
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Public Hearing to consider whether to recommend the Board adopt an Order
imposing
Administrative Civil Liability for Alleged Failure to File an
Annual Water Diversion and Use Report for 2019 Diversions under

Water Right License 455 (Application A002575)

and

**Water Right License 13783 (Application A025528) of
Ciro Toma (“Respondent”)**

The **Public Hearing** will commence on

June 8, 2021 at 9:00 am

and will be held by Zoom teleconference.

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/99849103563?pwd=RFITWW1hQ0hRVUJJSJSHZ2UkVtMFZZUT09> with Meeting ID: 998 4910 3563 and Passcode: 869575

Or by calling in at:

+16699009128,,99849103563#,,,,*869575# 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/

PURPOSE OF HEARING; HEARING ISSUES

The purpose of this hearing is for a hearing officer in the State Water Resources Control Board (State Water Board or Board), Administrative Hearings Office (AHO) to receive evidence and arguments relevant to the following questions:

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

- 1) Did the Respondent file an Annual Water Use and Diversion Report for 2019 as required by California Code of Regulations, title 23, section 925 or 929, or any term or condition of any water-right permit or license requiring the filing of an annual progress report by permittee or report of licensee? If so, what was the filing deadline for the report and when did Respondent submit the report?
- 2) Did any violation of a State Water Board regulation or order or a term or condition of a water-right permit or license that requires the Respondent to file an annual report occur?
- 3) If a violation of any State Water Board regulation or order or a term or condition of any permit or license occurred, should the AHO hearing officer impose administrative civil liability?
- 4) If the AHO hearing officer decides to impose administrative civil liability in this matter, what is the appropriate amount for such administrative civil liability? (Water Code section 1055.3 provides that, in determining the amount of civil liability, the Board shall take into consideration all relevant circumstances, including, but not limited to: (a) the extent of harm caused by the alleged violation; (b) the nature and persistence of the alleged violation; (c) the length of time over which the alleged violation occurred; and (d) the corrective actions, if any, taken by the violator.)

BACKGROUND

California Code of Regulations, title 23, sections 925 and 929 require permittees and licensees, respectively, to submit Annual Water Diversion and Use Reports for each year's diversions and use no later than April 1 of the following year (see Wat. Code, §§ 1840-1841).¹ These reports must be filed electronically using the Report Management System, which is a component of the State Water Board's electronic Water Rights Information Management System ("eWRIMS").

Water Code section 1846 authorizes the State Water Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a regulation or order adopted by the Board or a term or condition of a water-right permit or license. Under these statutes, the Board may impose such administrative civil liability in an amount not to exceed \$500 per day for each day in which the violation occurs.

On January 15, 2021, the State Water Board, Division of Water Rights (Division), issued two Administrative Civil Liability (ACL) Complaints under Water Code section 1055, alleging that Respondent failed to file Annual Water Diversion and Use Reports for 2019 diversions and use by the April 1, 2020 deadline. Each ACL Complaint alleges that the

¹ Copies of the California Water Code and Code of Regulations are posted on the State Water Board's website at http://www.waterboards.ca.gov/laws_regulations.

Respondent violated California Code of Regulations, title 23, section 929 and recommends the imposition of administrative civil liability in the amount of \$2,000 (a total of \$4,000 based on the allegations in both complaints). Each ACL Complaint states that the maximum potential liability for the alleged violations is \$144,500 (a total of \$289,000 based on the allegations in both complaints).

Information on the eWRIMS website indicates that, on January 21, 2021 Respondent submitted annual reports for diversions and use during 2019 under the water-right licenses involved in this matter.

In an e-mail dated February 2, 2021, Respondent requested a hearing on these matters. Water Code section 1112, subdivision (a)(1), provides that an AHO hearing officer shall preside over hearings of ACL Complaints issued under Water Code section 1055. The AHO hearing officer's proposed order in this matter will be issued under Water Code section 1114, subdivision (c).

ADMINISTRATIVE RECORD

The AHO hearing officer's proposed order in this matter will be based upon evidence and arguments in the administrative record. The following documents currently are in the AHO administrative record for this matter: (1) October 5, 1921 License for Diversion and Use for License 455 and December 17, 2008 License for Diversion and Use of Water for License 13783; (2) January 15, 2021 ACL Complaints and transmittal package; (3) Respondent's January 21, 2021 reports on the eWRIMs website for 2019 water diversions and use for the water-right licenses at issue; (4) Respondent's February 2, 2021 request for a hearing for the water-right licenses at issue; (5) February 2 and 3, 2021 voicemail and e-mail correspondence between the AHO and Respondent regarding receipt of the hearing requests; (6) AHO's February 4, 2021 e-mail to Respondent acknowledging receipt of Respondent's hearing requests; (7) AHO's March 18, 2021 e-mail to Division requesting copies of ACL Complaints and transmittal packages; and (8) Division's March 23, 2021 e-mail in response. The parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the hearing issues outlined above.

HEARING OFFICER AND HEARING TEAM

Megan Knize, a hearing officer in the State Water Board's Administrative Hearings Office, will be the hearing officer for this proceeding and will prepare a written proposed order and transmit it to the Clerk of the State Water Board (for the Board's consideration) within 90 days after the matter is submitted for decision. Other AHO staff may be present and may assist the hearing officer during the hearing and throughout this proceeding.

PROSECUTION TEAM

A State Water Board staff Prosecution Team will be a party to this hearing. The 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 Enforcement Section.

PROHIBITION ON EX PARTE COMMUNICATIONS; SEPARATION OF FUNCTIONS

While this proceeding is pending, *ex parte* communications between parties and members of the AHO hearing team are prohibited. *Ex parte* communications are any type of communication that occurs between a party or interested person and the hearing officer or a member of the hearing team without notice and an opportunity for all parties to participate.

Please do not attempt to communicate by telephone with any AHO hearing officer or staff member regarding this hearing, because other parties would not be able to participate in such communications. If any party wishes to communicate with the AHO at any time regarding any issue related to this proceeding, including any issue regarding hearing procedures or filing of documents, please communicate by e-mail to adminhrgoffice@waterboards.ca.gov or by letter to the AHO and serve all other parties with copies of the communication.² The party shall include a proof of service through a formal proof of service or by other verification.³

The Prosecution Team is separated from the AHO hearing team. Like all other parties, the Prosecution Team is 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.)⁴ These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's Internet webpage: https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

² The AHO's mailing addresses are provided in Item 6, below.

³ All references to "proof of service" in this document refer to either a formal proof of service or a list of the parties and the addresses of them or their representatives in an e-mail "cc" (carbon copy) list or the cc portion of a letter.

⁴ 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.

More information for this case may be found by clicking on “Annual Reports” and then on the link with the name of the Respondent.

The AHO webpage has information about accessing the AHO’s YouTube channel to watch live broadcasts or past recordings of hearings and pre-hearing conferences.

For general information about AHO proceedings, an AHO Frequently Asked Questions (FAQs) page is available at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/procedures.html. The AHO has also prepared a memorandum with information about how the AHO resolves a matter if (1) the Division withdraws the ACL Complaint in the matter, (2) the parties settle, or (3) the AHO holds a hearing. A copy of this memorandum is available at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020-07-10_aho-dwr_processes_memo.pdf.

DEADLINES FOR HEARING PARTICIPATION

Deadline for filing and service of any submittals of proposed testimony or exhibits before the hearing (optional)	June 1, 2021, 4:00 pm
Hearing date and time	June 8, 2021, 9:00 am

PROCEDURES FOR THIS WATER-RIGHT HEARING

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during or after the hearing as she deems appropriate.

- 1. HEARING PROCEDURES:** The AHO will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this proceeding.
- 2. SETTLEMENTS:** The Prosecution Team and the Respondent may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO will participate in such settlement discussions.
- 3. POLICY STATEMENTS BY INTERESTED PERSONS:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present non-evidentiary policy statements during the hearing.

4. TESTIMONY AND OTHER EXHIBITS: Exhibits include all written testimony and other documents to be submitted as evidence. There is no requirement for any party to submit any proposed testimony or exhibits before the hearing, but a party may do so. Any party that wants to submit proposed testimony or exhibits before the exhibit filing deadline listed above may do so by following the procedures described in Item 6. Any party submitting written proposed testimony before the hearing still must produce the actual witness or witnesses to verify the written proposed testimony, provide a summary of it, and be available for cross-examination, during the hearing.

5. EXHIBIT FORMATTING AND ORGANIZATION: A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Word or Excel format. A sample is attached to the end of this document.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, the Prosecution Team's exhibits should be numbered PT-1, PT-2, etc., Respondent's exhibits Respondent-1, Respondent-2, etc.

6. SUBMISSIONS OF DOCUMENTS: Parties that decide to submit evidence before the hearing may upload such evidence electronically to the AHO's File Transfer Protocol website, "AHO-FTP2". Parties must also mail two paper copies of all uploaded exhibits to the AHO.

Please go to the AHO's webpage and review the Notice of Availability of Administrative Hearings Office FTP Sites for information about electronic submissions of documents. This document is accessible here:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020_05_05_notice_ftp2.pdf

Each party that decides to file exhibits before the hearing shall upload its exhibits and Exhibit Identification Index to the AHO-FTP2 site before the exhibit filing deadline specified in this notice. Any party that uploads hearing documents to the AHO-FTP2 site shall mail paper copies of all of the exhibits and the party's exhibit identification index to all other parties at the address listed in the service list, and shall file a proof of this service with the AHO.

When a party has uploaded all of the party's exhibits to the AHO-FTP2 site, the party or party's representative shall send an email to the AHO at adminhrgoffice@Waterboards.ca.gov, and mail a paper copy of this e-mail to all other parties on the service list, notifying the AHO that the party has uploaded the documents.

Each party also shall mail or deliver by courier two paper copies of its exhibits and Exhibit Identification Index to one of the AHO's two addresses listed below, with a proof of service of these paper copies. The party shall make this mailing of the paper copies of the party's exhibits by the exhibit filing deadline, but the AHO does not need to receive the mailed paper copies of the exhibits by this deadline.

After the exhibit filing deadline, the AHO will move all documents from the AHO-FTP2 site to the publicly available AHO-FTP site, perform minor file name formatting if needed, advise the parties of these changes and that these documents are available for downloading from that site.

Instead of uploading the party's exhibits and exhibit identification index to the AHO-FTP2 site, a party may deliver two paper copies of the party's exhibits to the AHO by either of the following two methods:

Delivery to AHO by U.S. Mail	Delivery to AHO by Overnight Courier
State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100	Joe Serna Jr. CalEPA Building State Water Resources Control Board Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Rm. 114 Sacramento, CA 95814

If a party uses either of these alternative means of filing paper copies of its exhibits with the AHO in lieu of electronically filing the exhibits, then the party shall complete the filing of the paper copies by the exhibit filing deadline specified in this notice.

The party also shall mail paper copies of the party's exhibits and exhibit filing index to the other parties at the addresses listed on the attached service list.

7. ORDER OF PROCEEDING: The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing.

- a. **Policy Statements:** The hearing officer will allow interested persons to present policy statements at the start of the hearing before the presentations of cases-in-chief. **Oral policy statements and oral summaries of written policy statements will be limited to 5 minutes.**
- b. **Presentation of Cases-In-Chief:** Each party may present a case-in-chief addressing the key issues in the hearing notice. The hearing will proceed in the following order:
 - Party's opening statement (**5 minutes per party**)
 - Summaries of the party's witnesses' written proposed testimony or presentation of the party's oral testimony (**no more than 30 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**30 minutes total for all of the other party's witnesses**).
 - Re-direct examination and re-cross examination of the party's witnesses, if allowed by the hearing officer.

- Questions from the hearing officer. (These questions may occur at any time, but normally will be after all other parties have completed their cross-examinations of a party's witnesses.)
- Submitting exhibits into evidence, with opportunities for objections by other parties.

c. **Presentations of parties' rebuttal evidence:** After all parties have presented their cases-in-chief, the hearing officer may allow parties to submit rebuttal exhibits and testimony.

d. **Closing statements (5 minutes per party)**

8. HEARING LOGISTICS: The hearing officer prefers that parties participate in the hearing 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 the hearing. Any interested party may order a court reporter at the party's own expense. The AHO will record the hearing and post audio-plus-video files of the hearing on the AHO-FTP site as part of the administrative record for this matter. Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference.

Parties should plan to call into the hearing at least 10 minutes before the scheduled hearing time to ensure the party can resolve any technical issues before the hearing begins. Parties will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When speaking, please turn the video on and unmute the microphone by clicking on the symbols in the lower left-hand side of the Zoom window.

During the hearing, please be respectful and patient. Parties should raise a hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute unless speaking. If other devices are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see each party's name, depending on the party's Zoom account settings.

Other participants may also see the last three digits of a party's phone number unless the party has called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If a party's device freezes, please notify staff at adminhrqoffice@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer.

If restarting the device does not work, try calling into the hearing using the phone number provided with the Zoom meeting information on the first page.

April 21, 2021

Date

SIGNATURE ON FILE

Megan S. Knize
Hearing Officer

Enclosures:

- Exhibit Identification Index
- Service List

SERVICE LIST

Ciro Toma, Respondent
41 Summit Street
Jackson, CA 95642
ciro@tomasurvey.com
Certified Mail No. 7003 1680 0000 2966 3347

Julé Rizzardo, Assistant Deputy Director
Division of Water Rights
State Water Resources Control Board
Jule.Rizzardo@Waterboards.ca.gov

Patrick Lewis, Staff Counsel
Office of Enforcement
State Water Resources Control Board
Patrick.Lewis@Waterboards.ca.gov

Kenneth Petruzzelli, Staff Counsel
Office of Enforcement
State Water Resources Control Board
Kenneth.Petruzzelli@Waterboards.ca.gov

Robert Cervantes, Supervising WRC Engineer
Division of Water Rights
State Water Resources Control Board
Roberto.Cervantes@Waterboards.ca.gov

Brian Coats, Senior WRC Engineer
Division of Water Rights
State Water Resources Control Board
Brian.Coats@Waterboards.ca.gov