



State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a status conference on
the pending petitions of

**Consolidated Irrigation District, Fresno Irrigation District, and
Alta Irrigation District, and of**

Semitropic Improvement District of Semitropic Water Storage District, and of

McMullin Area Groundwater Sustainability Agency,

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

and on the complaint filed by

Semitropic Improvement District of Semitropic Water Storage District

seeking revocation of

Water-Right Licenses 11517 and 11521;

and a cease and desist order against

the Kings River Water Association and its member units

for the alleged unauthorized diversion
or threat of an unauthorized diversion of water from the Kings River System.

**The Status Conference will begin on
January 30, 2024, at 1:00 p.m.
by Zoom teleconference.**

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

Please access Zoom by using the link:
<https://waterboards.zoom.us/j/93666642673?pwd=QWhMR09ZNVZyUUlvM3ZSdXBBUHZAUT09> with Meeting ID: 936 6664 2673 and Passcode: 879127

Or by calling in at:
+16699009128,,93666642673#,,,,*879127# US (San Jose)

Interested members of the public who would like to watch this status conference without participating may do so through the Administrative Hearings Office YouTube channel at:

https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8I-C7Nig/videos?view=2&live_view=502&view_as=subscriber

BACKGROUND

On December 2, 2020, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (State Water Board or Board) issued a Notice of Public Hearing and Pre-Hearing Conference on two pending petitions to revoke or revise the Declaration of Fully Appropriated Stream Systems (FAS Declaration) with respect to the Kings River System and related issues raised in a complaint filed by Semitropic Improvement District of Semitropic Water Storage District (Semitropic) against Kings River Water Association (KRWA) and its member units. The petitions and complaint had been assigned to the AHO for further proceedings by the Executive Director of the State Water Board by memoranda dated May 29 and October 29, 2020, respectively.

On February 19, 2021, the AHO hearing officer issued a ruling letter to split the proceeding into phases. Phase 1A of the hearing addressed the threshold question of whether there is evidence tending to show that Licenses 11517 and 11521 should be revoked or a violation of a requirement described in Water Code section 1831, subdivision (d), by KRWA or its member units is occurring or threatening to occur, based on the complaint filed by Semitropic.

In the February 19, 2021 ruling letter and the March 19, 2021 Amended Notice of Public Hearing, the hearing officer stated that she would notice a Phase 1B of the hearing if Semitropic or other parties presented sufficient evidence in Phase 1A to support giving notice of a proposed revocation and cease and desist order pursuant to Water Code sections 1675.1 and 1834. This notice would include a statement of facts and information on which the Board's consideration of a proposed revocation and a proposed cease-and-desist order during Phase 1B would be based. After Phase 1 of the hearing was completed, the AHO would conduct Phase 2 of the hearing to receive evidence relevant to the three petitions to revoke or revise the Board's FAS Declaration with respect to the Kings River. After Phase 2, the AHO would present a recommended order to the Board for its consideration.

The AHO conducted Phase 1A of this hearing on June 2, 3, 4, 17, and 18, 2021. Parties filed closing briefs for the Phase 1A hearing on July 9, 2021. The AHO has not yet issued any draft ruling or recommended order on the issues addressed in Phase 1A of the hearing.

PETITION BY THE MCMULLIN AREA GSA

On November 24, 2021, the McMullin Area Groundwater Sustainability Agency (McMullin Area GSA) submitted a petition to the State Water Board Division of Water Rights (Division) to revoke or revise the FAS Declaration with respect to the Kings River and submitted an accompanying application for a permit to appropriate water from Fresno Slough and James Bypass (A033259). The State Water Board's Executive Director assigned McMullin Area GSA's petition to the AHO for further proceedings. On March 10, 2022, the AHO issued a Notice of Assignment of the petition which stated the hearing officer's intent to incorporate the McMullin Area GSA's petition into Phase 2 of this proceeding.

PROCEDURE AFTER PHASE 1A HEARING

Water Code section 1675 requires the Board to give notice of a proposed revocation of a water right license that contains a statement of the facts and information upon which the proposed revocation is based. (Wat. Code, §§ 1675 & 1675.1.) Before issuing a cease and desist order, Water Code section 1834 requires the Board to give notice to the person or entity allegedly engaged in the violation that contains a statement of facts and information that would tend to show the proscribed action. (Wat. Code, §§ 1831, subd. (c) & 1834, subd. (a).)

In Resolution 2012-0029, the Board delegated to the Deputy Director of Water Rights the authority to give notice of a proposed revocation of a water right license and of a proposed cease and desist order. Neither the Deputy Director nor any other person with delegated authority to issue such notices has issued a notice of proposed revocation or a notice of a proposed cease and desist order related to the Semitropic Complaint or the issues raised in Phase 1A of this proceeding.

Since completion of Phase 1A of the hearing, the hearing officer has determined that in observance of the separation of functions within the State Water Board and delegation of authority by the Board and the Executive Director, an AHO hearing officer is not the appropriate person to issue any notice of a proposed revocation of a water right license or proposed cease and desist order to KRWA or its member units. AHO hearing officers do not hold or exercise the discretionary prosecutorial function of determining whether the Board should initiate an enforcement proceeding, and neither the Board nor the Executive Director has purported to delegate any such authority to them.

To decide on next steps in this proceeding, the hearing officer is scheduling a status conference in which the hearing officer requests the participation of the Division of Water Rights Enforcement Unit and counsel from the Board's Office of Enforcement.

STATUS CONFERENCE

The AHO hearing officer will hold a status conference by Zoom teleconference on the date and at the time specified on the first page of this notice. No in-person appearances

will be allowed. The status conference will be 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.

The purpose of this status conference is to discuss next steps and any involvement by the Division of Water Rights Enforcement Unit and the Board's Office of Enforcement (collectively, Office of Enforcement) in this proceeding.

During the status conference, the AHO hearing officer intends to raise the following questions:

1. Does the Office of Enforcement need additional time to determine whether to issue notice of:
 - a. A proposed revocation of all or a portion of Licenses 11517 or 11521, with respect to the diversion or use of water from the Kings River system; or
 - b. A proposed cease and desist order against KRWA or any of its member units with respect to the diversion or use of water from the Kings River system?
2. If so, by what date will the Office of Enforcement notify the AHO and the parties whether it intends to issue any such notices of enforcement?
3. If the Office of Enforcement intends to issue notice of a proposed revocation or a proposed cease and desist order against KRWA or any of its member units, when will it issue the notice or notices?
4. Should the AHO issue a preliminary ruling as to whether there is sufficient evidence in the evidentiary record for Phase 1A of the hearing to support notice of a proposed revocation of all or a portion of Licenses 11517 or 11521 or a proposed cease and desist order against KRWA or any of its member units with respect to the diversion or use of water from the Kings River system, before the Office of Enforcement decides whether to issue a notice of proposed revocation or proposed cease and desist order?
5. Should the AHO schedule and conduct Phase 2 of this proceeding, either before or without conducting Phase 1B, to receive evidence relevant to whether the Board should revoke or revise the FAS Declaration with respect to the Kings River as requested by the petitions?
6. If the Office of Enforcement does not intend to issue any notices of enforcement, how should the AHO proceed in this matter?

STATUS CONFERENCE STATEMENTS

The AHO encourages any party that wants to participate in the status conference to file a status conference statement addressing any or all of the status conference questions identified above. Parties shall file status conference statements with the AHO and serve copies 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 and advise the parties on the new service list when the AHO has done this.

Status Conference Schedule

Deadline for filing status conference statements.	January 23, 2024, end of day (11:59 p.m.)
Status conference date and time.	January 30, 2024, at 1:00 p.m.

SEPARATION OF FUNCTIONS

As stated in the hearing officer's February 19, 2021 ruling letter, the AHO hearing officer and other participants on the hearing team have maintained and will continue to maintain separation of functions from staff in the Office of Enforcement and the Division of Water Rights Enforcement Section, including the Assistant Deputy Director for the Permitting and Enforcement Branch. No ex parte communications shall occur, or have occurred, about matters in this proceeding between the AHO hearing officer and other members of the hearing team and staff of the Office of Enforcement or the Enforcement Section. The AHO hearing officer and staff may consult with staff of the Division of Water Rights (excluding staff in the Division's Enforcement Section), staff of the Board's Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

SUBMITTAL OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO, including NOIs and status conference statements, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

By Email (preferred method)	AdminHrgOffice@waterboards.ca.gov with subject line "Kings River FAS Hearing"
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100

<p>By Hand Delivery (see instructions below):</p>	<p>Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2nd Floor, Room 114 Sacramento, CA 95814</p>
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Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline.

STATUS CONFERENCE LIVE-STREAM AND RECORDING

The status conference 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>

Date: December 8, 2023

/s/ Nicole Kuenzi
 Nicole Kuenzi
 Presiding Hearing Officer

Attachment:
 -Service List

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Updated June 7, 2021

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