State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, Ca. 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

PROTEST – (Applications & Petitions)

BASED ON ENVIRONMENTAL, PUBLIC INTEREST, or LAW CONSIDERATIONS
APPLICATION: 5634X01
PETITION FOR ASSIGNMENT OF STATE-FILED APPLICATION: 5634
PETITION TO CHANGE STATE-FILED APPLICATION: 5634

We, Foothills Water Network, Trout Unlimited, California Sportfishing Protection Alliance, South Yuba River Citizens League, Northern California Council Federation of Fly Fishers, Save Auburn Ravine Salmon and Steelhead, Friends of the River, Sierra Club, American Rivers, American Whitewater, Protect American River Canyons, Bob Center and Tributary Whitewater (collectively "FWN") have read carefully the August 26, 2016 notice (Notice), Application 5634X01, Petition for Assignment of State Filed Application 5634, Petition to Change State Filed Application 5634 (collectively, "Application"), and supporting documents of Nevada Irrigation District (NID or Applicant) to divert water from the Bear River for storage at various points in the Bear River watershed within Placer and Nevada County, as given in the Notice. A copy of the Notice is appended to this protest.

FWN and its members protest the Application on environmental, public interest and legal grounds because to the best of our information and belief the Application for water will:

(1) not be within the State Water Resources Control Board's (SWRCB) jurisdiction (X)
(2) not best serve the public interest (X)
(3) be contrary to law (X)
(4) have an adverse environmental impact (X)

Facts Supporting the Foregoing Allegation

I. Foothills Water Network Description and Interest in Proceedings

The Foothills Water Network[1] (FWN) represents a broad group of non-governmental organizations and water resource stakeholders in the Yuba River, Bear River, and American River watersheds. The overall goal of the Foothills Water Network is to provide a forum that increases the effectiveness of non-profit conservation organizations to achieve river and

[1] FWN is comprised of American Rivers, American Whitewater, California Sportfishing Protection Alliance, Friends of the River, Gold Country Fly Fishers, Northern California Council Federation of Fly Fishers, Protect American River Canyons, Save Auburn Ravine Salmon and Steelhead, Sierra Club, South Yuba River Citizens League and Trout Unlimited. FWN was formed to help conservation and recreation stakeholders understand and create solutions for the simultaneous and interlinked hydropower relicensings affecting the Yuba, Bear, and American river watersheds. In addition to established members of FWN, the business organization "Tributary Whitewater" and individual Bob Center join in this protest.

watershed restoration and protection benefits for the Yuba, Bear, and American rivers. FWN is interested in this proceeding because the proposed Project's alleged benefits will not justify the financial and environmental cost. Additionally, the proposed Project will likely affect other processes in which FWN is currently engaged and the outcomes that FWN seeks. Such processes include protest resolution discussions with NID in a separate proceeding regarding several change petitions and petitions for extension of time filed in 2009.[2] These discussions have been ongoing for several years and concern many different river reaches, including the Bear River below Combie Reservoir. It remains unclear to what extent the Application affects the scope and timeline of that proceeding. Additionally, FWN is a participant in the Federal Energy Regulatory Commission (FERC) process to relicense the Yuba-Bear (FERC no. 2266) and Drum-Spaulding (FERC no. 2310) projects (collectively "YBDS"). After many years of negotiation, relicensing participants including FWN reached agreement on most key issues, culminating in final 4(e) mandatory conditions filed in 2013. Parts of these conditions could be lost if a transfer to NID of BLM lands located in the footprint of the proposed Centennial Reservoir were to move forward as a collateral consequence of the Project; NID is actively pursuing such a transfer. FWN has a particular interest in protecting the agreed-upon benefits produced in the YBDS negotiation process. Such benefits include minimum flows below Rollins Dam and habitat enhancements for Foothill Yellow-Legged Frogs and other sensitive species.

II. Background

A. The Application and Petition

NID seeks the assignment of State Filed Application 5634 in order to gain appropriative diversion and storage rights. NID also filed a petition to change the place and purpose of use of State Filed Application 5634 to conform to its proposed Project.

NID proposes to divert up to 221,400 afy, including the storage of up to 110,000 afy in a new onstream storage facility that it plans to construct (Centennial Dam and Reservoir or proposed Project). NID proposes to convey water diverted at Centennial Dam down the Bear River to rediversion points at Combie Dam and Camp Far West Dam (CFW). From Combie Dam, water would be diverted by gravity to the various points of rediversion as authorized under NID's existing permits and licenses. From CFW, South Sutter Water District (SSWD) could divert water by gravity to the place of use identified in SSWD's License 11118. Additionally, Centennial Dam would become a point of rediversion for many of NID's existing water rights.

B. Centennial Dam (formerly Parker Dam) water rights history

Centennial Dam (formerly referred to as Parker Dam) was identified as a point of diversion in State Filed Applications 5633 and 5634 filed by the Department of Finance in 1927. It was via Water Right Application 2652 however, that NID first sought water rights to develop the Parker project. Application 2652, filed in 1921, was originally filed to create a reservoir on South Wolf

[2] FWN's 2009 protest concerns petitions for change and extension of time for Nevada Irrigation District's Water Right Permits 1481, 11626, 13770, 5815, 13772, 13773, 16953, 18608 and 19158 (applications 1614, 26528, 5193, 8180, 20017, 20072, 24983, 27132, 27s59) and licenses 12795, 8808, 8809, and 12798 (applications 1270, 1615, 6229, and 2372) in Nevada, Placer, Sierra, and Yuba counties.

Creek (Nevada County), but was amended in 1941 in favor of the Parker site.[3] Application 2652 was finally approved in 1958, concluding a 37-year process.[4] In the context of Application 2652, NID failed to demonstrate that Parker Dam was necessary[5] or that NID had plans to construct it.[6] The State Water Rights Board (Board)[7] held hearings that led to approval of application 2652. In these hearings, the Board considered that the then-current California State Water Plan (Plan)[8] included features on the Bear River for either Rollins Reservoir (or a suitable alternate) on the middle reaches of Bear River with a gross storage capacity of 100,000 af, or an expansion of Camp Far West reservoir. However, the Board did not find that the then-current Plan included the Parker project. The Board determined that the Parker project was at variance with the Plan; however, the Board approved the application because it had the support of the Department of Water Resources (DWR).[9] The Board issued Permit 11626, under Application 2652, to NID on December 4, 1958.

In 1962, NID requested to change Permit 11652 from the Parker site to the Rollins site. In hearings on whether NID had proceeded with due diligence to put Permit 11626 to beneficial use, it was noted that a report commissioned by NID in October 1958 indicated that the Parker project was "marginal" and no further planning on the project by NID was done past that time.[10] In further testimony, an engineer for NID noted that the Parker site was abandoned because the "Rollins reservoir site lends itself to a multi-purpose development more than the Parker site…."[11] The same witness also noted that the Parker site was complicated by the fact that the Bear River Canal parallels and adjoins it.[12]

Around the same time (circa 1941) that NID amended Application 2652 to include the Parker site, DWR sought an amendment to Application 5634. The amendment to Application 5634 also added a point of diversion at the Camp Far West site. On May 27, 1941, the DWR noted that the 1930 State Water Plan decided to locate the "dam for the reservoir on the Bear River at the Camp Far West site instead of at the Parker site."[13] The letter noted that the state was interested in preserving water for development "at the Parker and Camp Far West sites" or at the "Camp Far West site alone."[14] Later drafts of the State Water Plan also omit any reference to Parker Dam.

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[3] D-474.

[4] Id.

[5] D-55.

[6] D-474.

[7] The State Water Resources Control Board was formed in 1967, incorporating the functions of the State Water Rights Board. "Board" in this document also refers to the State Water Resources Control Board for actions that occurred beginning in 1967.

[8] D-914; *See also* Bulletin No. 3, Department of Water Resources, May 1957.

[9] D-914.

[10] *See* transcript of hearing before State Water Rights Board in the matter of Permit 11626, February 14, 1963 (hereinafter "Transcript") pp. 42-43, noting that the report was prepared by Ebasco consultants in 1960 and it concluded that Parker was marginal.

[11] Transcript, p. 13.

[12] Id.

[13] May 27, 1941 letter from Frank Clark, Director of Public Works to Honorable George Killian, Department of Finance. *See also* Bulletin No. 25, Report to Legislature of 1931 on State Water Plan. (1930) p. 91 noting the proposed surface storage unit for the Bear River is Camp Far West.

[14] Id.

From the time the Parker site was listed as a point of diversion in State Filed Application 5634 in 1927, through the time NID sought to amend permit 11626 to change its project site from Parker to Rollins in 1962, several parties expended significant resources to evaluate the suitability of the Parker site for a storage project. For instance, the Bureau of Reclamation (BOR) applied for a loan to complete core drillings and to purchase the Parker Dam site.[15] In addition to the land purchase, BOR expended $90,000 towards evaluating the project.[16] In hearings held to determine whether or not NID had exercised due diligence in putting water to beneficial use under permit 11626, NID noted that it too expended resources acquiring most of the Parker site and evaluating its suitability for a reservoir.[17] Despite this investment, no party ever pursued the Parker site, and NID actively abandoned it in 1962.

On September 17, 1959, DWR executed a release from priority of application 5634 in favor of application 14804 held by South Sutter Water District for the Camp Far West Project. NID had requested on August 14, 1958 that DWR not release any filings (including State Filed Application 5634) that could affect future development of projects on the Bear River, which at the time included Parker (soon to be changed to Rollins).[18] The release was ultimately granted, subject to a reservation of water "as may be necessary for the development" of a county of origin.[19] This general reservation was included by DWR on the recommendation of the California Water Commission to include a provision that reserves water for the "reasonable needs" of the counties of origin.[20]

III. The Application and Petition should be Denied

Water Code §§ 1250-1258 set forth the general requirements for Board decisions regarding a water rights application. These code sections require in part that the Board determine that granting the application is in the public interest, and that the appropriation if granted will protect instream resources, will be consistent with applicable water quality control plans, and will be consistent with the California Water Plan.

The Water Code establishes a particular framework for how the Board must make decisions on applications for assignments of state filings. Water Code § 10504 states: "The board may release from priority or assign any portion of any application filed under this part when the release or assignment is for the purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law."

At the heart of state filings is the concept that water should be reserved to the state to facilitate development that is consistent with coordinated plans. Water Code § 10500 states: "The department shall make and file applications for any water which in its judgment is or may be

[15] *See* D-914 p. 6-7.
[16] Id.
[17] Transcript, pp. 39, 43.
[18] Presentation of NID re Disposition of state filings number 5633, 5634, and 10221. August 14, 1958.
[19] Release from Priority by the Department of Water Resources to the South Sutter Water District of Application Nos. 5633 and 5634 in Favor of Application No. 14804. September 17, 1959.
[20] Resolution No. 46. California Water Commission. October 3, 1958.

required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state."

Water Code § 10505.5 geographically restricts the use of water assigned under a state filing:

> Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board, shall be amended to provide, and any permit hereafter issued pursuant to such an application, and any license issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is necessary for the development of the county.

In addition, the standard of review for change petitions requires absence of harm to other legal users (and, we would argue, uses) of water. Section 1702 of the Water Code states: "Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

The California State Water Plan (Plan), since its first iteration in the 1920's, has served as the state's main document for recording its water management goals. Subsequent drafts of the Plan have shown the State's evolving water management priorities. Recent versions have seen focus shift toward integrated projects that serve multiple purposes and produce better cost value. Watershed-wide management plans (such as integrated regional water management plans) have followed suit. State reports by DWR as early as 1974 note that "future large-scale surface water development…in California face significant obstacles," that "[t]he number of desirable storage development sites is rapidly diminishing," and that future demand in large part should be met by "more effective water management practices."[21] These statements ring even more true today. Updated plans recognize the challenges of a new era facing drought conditions, population growth and climate change, and also recognize the need to invest dollars wisely.[22]

Approval of the assignment of State Filed Application 5634 would be at odds with the purpose behind the state filings and the direction of modern state water planning. NID has resurrected the long discarded, marginal Centennial Dam project, sheening it with false platitudes regarding its purported ability to address drought and climate change, and hoping to mask its large price tag and questionable benefits. In fact, the Centennial Dam project makes less sense now than it did in 1941 or 1958, or at any of the other instances over the last century when it was considered and ultimately rejected in favor of more beneficial projects.

A quick review of its history as described above shows that the Parker site was continually dismissed as a viable project. It was routinely omitted from state water planning documents.

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[21] Bulletin No. 160-74. Water Plan Outlook in 1974. Department of Water Resources. November 1974. p. 75.

[22] *See* Bulletin 160-74 California Water Plan Update, Volume 3. 2013, p. 14-7 noting that new surface storage projects hold the greatest potential for locations that "have a shorter list of water management strategies available to meet local needs." Additionally, it notes that "[m]ost of the best natural reservoir sites in California have already been developed…." p. 14-10.

The State Filed Application was amended in 1941 because the 1930 state water plan decided to locate the "dam for the reservoir on the Bear River at the Camp Far west site instead of at the Parker site." At that time, state officials noted the possibility that they would just proceed with the Camp Far West site in the Bear River.[23] The 1957 version of the State Water Plan (the most fully formed and ambitious version of the Plan) included as priorities for the Bear River only the Camp Far West expansion and the development of the Rollins project, but not the Parker project.[24] No subsequent version of the Plan has included the Parker site. On the contrary, all documents suggest that the DWR effectively abandoned the Parker reservoir idea. The Bureau of Reclamation followed suit in 1957 when it failed to move on the project after conducting some evaluation studies. And, of course, NID officially abandoned the project in 1962 following evidence that other sites on the Bear River were more suitable for multi-purpose projects and that the Parker project was marginal.

The fact is that the worthwhile reservoir sites on the Bear River have all been developed. The main surface storage projects for the Bear River that were envisioned in the California Water Plan have been constructed. Prior to the construction of Rollins, and during proceedings considering its expansion, there was significant debate surrounding whether or not there was sufficient water for both the Rollins project and to fully meet the needs of downstream water users.[25] And that was without an additional proposed reservoir in the mix.[26]

Any additional reservoir on the Bear River utilizing State Filed Application 5634 would also be subject to the priority of SSWD's water right for the Camp Far West project unless it can be shown that it is necessary for the development of the county of origin. At present, this claim as it relates to the Centennial project is unsubstantiated. Available information suggests that the Centennial project may in fact be an expensive mechanism to maintain the existing discretionary decisions of Placer and Nevada counties, not to facilitate additional necessary development.

Yet, almost 55 years after NID rejected it, the Parker project is reborn with a new name and a shiny new justification. Alas, the previous realities remain. It is a marginal project. Its purported benefits could best be achieved by other means. It would significantly impact environmental resources and is against the public interest. It is contrary to law. It is inconsistent with modern water management planning strategies. It is not necessary for the development of any county of origin. It is not a viable strategy to combat the effects of climate change. For these reasons and others discussed more fully below, the Application and Petition should be denied.

[23] May 27, 1941 letter from Frank Clark, Director of Public Works to Honorable George Killian, Department of Finance.
[24] Bulletin No. 3, Department of Water Resources, May 1957.
[25] *See* Transcript p. 63 where NID expert testimony noted that if Rollins was subject to the priority of SSWD that "it would be extremely damaging to the yield at Rollins." SSWD witness testimony noted SSWD deficit would increase with Parker or with Rollins projects. Transcript pp. 129-135.
[26] It was noted in hearing that the "deficit" to SSWD was greater with a reservoir constructed at the Parker site as compared to the Rollins site. Transcript, p. 134.

IV. The Extent of Board Jurisdiction over the Project is Unclear

Currently, the Project description supplied by NID in its Application is vague. This makes it difficult to discern the extent to which the Project is jurisdictional to Federal Energy Regulatory Commission (FERC). Clearly this ambiguity extends to questions relating to the scope of the Board's jurisdiction over the Project. NID has been clear in its intent to add hydropower to the proposed project "at a later time," in which case the proposed Project would be jurisdictional to (FERC).[27] Since it is reasonably likely that NID would install hydropower facilities at the new Centennial Dam or on tunnels or other conduits that lead to or from this dam, the Application and supporting DEIR must describe these facilities now to ensure adequate analysis of the impacts of the proposed Project and to inform these jurisdictional questions.

Using information currently available, it appears that the proposed Project is likely to be jurisdictional to FERC under most scenarios. Even if NID plans to delay construction or opts not to construct new power facilities, the proposed Project is still jurisdictional to FERC if it is otherwise used to facilitate hydropower production at existing sites, including changes to the flow regime in the Bear River downstream of Rollins reservoir and the intake to the Bear River Canal, and/or the facilitation of peaking operations in this river reach. Statements made by NID to date support the assumption that the proposed Project would be used for these purposes.[28] In this case, a FERC license amendment to the Yuba-Bear Project would be required.

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[27] NID engineer Doug Roderick on radio station KNCO on 2/9/15 saying the project has 2 hydro plants and that hydro would be the main funding source. http://knco.com/nid-launches-centennial-reservoir-website/

Remleh Scherzinger, presentation to Nevada County Board of Supervisors, November 10, 2015, item 18. For video, see http://nevco.granicus.com/MediaPlayer.php?view_id=3&clip_id=6448. In providing the project description, he stated there would be "… three power units – we anticipate two at Centennial and then building the second power unit at Rollins. That unit has been 30% designed. It was contemplated in the 80's and so we have a lot of that work already done, so we are going to bring that one forward." (Slide 18: "Project Description).

"NID plans on adding a second Rollins powerhouse and then putting in 30+ megawatts hydropower at a later date at Centennial Reservoir." Remleh Scherzinger, presentation to Placer County Water Agency Board of Directors, May 9, 2016. PCWA Board minutes May 9, 2016, p. 70.
https://www.pcwa.net/files/Minutes/2016/05-09-2016_Minutes.pdf

Remleh Scherzinger, in NID Board Minutes for 12/10/14, p. 310. "With regard to the environmental document, he anticipates that the District will complete a National Environmental Policy Act (NEPA) document because the project "will have access to Federal funding and will involve hydroelectric power."
http://nidwater.com/wp-content/uploads/2015/01/Wk-Copy-of-Minutes-12-10-2014.pdf

[28] NID General Manager Remleh Scherzinger interview Grass Valley Union, August 30, 2014: "NID officials say the advantage of building a new reservoir in the middle of two existing reservoirs is flexibility, both with water releases and with the hydroelectric power grid. For example, if the district needs more power to balance the grid at the hottest times of the summer day — from 1 to 4 p.m. — NID could release water from Rollins downstream to Parker. "We can dump from one to another and still not lose the water to Combie," Scherzinger said. "It's fantastic." http://www.theunion.com/news/12801466-113/nid-parker-reservoir-scherzinger

Remleh Scherzinger, NID General Manager, during Q& A with the Nevada County Board of Supervisors on 11/10/15 Item #18. Mr. Scherzinger explained he has been talking to the CA Water Commission about sediment removal being part of the regulations, and then stated he thinks inclusion of hydroelectric should also help: "…Is the installation of hydroelectric power on the facility. While chapter 8 does not specifically address hydroelectric energy as one of the boxes to be checked on whether a project should go or not go, or get funded or not get funded,

If the Project is jurisdictional to FERC, then some degree of federal preemption may apply. Application of state water right law to federally licensed hydropower projects is subject to preemption except as appropriate for regulation and protection of proprietary rights. *CA v. FERC,* 495 U.S. 490, 491 (1990)*; Sayles Hydro Assocs. v. Maughan,* 985 F. 2d 451, 454-456. States are not preempted from regulating non-hydropower uses of water in multiple-use projects that also generate power under FERC licenses. *County of Amador v. El Dorado County Water Agency,* 76 Cal. App. 4th 931, 961-962 (1999). Additionally, state and federal agencies have defined jurisdiction over hydropower projects that qualify for FERC license "exemptions." It is impossible for the Board (and all other interested parties) to understand their legal responsibilities and opportunities without resolution of the jurisdictional questions.

Whatever the extent of the Board's jurisdiction over the Project may be, NID must apply to the Board for power rights if NID plans to construct power generation facilities attached to the new water supply facilities. If applicable, NID should submit a water rights application for power generation promptly.

V. The Proposed Application Does Not Best Serve the Public Interest

Notwithstanding whether NID can demonstrate that it has proper claim to State Filed Application 5634 as a county of origin, the Board still must consider whether assignment of the application and approval of the changes requested under NID's associated petition will best develop, conserve, and utilize in the public interest the water being sought. Water Code §§ 1253, 1255, 1257. As discussed below, it is clear that the Centennial project will harm and will not best develop, conserve, and utilize in the public interest the water resources of the Bear River.

A. County of origin status is not carte blanche for granting assignment

The Board cannot assign a State Filed Application without finding that the requirements of Water Code § 10505 *et seq*. have been met. Section VI of this protest, *infra*, contains significant discussion concerning whether the Board can legally make the required findings for this Application.

The Board, however, has an obligation beyond the requirements enumerated in § 10505 *et seq.*: mainly to consider whether approval of the Application will best develop, conserve and utilize in the public interest the water being sought. The Board must consider not only whether Applicant has demonstrated county of origin status, but whether it has demonstrated that it has a worthwhile project that will further the public interest. NID's application fails to pass this test.

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given that the Governor just signed his 50% renewable goal by 2020, it should at least get a bell ring, you know we should get a gold star or something because projects like ours and honestly like Sites will generate additional hydroelectric energy. Now our project we anticipate generation under 30 megawatts so we'll fall into the renewable power supply, so we are renewable which is again fantastic. The project brings so many benefits to the community and the district's sphere which is Placer, Nevada and Yuba counties. This is a really good thing." http://nevco.granicus.com/MediaPlayer.php?view_id=3&clip_id=6448

Centennial Dam is a long-discarded marginal project that would do little to meaningfully address drought or climate change. It would, however, seriously harm environmental and public trust values. It is not in the public interest to assign a State Filed Application to an entity for a questionable project that is at odds with the purpose behind the state filings: broadly stated, to ensure coordinated development of the State's water resources. Sections II and III, *supra*, discuss in more detail how this Project has been repeatedly considered and rejected over the last century in favor of more beneficial projects. It is not in the public interest to assign priority water rights reserved for the coordinated development of the state's water resources to an entity for a subpar project that would do little to address the pressing water management challenges of today.

B. Approval of the Application would unravel substantial benefits achieved through FPA § 4(e) conditions in the Yuba-Bear/Drum-Spaulding relicensing

Approval of the Application would eliminate the benefit of the flow regime for the Bear River that FWN and numerous other parties negotiated in the YBDS relicensing. Most of the "Rollins Reach" of the Bear River would be inundated by Centennial Dam. In addition, Centennial Reservoir is likely to be used as an afterbay to facilitate peaking operations for the hydropower facilities at Rollins Dam. Such use is outside the scope of operations considered in the existing YBDS FERC license, the Federal Power Act section 4(e) conditions (16 U.S.C. § 797(e)) for the new YBDS FERC license, and the analysis in the FEIS for the relicensing of the Yuba-Bear, Deer Creek, Drum-Spaulding, and Lower Drum hydroelectric projects.

Additionally, NID has actively sought federal legislation that would mandate sale of Bureau of Land Management (BLM) land at the Centennial Dam site to NID. Such a change of ownership, if completed, could affect the regulatory authority of BLM over the Yuba-Bear Hydroelectric Project and would eliminate the potential section 4(e) conditioning authority of BLM over any new hydropower facilities attaching to the proposed Project.

It is not in the public interest for the Board to assign water rights to NID that would nullify eight years of work by diverse stakeholders insofar as they negotiated in good faith a flow regime in the Bear River downstream of Rollins Reservoir. It is also not in the public interest for the Board to assign water rights that would provide political impetus for the transfer of land from a public land management agency to facilitate a water development project. And it is not in the public interest for the Board to provide political impetus for NID to pre-emptively reduce its regulatory requirements for the proposed Project through the forced sale of BLM land.

C. The Project would unravel land use commitments of the Stewardship Council

Earlier this year, the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) approved a conservation easement transaction that will conserve in perpetuity land adjacent to the Bear River "for beneficial public values (BPV)". NID's proposed Centennial Dam would flood the entire 50 acres of Parcels 871 and 879 covered by this conservation easement.

The goal of the Stewardship Council is to "preserve and/or enhance the existing environmental and economic benefits of the watershed lands... ." (Stewardship Council Land Conservation Plan Vol. 1, 1.2.4) At its September 21, 2016 meeting, the Pacific Forest and Watershed Lands Stewardship Council Board of Directors adopted the following resolution:

- That the board approve the proposed Land Conservation and Conveyance Plan (LCCP) for lands to be retained by PG&E at the Lower Drum (Upper Pinecroft) planning unit, which LCCP describes how the proposed conservation easement transaction conforms to and fulfills the requirements of the 2003 Settlement Agreement and Stipulation.
- That the board approve the proposed conservation easement funding agreement between the Stewardship Council and Placer Land Trust.[29]

As noted above, NID's proposed Centennial Dam would flood the entire 50 acres of Parcels 871 and 879 covered by the conservation easement. In addition, the Project will impact remaining acres within the planning unit that have been recommended for donation to the Auburn Area Recreation District and to Placer County, would also be impacted. Rather than preserve and enhance the existing Bear River watershed lands and its designated "Beneficial Public Values," NID's Centennial project would destroy existing fish, wildlife and plants; the mixed woodland forests; the viewshed; the outdoor recreation, including portions of a heavily used public campground and trails; and numerous historical and tribal sites all native to this riverine reach and subject to the conservation easement.

D. The Board and NID should prioritize water use efficiency over new construction

Assignment of a state filing, like the granting of any water right application, requires that the applicant exercise diligence in constructing the project and putting water to beneficial use. It would create a regulatory requirement to develop water even when such development is not needed within the county of origin and is not cost efficient. It is likely to create competition for limited resources between new construction and responsible maintenance, use, and upgrades of existing facilities.

NID holds abundant supplies of surface water. NID currently holds water rights that allow diversion of over 400,000 acre-feet of water per year, yet NID uses this supply inefficiently. It is clearly in the public interest to maximize the use of existing resources and infrastructure before developing new sources of supply. The following sections highlight inefficiencies in NID's current water management.

1. *Inefficient demand-side urban water use*

NID's per capita consumption of urban water is one of the highest in the state, over 250 gallons per day. NID was subjected to the highest level of mandated conservation during the 2014-2015 drought emergency: a 36% mandated savings ceiling imposed by the Board. During the 2012-

[29] Stewardship Council September 21, 2016 Board Meeting Presentation available at http://www.stewardshipcouncil.org/public_information/board_meetings.htm#minutes.

2015 drought, NID did not implement active conservation programs such as toilet or washing machine rebates, landscape irrigation incentives or turf replacement, or modern advanced metering technologies, etc. NID instead relied on passive public education programs to meet the mandated goal. Unsurprisingly, NID did not meet its goal and paid the required fine for its water conservation deficiency. NID did not sign the California Urban Water Conservation Council Memorandum of Understanding and still has not fully implemented any active best management practices for urban water conservation, relying on its basic level of passive public education. With average rainfall last year, NID declared that it had a three-year supply on hand and ended any mandated requirements for conservation.

2. *Inefficient supply-side and demand-side agricultural water use*

NID currently delivers about 130,000 AF of water for consumptive purposes annually, of which "agricultural" demand makes up approximately 115,000 AF. NID delivers is raw water through a 400–mile-long network of open ditches. NID bills its raw water by the "miner's inch." This system of conveyance and measurement reaches back well over 150 years to the Gold Rush. In those 150-plus years, the culture has gone through major shifts, from mining to tree-and-vine agriculture until World War I, then from sheep and cattle grazing during much of the 20th century to today's real estate market. During these major historical shifts, the system has changed little.

Today, NID delivery of untreated ditch water has multiple systemic inefficiencies, which include conveyance losses and evaporation, imprecise measurement and metering, and outdated customer profiles and rate structures. In addition, NID has failed to promote and invest in demand side-efficiencies for both commercial and non-commercial raw water customers.

a. Conveyance losses

While overall raw water delivery losses are estimated at close to 15%, canal leakage varies from 10-30% on any given reach of canal. NID's canals are mostly unlined. Spills at the end of canals are not electronically monitored, but are regulated by ditch tenders in the same way as was done over a century ago. Additionally, evaporation is a significant source of water loss in open ditch systems.

b. Measurement/metering.

The only system of raw water metering in use by NID is sale by the miner's inch, which from mid-April through mid-October delivers a steady flow of 11.22 gallons per minute, 16,157 gallons per day, or about 18.10 acre feet per year. With this system, customers have no incentive to even limit delivery flow to times of need, but instead allow full flow 24 hours a day/7 days a week.

c. Customer profiling.

NID considers the several thousand customers who draw from this block of 115,000 AF of water all to be "agricultural" customers. The District makes no distinction between commercial agriculture and non-commercial users whose needs are largely for recreational livestock and

rural landscaping. The vast majority of NID's raw water deliveries are to non-commercial customers.

d. Valuation of water.

The valuation of water is the same between the above disparate categories. No conservation pricing or incentives for best management practices are applied to the delivery of "agricultural" water, and no pricing distinctions are made between commercial and non-commercial uses.

e. Demand-side management.

NID has no program for water efficiency on the demand side of its agricultural ditch water system. No customer incentive program or conservation pricing exists for efficient irrigation. No program exists to limit water delivery to times of need or time of use.

f. Supply-side inefficiencies.

NID has not used its existing storage facilities to their maximum capacity, primarily due to sedimentation and subsequent loss of storage capacity. While NID has done a pilot sediment removal study using state-of-the-art mercury recovery in sediment removal, it has not implemented the program to scale for either Combie Reservoir or Rollins Reservoir on the Bear River. Supply enhancement opportunities may exist for Rollins Reservoir by raising the dam. NID has also studied raising other dams in its system, and further enhancements may be possible through partnerships to raise dams both upstream with PG&E and downstream with South Sutter Water District. Subject to positive environmental and feasibility review, it is in the public interest to evaluate optimization of existing storage facilities before developing new ones.

E. Recreation

It is not in the public interest to remove public access and recreational opportunities on one of the few remaining riverine reaches of the Bear River. Centennial Dam would inundate the Bear River Campground, resulting in a loss of 250 acres of public land that currently provide an extensive network of public hiking trails, free river access and family camping. Placer County residents and nearby low-income communities would no longer be able to have easy access to the river. A six-mile whitewater boating run would be destroyed, along with stream fishing and gold panning opportunities.

F. Climate Change

NID promotes Centennial Dam as a facility that will mitigate the effects of climate change. However, NID has been very selective and unscientific in its analysis supporting this claim. It is in the public interest to address climate change issues using the best available science when planning for the future.

NID's analysis that supports the hypothesis of project benefits under climate change is limited to the issue of snowpack. With increases in temperature, the Sierra snowpack will be reduced. NID asserts that it currently relies on snowpack for approximately 120,000 AF of storage, which it

uses in the summer for deliveries. Because that volume of water will fall as rain rather than snow in the globally warmed future, NID asserts that it needs a new reservoir to store that 120,000 AF of lost snowpack storage. However, NID currently has rights to over 400,000 AF of water, presently has 289,000 AF of reservoir capacity, and yet has annual demand of only 130,000 AF from its existing customer base. NID fails to establish that snowpack losses will affect its ability to fully meet its current demand.

NID states that the purpose of the reservoir would be to capture the rain that had previously fallen as snow. However, the water rights for which NID seeks assignment are Bear River water rights. The watershed of the Bear River is a low elevation watershed, narrowing as it reaches its highest elevation point of 4500 feet. United States Forest Service (USFS) has stated that snowline over the past several decades has receded from 3500 feet to 4500 feet. So, according to USFS, the entire Bear River watershed is below the snowline, and even in today's conditions does not develop a snowpack that lasts into late spring, much less the summer months. If NID is proposing Centennial Reservoir as a climate change mitigation for snowpack loss, it simply will not work, since there is no snowpack loss to mitigate.

It is not clear if NID intends to store Yuba River watershed snowpack offstream in Centennial Reservoir (which is, of course, onstream the Bear River). Currently, NID is limited at Rollins reservoir to storing no more than 18,000 AF of Yuba River water. NID has indicated in a number of public meetings that its intention is to move water from their upper system (Yuba watershed) for storage in Centennial in the lower system (Bear watershed). NID needs to clarify the purpose of Centennial Reservoir and identify the source(s) of water that may fill it.

NID has singled out one element of the effect that climate change may have on watershed yield. The NID prediction assumes that precipitation levels will not change in the future. Climate change scenarios, however, vary from 15-20% more precipitation to 15-20% less precipitation, with the most recent scenarios pointing toward the leaner side. Soil moisture content is emerging as equally important a variable as precipitation for watershed yield. Changes in the patterns of precipitation are now being predicted that dwarf predictions of reduced precipitation. Storm patterns are predicted to move further toward the poles, bringing semi-tropical arid climates further into Mediterranean and temperate climate zones, and resulting in mega-droughts with precipitation reduction of 40% and more. Tree ring historical analysis shows that this pattern occurred in the 35-year mega-drought referred to as the "medieval era anomaly." Other factors are now being understood that significantly affect watershed yield under conditions of global warming, such as snow sublimation, increases in evapotranspiration, reduction of dormant season and longer growing season, increased evaporation levels, increased levels of biomass, and amplification from yet-to-be-understood feedback loops. Until the full picture can be understood, it is unscientific and therefore not in the public interest to pick one element of climate change (like snowpack loss), make a prediction of conditions amid climate change uncertainty, and build a protection strategy around that single element.

VI. The Proposed Application is Contrary to Law

NID seeks an assignment and modification of State Filed Application 5634. The requested assignment and modification raises significant issues of law, discussed below. These issues cast

doubt over whether the Board can legally assign State Filed Application 5634 to NID for the Centennial project.

A. Source of water

NID seeks an assignment of State Filed Application 5634 for water sourced in the Bear River. However, it appears that Centennial Reservoir would primarily capture water that NID had previously exported from the Middle Yuba River or that PG&E had previously exported from the South Yuba River.[30] While use of Yuba River water may be necessary to fill an additional reservoir on the Bear River, Application 5634 lists only the Bear River as a source. State Filed Application 5634 was filed by the state prior to much of the infrastructure and authorizations that facilitated the now-extant export of Yuba River water to the Bear River. The State Filed Application does not authorize use of water imported to the Bear River even if modern infrastructure would physically allow such use.

NID needs to demonstrate that water from the Bear River will be available for appropriation. While NID claims that the mid-elevation location of the proposed Centennial Reservoir would capture locally sourced water from rain runoff events, NID has not quantified the amount of water from the Bear River that the proposed Project would capture under changed climate and future runoff conditions.

NID is currently undergoing a separate process involving petitions it filed in 2009 with the State Board to line up many of its existing water right permits with NID's actual uses and practices. FWN is a protestant to this separate process. FWN has not contested the propriety of NID's effort to line up its existing permits with actual practice.[31] However, the Board has no legal basis to extend NID's 2009 effort that seeks in part to acknowledge NID's actual operations to NID's separate effort to assign a 1927 priority date to a wholly new facility whose source water would be different than the source that the state reservation specifies. If in fact water to fill Centennial Reservoir would be sourced in whole or in part from the Yuba River, the Board should deny assignment State Filed Application 5634, and require NID to file a new application with a present-day priority date.

B. County of Origin

Pursuant to county of origin statutes, the Board may assign Application 5634 to NID if such assignment is necessary for the development of the county(ies) in which the water originates (in this case Nevada and/or Placer). Water Code § 10505. However, NID's claim that assignment of State Filed Application 5634 to Centennial Reservoir is necessary for the development of the counties of origin lacks foundation. Available information suggests on the contrary that assignment to NID is not necessary for the development of the counties of origin. Rather, such

[30] This is consistent with a similar analysis that the Board conducted regarding Rollins reservoir. The Board file for Application 5634 contains staff communications noting that Don Kielen found in 1978 that a significant portion (40,000 acre/feet out of the total 60,000 acre/feet of capacity) of the water collected to storage in Rollins was sourced in the South Yuba River. This practice did not seem to be authorized at the time, because the only right to storage of South Yuba River in Rollins was via water right permit 13772 for 18000 afa.

[31] FWN's protest of the 2009 petitions generally concerns impacts to public trust resources.

assignment would enable NID to maintain the existing discretionary social priorities attached to existing water use within the District while allowing equally discretionary development of the Lincoln area (Placer County).[32] Development of the Lincoln area would attach at least as much to housing to support the workforce for the City of Sacramento as it would to the development of Placer County, let alone Nevada County. In addition, Lincoln is in the Auburn Ravine watershed, not the Bear River watershed.

If development of the Lincoln area were essential to Nevada and Placer counties, NID could easily make the choice to reduce existing raw water uses in favor of suburban or urban development. It could do so at a monetary and resource cost far less than the cost of building and operating a new reservoir on the Bear River. The fact is that large portions of Nevada and western Placer counties remain semi-rural as a lifestyle choice, and real estate in these semi-rural areas are marketed to meet this lifestyle choice. New water that might become available through construction of Centennial would be as much to maintain the viability and reliability of existing non-commercial raw water deliveries as it would be necessary for "development." NID wants to build a new reservoir so that Nevada and western Placer counties can have their cake and eat it too.

NID relies on unsubstantiated demand projections of future growth. For example, NID projects agricultural water use to increase 50% by 2040. In contradistinction, the U.S. Geological Survey projects no increase in agricultural water use in Nevada and Placer counties through 2062. To estimate population growth, NID uses an annual growth rate of 2.5%, whereas historical average for years 2010-2015 was 0.5%.[33]

NID has traditionally not sold surplus water to purchasers outside of NID's service area other than South Sutter Water District (SSWD). However, NID is apparently contemplating selling water developed from the Project.[34] Recent NID plans note that "[t]he District is currently considering planned water exchanges on either a short term or long term basis."[35] As quoted above in Section III above, Water Code § 10505.5 explicitly precludes use of water outside the county of origin.

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[32] "Now you can ask the question of whether or not it's in the best interest to have development in the Lincoln area, as far as NID is concerned, NID is actually somewhat agnostic on that issue--we are neither pro-development or anti-development. That's Lincoln's problem. We have a duty to serve water to people within our district and that is what we intend to do. The question that I think is kind of implicit in that last question is that this will result in an increase in water deliveries and perhaps a reduction in water served in this area. And those are not true, so that the water balance remains the same and will Centennial water go to Lincoln? Of course it will because that's the flow pattern. Is Centennial necessary to serve Lincoln? Absolutely not." Nick Wilcox, NID Board Member, Presentation to Sierra College, February 19, 2016.

[33] *See* NID 2015 Urban Water Management Plan (UWMP) http://nidwater.com/wp-content/uploads/2016/06/NID2015_UWMP-6-01-16.pdf ; *see also* USGS agricultural water use projection http://iopscience.iop.org/article/10.1088/1748-9326/11/5/054018/pdf page 9; *see also* NID UWMP section 2.3 http://nidwater.com/wp-content/uploads/2016/06/NID2015_UWMP-6-01-16.pdf.

[34] NID 2015 Agricultural Water Management Plan; Brown and Caldwell, Section 4.3.4: Exchanges and Transfers http://nidwater.com/wp-content/uploads/2011/12/FINAL2015_Agricultural_Water_Mgmt_Plan_012916.pdf

[35] Id.

C. South Sutter Irrigation District Release from Priority

NID is seeking through this assignment water rights that would be senior to those of many major water rights on the Bear River. However, on September 17, 1959, DWR executed a release from priority of State Filed Application 5634 in favor of application 14804 held by South Sutter Water District (SSWD) for the Camp Far West Project expansion. The release was subject to reservation of water "as may be necessary for the development" of a county of origin. This general reservation was included by DWR at the recommendation of the California Water Commission to include a provision that reserves water for the "reasonable needs" of the counties of origin.

NID proposes that the Centennial project would serve the development of Placer and Nevada counties. As discussed above, the Centennial project should likely be viewed instead as an expensive mechanism whose primary purpose is to maintain the existing water uses in the counties, not to facilitate additional "necessary development." Consequently, the proposed Project does not appear to serve a "reasonable" need. As discussed in the "Public Interest" section, *supra*, there are several other strategies that NID could employ with less environmental and fiscal consequences to serve the existing and reasonable future needs of the counties.

D. Water Quality Control Plan

A state filed application can be assigned when the release is for the "purpose of development not in conflict with water quality objectives established pursuant to law." Water Code § 10504. The existing Bay-Delta Water Quality Control Plan (WQCP) currently requires only the release of 4,400 AF/yr in dry and critically dry years from Camp Far West Reservoir, over and above instream flow requirements specified in SSWD's FERC license. This requirement was based on the understanding that there is unregulated water that flows from the watershed into the Feather River in the winter-spring period of many years. However, the proposed Project would affect downstream hydrology such that water captured by Centennial dam would not be available to downstream reaches. As a consequence, there would less unregulated flow out of the lower Bear River, less frequent spills below Camp Far West Reservoir, and reduced magnitude and duration of spills that did occur.

Such reductions in unregulated flow would be significant. We base a first-cut analysis on MBK Engineers' water balance model that they developed for the Pre-Application Document for the ongoing relicensing of the Camp Far West Hydroelectric Project, and on SSWD's accompanying report. MBK examined a 38-year period of record from 1976-2014.[36] In that period under a "current conditions" scenario, the model shows eleven years when there would be no release (spill) from Camp Far West Reservoir beyond the minimum required instream flow. With Centennial in place, an additional four years would have no spill under current conditions.

[36] SSWD, Pre-Application Document for the relicensing of the Camp Far West Project, Appendix G.
Due to the file size of the Operations Model it is not posted on the SSWD relicensing website, but a CD of the Ops Model and the Operations Model Documentation and Validation Report can be obtained by contacting Jim Lynch at HDR (Telephone 916-679-8740 or E-Mail james.lynch@hdrinc.com).

Projected to 2062 conditions (not factoring climate change), there would be an additional six years without spill from the Bear River watershed into the Feather River.[37]

Construction and operation of the proposed Centennial Dam would mean that in 38% of all years, there would be no unregulated flow out of the Bear River watershed into the Feather River. By 2062, that frequency would balloon to 55% of all years. Stated differently, under the current instream flow requirements for Camp Far West Reservoir, construction of Centennial Dam would limit releases from the Bear River into the Feather River to 6% or less of the average unimpaired flow from the watershed in 38% of all years under current levels of use. By 2062, outflow from the Bear River to the Feather River would be 6% or less of the average unimpaired flow from the watershed 55% of all years.[38]

The Board is in the process of updating the WQCP and should consider NID's Application in that context. Freshwater inflow to the Delta is a critical resource for maintaining ecosystem function in California's largest estuary. The proposed Project would lessen freshwater inflows to the Delta and change the timing of inflows. A potential consequence of this Project is a reduction in Delta inflow and outflow, both under current requirements and under reasonably foreseeable requirements enacted pursuant to the update of the WQCP. This would undoubtedly also result in a transfer of the burden for flow increases to other water users in other watersheds, contrary to the goals of the WQCP.

E. Coordinated Water Plan

A state filed application can be assigned when "the release or assignment is for the purpose of development not in conflict with such general or coordinated plan." Water Code § 10504. The California State Water Plan since its first iteration in the 1920s has served as the state's main document for recording its water management goals and subsequent drafts have shown the state's evolving water management priorities. One consistent item in the iterations of the Plan, however, has been a vision for the Bear River that does not include Centennial Dam. Previous iterations have suggested other storage projects, including the expansion of Camp Far West and Rollins Reservoir, but not Centennial Dam. The most recent Plan does not include Centennial Dam but does note that the potential of the Bear River to support a viable population of steelhead is low because of limited amount of habitat for spawning and rearing at suitable elevations and inadequate streamflow.[39] This appears to be a recognition of the significant effects of the dams that are currently on the Bear River as opposed to a desire for more of them. Otherwise, the Plan is bullish on integrated projects that are cost-effective and provide multiple benefits. The Centennial project, an expensive marginal project that provides little benefit and has great potential for harm, is not consistent with this approach.

[37] The 2062 conditions are based on projected increased demand within the NID service area, not on increased demand by SSWD.
[38] This reduction in unregulated flow will have environmental impacts in the Bear River and downstream of confluence with the Feather River, as discussed below.
[39] California Water Plan Update, Volume 2. P. SR-18. Department of Water Resources, 2013.

VII. The Proposed Project Would Have an Adverse Environmental Impact

A. Aquatic resources

1. *Threatened and endangered species*

Threatened and endangered species that are present in the Bear River in reaches potentially affected by the proposed project include Central Valley steelhead. NMFS has designated critical habitat for Central Valley steelhead on the Bear River from its mouth to Camp Far West Dam. As described more below, the Project has the potential to impact the anadromous resources downstream of Camp Far West, including rearing habitat, by altering the hydrologic and water quality conditions in the Bear River, the Feather River, the Sacramento River and the Sacramento-San Joaquin Bay-Delta estuary.

2. Impacts of hydrological changes on Bear River and downstream fisheries

It is virtually certain that non-natal rearing of anadromous salmonids and sturgeon takes place in the lower Bear River. Maslin (1996) documents non-natal rearing of salmonids in Sacramento River tributaries, many of them ephemeral.[40] As a professor at Chico State University, Maslin has directed student research into this phenomenon for many years. Healey (2013) documented non-natal rearing of salmon during 2012 in Auburn Ravine, whose outfall enters the Sacramento River just south of the confluence of the Feather and Sacramento rivers at Verona.[41] Thomas Cannon, fisheries biologist who consults for the California Sportfishing Protection Alliance, personally surveyed Auburn Ravine in past years and documented non-natal rearing there, and states that the tributaries of the Feather including the lower Bear River also exhibit the non-native rearing phenomenon.[42] The California Department of Fish and Wildlife has documented the presence of sturgeon in the lower Bear River during high flow events.[43] The Anadromous Fish Recovery Program Working Paper (USFWS, 1995) provided draft water allocation priorities for water on the Bear River, including flow and temperature recommendations in above normal and wet-water year types with the goal of providing habitat for sturgeon.[44]

Juvenile salmon, steelhead and sturgeon have limited options for finding low velocity, food-rich habitat in most reaches of mainstem Sacramento Valley rivers, including the Sacramento and the

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[40] See Maslin, Paul E., et. al, 1996. Intermittent Streams as Rearing Habitat for Sacramento River Chinook Salmon: 1996 Update. Available at: http://swrcb2.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/exhibits/swrcb/swrcb_maslin1997.pdf
"Non-natal rearing" refers to the use of a river reach by the juveniles of migratory species when those juveniles were spawned in locations other than the river reach in which they rear.

[41] Michael Healey, California Department of Fish and Wildlife (DFW), 2013: 2013 Auburn Ravine Rotary Screw Trap Monitoring Report. This report was filed as an attachment to DFW's comments on the Final Environmental Impact Statement for the combined relicensing of the Yuba-Bear/Drum-Spaulding projects. See FERC e-Library 20150206-5016.

[42] Thomas Cannon, pers. comm.

[43] Sean Hoobler, DFW, pers. comm.

[44] U.S. Fish and Wildlife Service, Anadromous Fish Restoration Program,Working Paper on Restoration Needs, vol 3, 1995, p. 3-xh-26. Available at: https://www.fws.gov/lodi/anadromous_fish_restoration/documents/WorkingPaper_v3.pdf

Feather. Juveniles moving down such major rivers seek refuge and safe areas to feed and grow. Areas near the mouths of tributaries to mainstem rivers provide some of the best rearing opportunities for these juvenile fish. Juvenile migrants often enter the lower reaches of these tributaries for extended periods of time, often moving several miles upstream. Growth in this tributary habitat increases the likelihood of survival when these juvenile fish ultimately migrate further downstream to estuary and ocean habitats.

Dry Creek-Spenceville, a tributary to the Bear River, supports a small but consistent run of fall-run Chinook salmon. In high water years, fall-run Chinook spawning has also been documented in the Bear River downstream of SSWD's irrigation diversion located one mile downstream of Camp Far West Dam.[45]

Inundated floodplain and low velocity edgewater habitat such as that provided in the lower Bear River during high flows are preferred by juvenile salmonids, whether these juveniles are natal to the Bear River or to other rivers in the Feather River system. Habitat created by the backwater effect when high flows in tributaries (such as the Bear) meet mainstem rivers such as the Feather provide excellent rearing habitat for juvenile sturgeon.

As described in Section VI(D), *supra*, the proposed Project would reduce unregulated flow in the lower Bear River, and thus reduce the frequency and magnitude of flows that provide rearing habitat for salmonids and sturgeon. At present, there are no required high flows in the lower Bear River pursuant to the FERC license for Camp Far West Project or the WQCP. Unregulated flow that occurs when Camp Far West Reservoir spills is the only source in the lower Bear River of good habitat for juvenile salmonids and sturgeon. Thus, the Centennial Project would have direct negative impacts on these species.

Additionally, the Centennial Project will have cumulative negative effects on fish species and ecosystem function in downstream stream reaches, in the Feather River, Sacramento River, and the Bay-Delta. The Bay Institute characterizes San Francisco Bay as being in a condition of "permanent drought," and reports that winter-spring inflow to the Bay from 1975-2014 averaged only 47% of the unimpaired flow in the watershed.[46] This dramatic reduction of freshwater inflow to the Bay has had severe negative consequences on fisheries and other elements of the aquatic ecosystem. Board staff, in its 2010 Delta Flow Criteria Report, extensively documented the negative impacts of excessively reduced inflow and outflow in the Delta. The proposed Project would further reduce freshwater inflows to the Delta and the Bay, and change the timing of inflows, further degrading aquatic habitat.

3. Impacts to aquatic species in the Rollins reach of the Bear River

Habitat for the aquatic resources in the portion of the Bear River immediately downstream of Rollins Reservoir would be almost completely eliminated by the construction of the proposed Project. The populations of foothill yellow-legged frogs and western pond turtles that are

[45] Pre-Application Document for the Camp Far West relicensing, *op. cit*, pp. 3.2.3-3 to 3.2.3-4. Available at http://sswdrelicensing.com/home/documents/ferc-filings-relicensing/ or FERC eLibrary no. 20160314-4003.
[46] See The Bay Institute, San Francisco Bay: The Freshwater-Starved Estuary, October, 2016, p. 12. Available at: http://thebayinstitute.org/sf-bay-freshwater-starved-estuary

present in the reach would be extirpated. The short portion of the river that remained between the new Centennial Reservoir and Rollins Reservoir upstream would likely be affected by fluctuating flows due to hydropower peaking, degrading the small amount of remaining riverine habitat.

4. Yuba River watershed

The proposed Project may result in increases in diversions from the Yuba River watershed to the Bear River system. It may also reduce instream flows in the Middle Yuba and South Yuba rivers. It may affect other operations in the Yuba-Bear/Drum-Spaulding water and power system that would affect aquatic resources.

5. Impacts to groundwater in Sutter County

The proposed Project is likely to reduce inflow to Camp Far West Reservoir in some years. This may lead to increased groundwater pumping in the SSWD service area, which may increase the likelihood of groundwater overdraft. Increased groundwater pumping may also negatively affect baseflows in the Bear River and nearby creeks, with potential impacts to aquatic species in these waterways

B. Terrestrial Resources

Centennial dam would inundate the last 6 miles of free-flowing river between the existing Rollins and Combie dams. The new reservoir would impact over 1,000 acres and would flood the river canyon and hundreds of acres of prime oak woodlands and riparian habitat.

Centennial Dam would substantially constrict animal migration corridors, especially for deer. The existing north/south crossing would be cut off creating a funneling effect for animals. This bottleneck would result in easy prey for predators.

Centennial Dam would inundate prime habitat for numerous bird species including warblers, buntings, woodpeckers and the Western Bluebird. The Black-throated Gray Warbler, a species of concern, has been observed in this area.

C. Growth-inducing impacts

Centennial Dam is likely to cause additional environmental impacts if it does, in fact, result in additional development.[47] NID officials and publications have clearly stated that a primary purpose of the Centennial Project is to serve projected growth.

[47] The DEIR for this Application must disclose and analyze growth-inducing impacts of the proposed Centennial Project, including a discussion of the environmental quality of life impacts on existing communities. An "EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate." *Napa County Bd. of Supervisors (2001) 91 Cal. App. 4th 342, 368.*

> "We need to be able to execute the project [Centennial] so that we can continue to make the deliveries to the community to meet the growth needs of the District....In particular, bedroom communities for commuters to Sacramento are expected to grow exponentially in Lincoln, parts of which are within NID service area."[48]

NID Waterways, an NID newsletter, stated in its Fall, 2015 issue: "Additional water storage capacity will allow the District to improve and expand water service within NID's Nevada and Placer County Service Area."[49]

To the degree that it supported urban or suburban development in the Lincoln area, the Project would have both terrestrial and aquatic impacts. The terrestrial impacts would include loss of oak woodland and loss of habitat for terrestrial animals (in particular, birds). Urban development may also have impacts on Auburn Ravine, which passes through the Lincoln area and which supports a known run of fall-run Chinook salmon and a less well-quantified run of steelhead. Auburn Ravine through Lincoln serves as a migration corridor for these species. Auburn Ravine also has documented instances of non-natal rearing of other runs of Chinook salmon in its lower reaches, including ESA-listed winter-run and spring-run Chinook; these rearing species could be affected by water quality degradation brought about by the urbanization of the Lincoln area.

D. Aesthetic resources

The Board should consider the merits of this Project from the standpoint of a Bear River that has already been mostly converted to reservoirs. The extent of reservoirs on the Bear River places unique value on the six-mile stretch of river that would be converted to a yet another new reservoir by Centennial Dam. Centennial Dam would be sandwiched by existing reservoirs upstream and downstream. The six mile reach of the Bear River that would be transformed into a new reservoir is a natural ecosystem and provides significant habitat as well as migration corridors: north/south river crossing of terrestrial species, and upstream/downstream migration of aquatic species. If this last reach of river is converted to reservoir, the impact would be magnified because it would establish an almost unbroken 20-mile reservoir system from Combie Dam to Chicago Park Powerhouse above Rollins Reservoir.

The proposed Project would degrade the aesthetic characteristics of the area, including the visual character and quality of the existing site. Presently, the canyon where the dam would be located is steep and forested, and presents scenic canyon views. However, fluctuating reservoirs often result in an aesthetically unpleasing "bathtub ring" without vegetation. The Applicant has provided no information regarding the predicted extent of a bathtub ring effect throughout the year during high, low, and average water years or the impact of this ring on multiple user types, including local residents, passing motorists, and recreational users.

[48] NID General Manager Remleh Scherzinger, interview, Grass Valley Union, August 30, 2014, *op cit*.

[49] *NID Waterways*, Fall 2015, Vol 36 #3, p 1. http://nidwater.com/2015/10/waterways-newsletter-fall-2015/

VIII. Terms of Dismissal

For the reasons mentioned above, FWN and its member organizations recommend that NID withdraw the Application. If NID does not withdraw the application, the Board should deny the Application.

The Applicant must also address the issues raised in FWN's comment letter on NID's Notice of Preparation for the EIR that will analyze the proposed Project. This comment letter is attached for reference. FWN and its member organizations reserve the right to state appropriate dismissal terms after the DEIR has been reviewed.

All protests must be signed by the protestant or authorized representative:

Date: 25 October 2016

Traci Sheehan Van Thull, Coordinator
Foothills Water Network
PO Box 573
Coloma, CA 95613
traci@foothillswaternetwork.org

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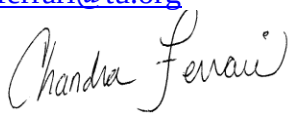
Chandra Ferrari, Water Policy Advisor/Attorney
Trout Unlimited
4221 Hollis St.
Emeryville, CA 94608
cferrari@tu.org



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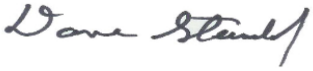
Chris Shutes, FERC Projects Director
California Sportfishing Protection Alliance
1608 Francisco St
Berkeley, CA 94703
blancapaloma@msn.com

_____

Caleb Dardick, Executive Director
South Yuba River Citizens League
303 Railroad Avenue
Nevada City, CA 95959
caleb@syrcl.org

_____

Dave Steindorf, CA Director
American Whitewater
4 Baroni Dr.
Chico, CA 95928
dave@amwhitewater.org



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Steve Rothert, Director, California Field Office
American Rivers
432 Broad St.
Nevada City, CA 95959
srothert@americanrivers.org

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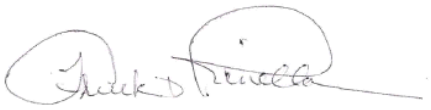
Allan Eberhart
24084 Clayton Road
Grass Valley, CA 95949
vallialli@wildblue.net

Frank Rinella

Northern California Council of Federation of Fly Fishers
303 Vista Ridge Dr.
Meadow Vista Ca. 95722
sierraguide@sbcglobal.net



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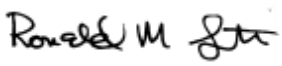
Jack Sanchez, President and Coordinator
Save Auburn Ravine Salmon and Steelhead
P.O. Box 4269
Auburn, CA 95604
alcamus39@hotmail.com

_____

Eric Peach, Boardmember
Protect American River Canyons
P.O. Box 9312
Auburn, CA 95604
parc@jps.net

_____

Ronald Stork, Senior Policy Advocate
Friends of the River
1418 20th Street, Suite 100
Sacramento, CA 95811-5206
rstork@friendsoftheriver.org



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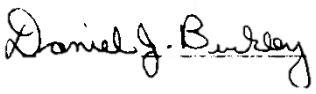
Daniel J. Buckley II, Owner

Tributary Whitewater
P.O. Box 747
Weimar, CA 95736
rafting@whitewatertours.com



Bob Center
10794 Arrowpoint Place
Grass Valley, CA 95949
Bcenter7210@att.net

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All protests must be served on the petitioner. Provide the date served and method of service used: *This protest was served via e-mail on the parties identified below on 25 October 2016.*

Remleh Scherzinger, General Manager
Nevada Irrigation District
1036 W. Main Street
Grass Valley, CA 95945
5634x01comment@nidwater.com

State Water Resources Control Board
Division of Water Rights
Attn: Kate Gaffney
P.O. Box 2000
Sacramento, CA 95812-2000
Kathryn.gaffney@waterboards.ca.gov