
State Water Resources Control Board

STATUS CONFERENCE RULING AND NOTICE OF STATUS CONFERENCES

The State Water Resources Control Board
Administrative Hearings Office
will hold Status Conferences on
pending Application 30166 filed by

EI Sur Ranch

for a permit to appropriate water from
the Big Sur River in Monterey County.

**The first Status Conference will begin on
August 23, 2022, at 9:00 a.m.**

**The next Status Conference will begin on
September 8, 2022, at 9:00 a.m.**

Both status conferences will be held by Zoom teleconference.

You may participate in the Zoom teleconference by using the link:

<https://waterboards.zoom.us/j/97355727363?pwd=ZllkWTllcmhCUVRtTUdwNVg0T0lOQT09>

Meeting ID: 973 5572 7363

Passcode: 496267

or by calling in at: +16699009128,,97355727363#,,,,*496267# US (San Jose)

**Interested members of the public who would like to watch the status conference
without participating may do so through the Administrative Hearings Office
YouTube channel, accessible by clicking on “Watch AHO Hearings” at:**

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

BACKGROUND

On July 27, 1992, James J. Hill III (Applicant) filed water-right Application 30166 on behalf of El Sur Ranch with the State Water Resources Control Board's (State Water Board or Board) Division of Water Rights (Division) for a permit to appropriate water from the Big Sur River in Monterey County. The Applicant amended Application 30166 in November and December 2005, October 2006, and June 2011. The current application is for a water-right permit that would authorize diversion of water at a rate not to exceed 5.84 cfs, with an annual maximum of 1,320 acre-feet, a maximum 20-year rolling average of 1,087 acre-feet per year, a seasonal limit of 676 acre-feet from July 1 through October 31, and a monthly limit for July, August, September, and October of 203 acre-feet per month.

The State Water Board held a public hearing on Application 30166 in June and July 2011. On December 9, 2021, the Board's Executive Director assigned Application 30166 to the State Water Board's Administrative Hearings Office (AHO). The AHO held an initial status conference in this matter on June 30, 2022. Additional information about this proceeding is in the AHO's May 23, 2022 Notice of Status Conference.

AUGUST 23 STATUS CONFERENCE

The AHO hearing officer will hold the August 23 status conference by Zoom teleconference. No in-person appearances will be allowed. The status conference will be held and electronically recorded by Zoom teleconference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at the party's own expense.

On July 26, Tom Berliner, representing the Applicant, sent an e-mail to the hearing officer asking for information about how the Applicant and his consultants might communicate with State Water Board staff about the development of an amended application. The hearing officer responded to Mr. Berliner, and copied the service list, by e-mail on August 1. The hearing officer indicated her intent to set a status conference to discuss Mr. Berliner's questions.

The primary purpose of the August 23 status conference is to address how the Applicant, his representatives, and consultants may communicate with State Water Board staff about amendments to Application 30166 and supporting documents necessary for the Board to act on the amended application, while complying with the prohibition against ex parte communications. The hearing officer is considering whether to set reoccurring status conferences at regular intervals in which all parties may participate, to facilitate communication between the Applicant, other parties to the proceeding, and AHO staff. Staff of the Division of Water Rights with experience in processing water-right applications may also participate in these status conferences to provide technical assistance.

During the June 30 status conference and in the Applicant's status conference statement, the Applicant raised the possibility of mediation to assist in resolution of issues not resolved by the Settlement Agreement. The AHO may be able to provide a hearing officer to conduct mediation between the parties. The hearing officer serving as the mediator would not discuss any confidential statements made or confidential documents submitted during the mediation process with Hearing Officer Kuenzi, members of the State Water Board, or any staff of the State Water Board advising the Hearing Officer or the Board on this matter. The mediation and all documents concerning it would be subject to Evidence Code sections 1115-1128 and would not be made a part of the administrative record for this proceeding. The participants are invited to comment during the status conference on the mediation process described here and the timing to conduct any mediation.

During the status conference, the hearing officer may raise issues in addition to those described above and invite comment from the participants.

Parties do not need to file status conference statements. If any party wants to file a status conference statement, the party shall file the status conference statement with the AHO and serve copies of it on the other parties listed in the attached service list by the deadline listed below. The AHO will post the statements on the Water Board AHO-FTP site in the folder for this matter.

SEPTEMBER 8 STATUS CONFERENCE

The AHO hearing officer will hold the September 8 status conference by Zoom teleconference. No in-person appearances will be allowed. The status conference will be held and electronically recorded by Zoom teleconference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at the party's own expense.

In advance of the September 8 status conference, the Applicant shall:

1. Prepare a proposal for the frequency of measurement and reporting, measurement methods, and measurement locations, to report to the AHO the amount of diversions by the Applicant and demonstrate compliance with Settlement Agreement term 4.b. The Applicant shall submit its proposal to the AHO with its status conference statement on **September 6, by 12:00 p.m.** The Applicant shall attempt to meet and confer with CDFW about the measurement and reporting proposal before submitting the proposal to the AHO.

2. Prepare a list of issues that the Applicant proposes to submit for mediation. The Applicant shall submit its proposed mediation issues to the AHO with its status conference statement by **September 6, at 12:00 p.m.** The hearing officer encourages the Applicant to meet and confer with other parties in developing the initial list of proposed mediation issues to submit to the AHO, but the Applicant is not required to do so before submitting this initial list. The Applicant shall meet and confer with all parties to the proceeding and prepare a revised list of mediation issues and submit it to the AHO by **September 22, at 12:00 p.m.**

The Applicant shall prepare a status conference statement and file it with the AHO by **September 6, at 12:00 p.m.**, which shall include the measurement and reporting proposal and initial list of issues for mediation described above. Other parties do not need to file status conference statements. If any other party wants to file a status conference statement, the party shall file the status conference statement with the AHO and serve copies of it on the other parties listed in the attached service list by **September 6, at 12:00 p.m.** The AHO will post the statements on the Water Board AHO-FTP site in the folder for this matter.

AMENDED APPLICATION

In accordance with the discussion during the June 30 status conference, the Applicant shall submit to the Division of Water Rights an amended Application 30166 that reflects the Applicant's current proposed project, with an electronic copy sent to the AHO and the service list, by **November 1, 2022, at 12:00 p.m.**

DEADLINES AND SCHEDULE

Status conference.	August 23, 2022, at 9:00 a.m.
Deadline for filing status conference statements.	September 6, 2022, at 12:00 p.m.
Status conference.	September 8, 2022, at 9:00 a.m.
Deadline for Applicant to submit revised list of mediation issues to the AHO.	September 22, 2022, at 12:00 p.m.
Deadline for Applicant to submit amended application to Division of Water Rights and the AHO.	November 1, 2022, at 12:00 p.m.

STATUS CONFERENCES LIVE-STREAM AND RECORDING

The status conferences will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live stream and recordings may be accessed at the following link:
<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57m>

August 15, 2022

/s/ Nicole L. Kuenzi
Nicole Kuenzi, Hearing Officer

Enclosures:
- Service List

SERVICE LIST

Updated August 12, 2022

By e-mail only

EL SUR RANCH / JAMES J. HILL III

Mr. Thomas M. Berliner
Ms. Jolie-Anne S. Ansley
Ms. Alexandra Jones
Duane Morris LLP
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
tberliner@duanemorris.com
jsansley@duanemorris.com
bajones@duanemorris.com

TROUT UNLIMITED

Mr. Brian Johnson
5950 Doyle St., Suite 2
Emeryville, CA 94608
bjohnson@tu.org

CALIFORNIA DEPARTMENT OF FISH & WILDLIFE

Ms. Kathleen Miller
Ms. Nancee Murray
P.O. Box 944209
Sacramento, CA 94244-2090
Kathleen.Miller@wildlife.ca.gov
Nancee.Murray@wildlife.ca.gov

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE/CENTER FOR BIOLOGICAL DIVERSITY & VENTANA WILDERNESS ALLIANCE

Mr. Peter J. Broderick, on behalf of John
Buse
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
pbroderick@biologicaldiversity.org
jbuse@biologicaldiversity.org

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

Mr. Chris Shutes
1608 Francisco St.
Berkeley, CA 94703
blancapaloma@msn.com

CARMEL RIVER STEELHEAD ASSOCIATION

Mr. Brian LeNeve
P.O. Box 1183
Monterey, CA 93942
brian@brianleneve.com

CALIFORNIA STATE PARKS

Mr. Stephen Bachman
2211 Garden Road
Monterey, CA 93940
stephen.bachman@parks.ca.gov

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Kathryn J. Tobias
P.O. Box 942896
Sacramento, CA 94296-0001
Kathryn.Tobias@parks.ca.gov

CALIFORNIA CATTLEMEN'S ASSOCIATION

Mr. Justin Oldfield
1221 H Street
Sacramento, CA 95814
Justin@calcattlemen.org

VENTANA WILDERNESS ALLIANCE
Mr. Tom Hopkins
P.O. Box 506
Santa Cruz, CA 95061
tom.hopkins@ventanawild.org

CAL FIRE
Mr. Richard Hutchison
2221 Garden Road
Monterey, CA 93940
Rick.hutchison@fire.ca.gov

FRIENDS OF THE RIVER
Mr. Steve Evans
1418 20th Street, Suite 100
Sacramento, CA 95811
sevans@friendsoftheriver.org

MONTEREY COUNTY CATTLEMEN'S
ASSOCIATION
Mr. Aaron Johnson
295 South Main Street, Suite 600
Salinas, CA 93901
Aaron@johnsonmoncrief.com

MONTEREY COASTKEEPER
Mr. Steve Shimek
475 Washington Street, Suite A
Monterey, CA 93940
exec@montereycoastkeeper.org

BIG SUR RIVER INN
Mr. Alan Perlmutter
P.O. Box 460
Big Sur, CA 93920
sandperl28@gmail.com

NATIONAL MARINE FISHERIES
SERVICE
Joel Casagrande and Mandy Ingham
2885 Mission St.
Santa Cruz, CA 95060
Joel.Casagrande@noaa.gov
Mandy.Ingham@noaa.gov

DEPARTMENT OF ECOLOGY &
EVOLUTIONARY BIOLOGY,
LONG MARINE LAB
UNIVERSITY OF CALIFORNIA SANTA
CRUZ
Dr. Peter Raimondi
Santa Cruz, CA 95060
raimondi@biology.ucsc.edu

CENTRAL COAST LIGHTHOUSE
KEEPERS
Mr. John O'Neil
P.O. Box 223014
Carmel, CA 93922
johnoneil@montereybay.com

Mr. Butch Kronlund
48280 Highway 1
Big Sur, CA 39320
bpkronlund@aol.com

Mr. Kirk Gafill
48460 Highway 1
Big Sur, CA 93920
kgafill@nepenthebigsur.com