.

Issues to be Considered by the Administrative Hearings Office

While staff have engaged extensively on this project 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, this matter would be aided by the AHO's expertise in conducting adjudicatory hearings and ensuring water rights matters are resolved in a timely manner. Therefore, the Division proposes to utilize the AHO to address the following issues and transmit a proposed order to the Board or, as delegated, to the Executive Officer or the Deputy Director for Water Rights, for consideration:

- 1) Whether the District seeks to continue to pursue the petitions for partial assignment of state-filed applications A012919 and A012920 and applications A012919C and A012920B.
- 2) Status of the petitions and accompanying applications including but not limited to:
 - a. Clarification of the amount of the partial assignments requested.
 - b. Preparation of a water availability analysis.
 - c. Preparation and finalization of environmental documentation.
 - d. Status of pending protests.
- 3) Whether the Board should approve the District's petitions for partial assignment of state-filed applications A012919 and A012920 and whether the Board should approve applications A012919C and A012920B in whole or in part.

If the District's petitions and accompanying applications remain pending after the AHO completes its proceedings, the Division will continue processing the petitions and accompanying applications in accordance with all applicable rules and regulations related to permitting. The AHO may also consider development of permits as part of the proposed order, in coordination with Division permitting staff.

Conclusion and Recommendation

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



State Water Resources Control Board

TO: Alan Lilly
Presiding Hearing Officer
Administrative Hearing Office

FROM: Eileen Sobeck
Executive Officer
State Water Resources Control Board

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

DATE: March 9, 2021

SUBJECT: ASSIGNMENT OF PENDING PETITIONS FOR PARTIAL ASSIGNMENT OF STATE FILED WATER RIGHT APPLICATIONS IN THE RUSSIAN RIVER WATERHSED AND ACCOMPANYING APPLICATIONS A012919C AND A012920B TO THE ADMINISTRATIVE HEARINGS OFFICE

The Division of Water Rights (Division) has recommended that the Board assign petitions for partial assignment of state filed applications A012919 and A012920 and accompanying applications (A012919C and A012920B) filed by Mendocino County Russian River Flood Control and Water Conservation Improvement District, to the Administrative Hearings Office for further proceedings and an adjudicative hearing. I have attached the Division's memorandum which summarizes the petitions and accompanying applications and recommends assignment to the AHO.

Based upon the Division's recommendation, I assign to the Administrative Hearings Office for further proceedings and an adjudicative hearing, in whole, the petitions for partial assignment of state filed applications A012919 and A012920 and accompanying applications (A012919C and A012920B), pursuant to Water Code section 1112, subdivision (c)(2).

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.

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

Eileen Sobeck
Alan Lilly

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March 9, 2021

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**

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Elizabeth Salomone
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Attorney for City of Ukiah

City of Ukiah
City of Ukiah Civic Center
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Berringer Blass Wine Estates
c/o Darren Cordova
MBK Engineers
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Sacramento, CA 95817
cordova@mbkengineers.com

National Marine Fisheries Service
Field Office
777 Sonoma Ave., Room 325
Santa Rosa, CA 95404

Department of the Army
San Francisco District, Corps of
Engineers
Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102

California Coastal Commission
45 Fremont St., Suite 2000
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Friends of the Eel River
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