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## State Water Resources Control Board

### NOTICE OF PUBLIC HEARING

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Public Hearing regarding the Amended Draft Cease and Desist Order  
that was issued to the following entity on the following date:

**Loren and Dolores Ohm, June 12, 2020**

**The Public Hearing will begin on  
January 14, 2021 at 9 a.m. to 5 p.m.**  
via Zoom teleconference.

**This Public Hearing will continue as necessary on  
January 15, 2021 from 9 a.m. to 5 p.m.**  
via Zoom teleconference

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/98086281319?pwd=b0FTMWtiRnIKNURISXRyaXRlaU9nZz09> with Meeting ID: 980 8628 1319 and Passcode: 852177

Or by calling in at: +16699009128,,98086281319#,,,,,0#,,852177# US (San Jose)

**Interested members of the public who would like to watch this hearing 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/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

### **BACKGROUND**

#### Applicable Statutes

California Water Code section 1831 authorizes the State Water Resources Control Board (“State Water Board” or “Board”) to issue a cease-and-desist order when the Board determines any person is violating, or threatening to violate, any of the requirements listed in subdivision (d) of section 1831. These requirements include the prohibition in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 (which begins with section 1000) of the Water Code.

Water Code section 1834 provides that, when a violation of one or more of these requirements is occurring or threatening to occur, the Board shall notify the party making or threatening to make the alleged violation that the party may request a hearing.

Water Code section 1110 established the Administrative Hearings Office (“AHO”) within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that an AHO hearing officer shall preside over a hearing in a matter involving a notice of a proposed cease-and-desist order issued under Water Code section 1834. Water Code section 1114 provides that, after the hearing is held and the matter is submitted to the AHO, the AHO hearing officer shall prepare a proposed order and provide it to the Board for the Board’s consideration.

### 2010 Draft Cease and Desist Order and Request for Hearing

On January 13, 2010, the State Water Board, Division of Water Rights (“Division”), issued a Draft Cease and Desist Order (“CDO”) to Loren and Dolores Ohm (“Ohm” or “Respondent”). The Draft CDO alleged that Ohm was making unauthorized diversions of water from various waterbodies in the southern portion of the Sacramento-San Joaquin Delta. On February 20, 2010, Ohm requested a hearing on this Draft CDO. The State Water Board never issued any notice for that hearing.

### Assignment from Division of Water Rights

On January 3, 2020, Erik Ekdahl, Deputy Director of the Division, sent a memorandum to Eileen Sobeck, the State Water Board’s Executive Director, proposing to transfer the proceeding regarding the Draft CDO described above, along with two others, to the AHO. On February 7, 2020, Ms. Sobeck issued a memorandum assigning this proceeding to the AHO.

### Amended Draft Cease and Desist Order

On June 12, 2020, the Delta Watermaster issued an amended Draft Cease and Desist Order (“Amended Draft CDO”) against Respondent.<sup>1</sup> The Amended Draft CDO states “the Ohms have not provided evidence that would substantiate a basis of right for the diversion of water to APN 162-120-09”. (Amended Draft CDO, p. 5, ¶ 8.)

## **PURPOSE OF HEARING AND HEARING ISSUES**

“The purpose of this hearing is for the AHO to receive evidence from the Prosecution Team and Respondent (the “Parties”) relevant to the Amended Draft CDO and any

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<sup>1</sup> The document the Delta Watermaster issued on June 12, 2020 does not explicitly state that it is a draft. Nevertheless, because Respondent requested a hearing on the 2010 Draft CDO and the present proceeding is in response to that request, the AHO is treating this document as an amended Draft CDO. (See Wat. Code, § 1834.)

responses or defenses to it. After the hearing, the AHO will prepare a proposed order for submission to, and consideration by, the State Water Board. The AHO's proposed order will be based upon evidence in the Administrative Record developed before and during the hearing. Parties may submit exhibits and testimony regarding the following issues:

- 1) Is the Respondent violating, or threatening to violate, the prohibition in Water Code section 1052, subdivision (a) (which is referred to in Water Code section 1831, subdivision (d)(1)) against the unauthorized diversion or use of water subject to Division 2 (which begins with section 1000) of the Water Code?
- 2) If any such violations or threatened violations are occurring, then should the State Water Board issue a cease-and-desist order to Respondent under Water Code section 1831?
- 3) If the State Water Board decides to issue a cease-and-desist order to Respondent under Water Code section 1831, then what provisions should be in the order?

## **HEARING OFFICER AND HEARING TEAM**

A hearing officer from the State Water Board's Administrative Hearings Office will preside at the hearing. Other AHO staff members may be present and assist the hearing officer during the hearing and throughout these proceedings.

## **PROSECUTION TEAM**

The State Water Board Prosecution Team will be comprised of attorneys from the State Water Board's Office of Enforcement and staff from the State Water Board's Division of Water Rights.

## **SEPARATION OF FUNCTIONS; PROHIBITION ON *EX PARTE* COMMUNICATIONS; COMMUNICATION PROTOCOLS**

All Parties, including the Prosecution Team, are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For a discussion of *ex parte* communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at: [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf). These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

If any Party wants to communicate with the AHO at any time regarding any procedural or substantive issue related to these proceedings, hearing procedures or filing of documents, then that Party shall make such communication to the AHO by e-mail or

letter and serve all other Parties with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. A Party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the Parties or their representatives in an e-mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Before the AHO circulates the final list of Parties described below, any Party submitting any document to the AHO for this proceeding (including the Party's NOI, described below) shall transmit copies of the document to all of the other Parties listed in the attached proof of service. After the AHO circulates the list of Parties that have filed NOIs for this hearing, any Party submitting any document to the AHO shall transmit copies of the document to all the other Parties on the NOI list. Whenever any Party files any document with the AHO for this proceeding, the Party shall include a proof of service using one of the methods described below that confirms that the Party has transmitted copies of the document to all other Parties and that describes the method of service. (These requirements do not apply to Parties' submissions of exhibits. The requirements for such submissions are discussed below.)

Please do not communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this hearing, because other Parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, the AHO will set up a conference call in which representatives of all Parties may participate. Any Party may request such a conference call at any time using the written communications protocols described above.

## **HEARING PARTICIPATION PROCEDURES; NOTICES OF INTENT TO APPEAR**

Any Person or Entity that wants to participate in the hearing in this matter must file a Notice of Intent to Appear ("NOI"), using the form in this notice, with the AHO before the deadline listed below.

Parties that have already filed NOIs for this hearing do not need to refile. Any additional party that wants to file an NOI must do so by September 11, 2020. The new party filing an NOI shall serve copies of the NOI by e-mail or U. S. Mail on all parties listed in the service list for this Hearing Notice. Within one week after the deadline to submit NOIs, the AHO will circulate a list of the Parties that have filed NOIs to all Parties and post that list on the AHO-FTP site as discussed below.

The AHO encourages Parties to agree to accept electronic service (by e-mail) of all documents regarding this hearing. If a Party is not willing to do this, then the Party may

check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the Party agrees to accept electronic service.

## **EXHIBIT FILING DEADLINES AND HEARING SCHEDULE**

**Table 1: NOI and Exhibit Filing Deadlines and Hearing Schedule**

| <b>Item</b>   | <b>Date and Time</b>               |
|---|------------------------------------|
| Deadline for any Party that wants to participate in the hearing to file an NOI with AHO and serve copies on all other Parties | <b>September 11, 2020, 4:00 pm</b> |
| Deadline for Prosecution Team to file its exhibits and exhibit identification indices with AHO                                | <b>September 11, 2020, 4:00 pm</b> |
| Deadline for all other Parties to file their exhibits and exhibit identification indices with AHO                             | <b>December 21, 2020, 4:00 pm</b>  |
| Hearing begins  | <b>January 14, 2021, 9:00 am</b>   |
| Additional hearing day  | <b>January 15, 2021, 9:00 am</b>   |

## **SUBMITTALS OF EXHIBITS TO AHO AND OTHER PARTIES**

Parties may file their exhibits and exhibit identification indices by one of the following methods:

**Table 2: Methods of Submitting Exhibits and Exhibit Identification Indices**

| <b>Method</b>   | <b>Address</b>   |
|---|--|
| By Uploading to AHO-FTP2<br><b>(preferred method for filing exhibits and exhibit identification indices):</b> | <a href="https://ftp.waterboards.ca.gov">https://ftp.waterboards.ca.gov</a><br>Username: AHO-FTP2<br>Password: Please email EXEC-AdminHrgOffice@Waterboards.ca.gov with "Request for AHO ftp password" in the subject line |
| By Mail:  | State Water Resources Control Board<br>Administrative Hearings Office<br>P. O. Box 100<br>Sacramento, CA 95812-0100  |
| By Hand Delivery<br>(see note below):   | Joe Serna Jr. CalEPA Building<br>Administrative Hearings Office<br>c/o Water Rights Records Unit<br>1001 I Street, 2 <sup>nd</sup> Floor, Room 114<br>Sacramento, CA 95814   |

Service of exhibits and exhibit identification indices by mail or hand-delivery may be more difficult or delayed due to closures during the COVID-19 pandemic. Parties therefore should upload their exhibits to the AHO-FTP2 site if possible. Parties that wish to mail or hand deliver exhibits should plan ahead, so that the AHO will receive the exhibits by the applicable deadlines. Any hand-delivered submittals must be date- and time-stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Please check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

Parties do not need to serve copies of their exhibits on other Parties. After each exhibit filing deadline, the AHO will post all exhibits that have been filed with the AHO on the AHO-FTP site described below in section 8 of "Information for Water-Rights Hearings." Please refer to the part of this Notice titled "Information Concerning Water-Right Hearings" for additional information about the requirements and process for filing exhibits and exhibit identification indices.

## **ADMINISTRATIVE RECORD**

The AHO has posted and will post all Administrative Record documents, including all submitted exhibits, to the AHO-FTP site.

## **AHO WEBPAGE AND NOTICES**

Subject to legal limitations, including the requirements for Internet Web site accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's Internet webpage at [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

Any interested party may sign up to receive all AHO notices on the E-mail Subscription Mailing Lists page within the State Water Resources Control Board website, at [https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

## **SETTLEMENT**

In this proceeding, the Prosecution Team is prosecuting the Respondent for alleged violations of the Water Code. The Prosecution Team and the Respondent may engage in private settlement discussions and may, or may not, include other persons in those discussions. Because of the separation of functions discussed above, no member of the AHO hearing team will participate in such settlement discussions or receive any evidence of what occurred during them (except for a written settlement agreement, if the Parties negotiate and sign such an agreement and submit it to the AHO). If the Prosecution Team and the Respondent enter into a written settlement agreement signed by representatives of both Parties, then they should notify the AHO of this agreement, using the procedures for submitting documents described above, as soon as possible.

## **WEBCAST OF HEARING**

Broadcasts of AHO water-rights hearings are available on the AHO's YouTube channel, accessible by clicking on "Watch AHO Hearings" at: [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

August 27, 2020 \_\_\_\_\_

/s/ ALAN B. LILLY \_\_\_\_\_  
Presiding Hearing Officer

Enclosure: Service List

## **INFORMATION CONCERNING WATER-RIGHT HEARINGS**

The Administrative Hearings Office (“AHO”) applies and strictly enforces the following procedural requirements:

- 1. HEARING PROCEDURES GENERALLY:** The AHO conducts hearings in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (“State Water Board” or “Board”) is available upon request or at the State Water Board’s website:  
[http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations)

Unless the hearing officer determines otherwise, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may present closing arguments or submit closing briefs. The Administrative Hearings Office (“AHO”) encourages parties with common interests to work together to make unified presentations and to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party, where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the AHO and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least 10 days after receiving the request, to give other parties an opportunity to respond, unless the hearing schedule requires an earlier ruling.

- 2. SETTLEMENTS:** In water-right enforcement hearings, a State Water Board Prosecution Team prosecutes an alleged violation. In such enforcement cases, the Prosecution Team and the party that is the subject of the proposed enforcement action (Respondent) may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. Although the AHO may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the Prosecution Team and the Respondent.

Other parties do not need to consent before the State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may approve a proposed settlement agreement between the Prosecution Team and the Respondent. However, the hearing officer normally will give all parties opportunities



to comment on any settlement agreement submitted to the State Water Board or the Executive Director for approval unless all parties are signatories to the settlement agreement.

In hearings involving an unresolved protest or protests to a water-right application or petition, the parties whose dispute originated the action may meet privately to engage in settlement discussions, and they may, or may not, include other persons in such discussions. If the original parties resolve the dispute, the hearing officer will determine whether to continue to hold the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestants and the applicant or petitioner.

- 3. PARTIES:** Besides the Prosecution Team and the Respondent in enforcement matters, and besides the applicant or petitioner and protestants with pending protests in application or petition matters, the hearing officer may authorize additional people and entities to participate as parties. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) Except as the hearing officer specifically rules, the hearing officer normally will allow any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate as a party to do so and not to just present a policy statement. The hearing officer may impose limitations on any party's participation. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer may designate persons or entities that do not file a timely Notice of Intent to Appear as parties at the hearing officer's discretion, for good cause shown and subject to appropriate conditions the hearing officer determines. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence, make objections, and examine witnesses.
- 4. POLICY STATEMENTS BY INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will provide opportunities for interested persons who are not designated as parties to present non-evidentiary policy statements. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing because that person or entity is not a party. The AHO will not add such interested persons and entities to the service list. Interested persons may be able to access some hearing documents from the AHO website or the AHO-FTP site.

Policy statements are subject to the following provisions in addition to the requirements specified in California Code of Regulations, title 23, section 648.1, subdivision (d).

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating an intent to make only a policy statement.
- b. The AHO requests that interested persons and entities present policy statements to the AHO and serve copies on all parties before such statements are presented at the hearing. Please see section 8 for details regarding electronic submittals of documents.

**5. NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of the Notice of Intent to Appear with the AHO no later than the deadline specified in the Hearing Notice. The AHO may interpret a failure to file a Notice of Intent to Appear by this deadline as an intent not to appear.

The AHO requests that interested persons who will not be participating as parties, but instead will be presenting only non-evidentiary policy statements to file Notices of Intent to Appear by the specified deadline.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not participate as parties, the Notice of Intent to Appear also must include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness's proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 10, below) that the witness will need to present a brief oral summary of his or her written testimony. (See section 6, below, for requirements that apply to written testimony.) Parties who do not intend to present cases-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.<sup>2</sup> Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the AHO and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 8, below.)

The AHO will e-mail a service list of parties to each person or entity that has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, the hearing office will send notice to those parties on the service list and interested persons that have filed Notices of Intent to Appear expressing their intentions to present only policy statements.

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<sup>2</sup> A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as part of a case-in-chief to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.

**6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written proposed testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. Each party proposing to offer testimony into evidence shall submit all of the party's proposed written testimony by the deadline for filing exhibits.<sup>3</sup> Each party shall designate each of its witness's written proposed testimony as an exhibit (with one exhibit for each witness). Each party must submit all its witnesses' written proposed testimony with the party's other exhibits by the exhibit filing deadline. The hearing officer normally will not permit oral testimony that goes beyond the scope of the witness's written proposed testimony. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO encourages all parties to prepare and submit a separate set of slides that summarize each of their witnesses' testimony, which the parties then can use to facilitate the witnesses' summaries of their testimony. The parties must label each set of such slides as a separate exhibit and submit it by the exhibit submittal deadline.

**7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file both the exhibits and an Exhibit Identification Index (a list of exhibits in Word or Excel format) with the AHO.

The AHO maintains two File Transfer Protocol (FTP) sites for the purpose of making Administrative Record files available to the public and allowing parties to transmit files to the AHO and to each other. (Please see section 8, below).

Please label each exhibit with a short version of your party name and sequential numbers. For example, the Prosecution Team's exhibits should be numbered PT-1, PT-2, etc.. Ohm's exhibits should be numbered Ohm-1, Ohm-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party shall number each paragraph of each witness's proposed written testimony sequentially, 1, 2, 3, etc. Do not use any sub-paragraph letters like 1a, 1b, etc. A party may include headings like "Background," "Introduction," etc. for different sections of a witness's proposed written testimony but should not number or letter these headings and should not re-start the paragraph numbering in each section.

**Each party must submit to the AHO the exhibits and indices for this hearing no later than the deadline specified in the Hearing Notice, above.** The AHO may interpret a party's failure to timely submit exhibits as a waiver of the party's right to submit exhibits and waiver of the party's status as a party.

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<sup>3</sup> The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

The following requirements apply to exhibits:

- a. Parties submitting exhibits based on complex technical analyses must also submit sufficient information so that a qualified independent expert could reproduce the results.

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) must also submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- b. The hearing officer has discretion to receive into evidence by reference any relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that a public agency has prepared or published, provided that the original or a copy was in the possession of the State Water Board before the hearing officer issued this Notice. (See Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the AHO of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the party will use the exhibit when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. The hearing officer will exclude exhibits that rely on unpublished technical documents unless the unpublished technical documents also are admitted as exhibits.
- d. Parties submitting large-format exhibits such as maps, charts, and other graphics shall provide the originals for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large-format original exhibit if it is readable.

- 8. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents to the AHO in electronic form (in addition to two paper copies) unless the hearing officer authorizes submission of exhibits in a different format. A party's uploading of hearing documents to the FTP site will constitute service on the other parties.

Documents must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft Office-supported format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indexes.

The following AHO FTP sites are available at <https://ftp.waterboards.ca.gov/>:

**a. Username: AHO-FTP**

Anyone may download from this FTP site the Administrative Record documents the AHO has uploaded for the pending proceedings listed on the AHO website. Only AHO personnel may upload files to this FTP site. The AHO's normal practice is to post on this FTP site all Administrative Record documents for each pending proceeding. These documents will include documents AHO personnel have copied from the Division of Water Rights Records Unit's public files and exhibits and Exhibit Identification Indices the parties to pending proceedings have filed. The AHO will post exhibits and indices promptly after each filing deadline for such documents.

**b. Username: AHO-FTP2**

Any party to a proceeding pending before the AHO may upload documents for the proceeding (primarily exhibits and Exhibit Identification Indices) to this FTP site. No one besides AHO personnel may download or delete any files from this FTP site.

To obtain authorization to access either of these FTP sites, please submit an email request to the AHO at [EXEC-AdminHrgOffice@Waterboards.ca.gov](mailto:EXEC-AdminHrgOffice@Waterboards.ca.gov) with "Request for AHO ftp password" in the subject line. After receiving an e-mail request, the AHO will provide a password to access these FTP sites. It is not necessary to include other parties in the cc line for these email requests.

Each party shall upload its exhibits and Exhibit Identification Index to the AHO-FTP2 site before the exhibit filing deadline. The parties do not need to serve exhibits or Exhibit Identification Indices on the other parties.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices to the AHO-FTP site and advise the parties that these documents are available to download from that site.

The AHO may rename exhibits that do not proper exhibit names or numbers. The AHO will create a folder of documents submitted the party has submitted, and a folder of documents the AHO has properly re-named, both of which will be available on the AHO-FTP site.

Each party also shall mail or hand-deliver two paper copies of its exhibits and Exhibit Identification Index to either of the AHO's two addresses below, along with a proof of service of these paper copies. A party may provide this proof of service of these paper copies by sending an e-mail or letter to the AHO, with the transmittal of copies

of the e-mail or letter to the other parties shown in the e-mail "cc" (carbon copy) list or the cc portion of the letter.

If a party cannot upload exhibits to the AHO-FTP2 site, then the party may mail its exhibits to the AHO at:

State Water Resources Control Board  
Administrative Hearings Office  
P. O. Box 100  
Sacramento, CA 95812-0100

Alternatively, a party may send exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building  
State Water Resources Control Board  
Administrative Hearings Office  
c/o Water Rights Records Unit  
1001 I Street, 2<sup>nd</sup> Floor, Room 114  
Sacramento, CA 95814

- 9. PRE-HEARING CONFERENCE:** At the hearing officer's discretion, the hearing officer may conduct one or more pre-hearing conferences before the hearing to discuss the pre-hearing and hearing schedules, the scope of the hearing, the status of any protests, the formats of exhibits, opening statements and policy statements, methods of service, and any other appropriate procedural issues. If the hearing officer decides to hold a pre-hearing conference, then the Hearing Notice will state the date, time, and location of the pre-hearing conference. The AHO may issue additional notices of subsequent pre-hearing conferences.
- 10. ORDER OF PROCEEDING:** The hearing officer normally will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5. During the pre-hearing conference or hearing, the hearing officer for good cause may change the time limits specified below. For example, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

  - a. Policy Statements:** The hearing officer will normally hear policy statements at the start of the hearing before the presentations of cases-in-chief. **Oral summaries of policy statements normally will be limited to 5 minutes.**
  - b. Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues in the hearing notice. Each case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officer may allow re-direct examination and re-cross

examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a request or motion of the party after completion of the party's case-in-chief. Rebuttal evidence is limited to evidence that is responsive to evidence presented with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party offering rebuttal evidence. Rebuttal evidence does not include repetitive evidence.

- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements normally will be limited to 5 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing, prior to the party's case-in-chief. A party should include any policy-oriented statements in the party's opening statement.
- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written testimony into the record. A witness provides direct testimony when he or she affirms his or her written testimony. **Each party will be allowed a maximum of 30 minutes total to summarize the party's written testimony on direct examination.** The hearing officer may allow additional time for oral testimony, and the parties may discuss the need for additional time during a pre-hearing conference.
- iii. **Cross-Examination:** The hearing officer will permit cross-examination of a witness on the party's written submittals, the witnesses' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel. **Cross-examinations initially will be limited to 15 minutes per witness or panel of witnesses.** The hearing officer has discretion to allow additional time for cross-examination if the cross-examining party demonstrates in an offer of proof good cause to take additional time for cross-examination. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
- iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow at his or her discretion re-direct and re-cross examination. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The

hearing officer may establish time limits for any permitted re-direct and re-cross examination.

- v. **Questions by Hearing Officer:** The hearing officer may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Parties need not submit rebuttal testimony and exhibits before the hearing unless the hearing officer requires such submittals. The hearing officer may set a schedule for submittal of rebuttal evidence after the parties have presented their cases-in-chief. Cross-examination of witnesses offering rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at another time, the hearing officer may allow oral closing arguments or may set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading closing briefs to the AHO-FTP site and filing two paper copies with the AHO. A party shall not attach any documents of evidentiary nature to the party's closing brief unless the document is already in the evidentiary hearing record or is the subject of an offer of proof made during the hearing. After the deadline filing closing briefs, the AHO will post all closing briefs to the AHO-FTP site.

**11. RULES OF EVIDENCE:** The hearing officer will admit evidence in accordance with Government Code section 11513. A party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

**12. TELECONFERENCE HEARINGS DURING COVID-19 PANDEMIC:** Due to the on-going COVID-19 pandemic and the associated closure of the Joe Serna Jr. CalEPA Building to the public, the AHO currently is conducting all hearings via Zoom teleconference.

To participate in this teleconference hearing, please use the Zoom meeting link listed on page 1 of this Notice. To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the teleconference hearing.

The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.



The AHO will not order a court reporter for videoconference hearings. Any interested party may order a court reporter at its own expense. The AHO will record the teleconference hearing and post audio-only and audio-plus-video files of the hearing on the AHO-FTP site. Anyone may watch past or present hearings by clicking “Watch AHO Hearings” on [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

Please test your device’s video and/or audio functions before the start of the meeting. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing time to ensure you can resolve any technical issues before the hearing begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office.

When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer’s attention.

If the device you are using freezes, please notify staff at EXEC-AdminHrgOffice@Waterboards.ca.gov, restart the device, and if that does not work, try calling into the hearing using the phone number provided.

To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices.

Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously.

## State Water Resources Control Board

### NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) \_\_\_\_\_ plans to participate in the water right hearing regarding the Loren and Dolores Ohm Amended Cease and Desist Order Proceeding.

**Scheduled to begin on January 14, 2021**

**1) Check only one of the following boxes:**

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination or rebuttal, and intend to participate as a party in this hearing.

**2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to item 3 below.**

| Witness Name | Expert Witness?          |                          | Subject of Proposed Testimony | Estimated Length of Oral Direct Testimony (minutes) |
|--------------|--------------------------|--------------------------|-------------------------------|---|
|              | Yes                      | No                       |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |

(If more space is required, please add additional pages.)

**3) Fill in the following information of the participant, party, attorney, or other representative:**

Name (type or print):

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

Represented party (if applicable):

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Mailing Address:

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Telephone Number:

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E-mail Address:

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Optional:

I/we decline electronic service of hearing-related materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



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