
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Public Hearing on the
Administrative Civil Liability Complaint
issued under Water Code section 1055 against

Lloyd Pareira (Water Right ID S021809)

for failure to submit a Curtailment Certification Form.

The **Public Hearing** will commence on

September 22, 2022, at 9:00 am

and will be held by Zoom teleconference.

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/98588032086?pwd=dTM2dHVESjF1Myt4UTM5a3QyM1FyZz09> with Meeting ID: 985 8803 2086 and Passcode: 729257

or by calling in at:

+16699009128,,98588032086#,,,,*729257# 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, at <https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

BACKGROUND

The State Water Resources Control Board (State Water Board or Board) adopted California Code of Regulations, title 23, sections 876.1 through 879.2 (Delta Emergency Regulations) on August 3, 2021. The regulations went into effect on August 19, 2021.¹ The Delta Emergency Regulations authorize the Deputy Director of the Division of Water Rights to issue curtailment orders to water right holders and claimants in the

¹ Text for California Code of Regulations, title 23, sections 876.1 through 879.2 may be found at

https://www.waterboards.ca.gov/drought/delta/docs/deltareg_oal_approval.pdf.

Sacramento-San Joaquin Delta watershed when flows are insufficient to support all diverters. On August 20, 2021, the Deputy Director of the Division of Water Rights issued an Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed (Curtailment Order) pursuant to the Delta Emergency Regulations. The Curtailment Order required water right holders and claimants who were subject to the order to submit an online Compliance Certification Form by September 3, 2021.

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. Under these statutes, the Board may impose administrative civil liability in an amount not to exceed \$500 per day for each day in which the violation occurs.

On June 6, 2022, the Assistant Deputy Director for the Division of Water Rights issued an Administrative Civil Liability Complaint (ACL Complaint) pursuant to Water Code section 1055 against Lloyd Pareira (Respondent) for failure to submit a Curtailment Certification Form as required by the Curtailment Order.

The ACL Complaint alleges that Respondent is the owner of record of claimed Water Right ID S021809 and that Respondent did not file a Curtailment Certification Form as required by the Curtailment Order. (ACL Complaint, ¶¶ 10 & 12.) The ACL Complaint further alleges that the Division sent the Respondent a Notice of Violation on May 6, 2022, informing the Respondent about the alleged violation, but the Respondent still had not filed a Curtailment Certification Form when the Division issued the ACL Complaint on June 6. (*Id.* at ¶¶ 15 & 17.)

The ACL Complaint calculates a maximum potential liability for Respondent's alleged violation of \$137,500, which is 275 days multiplied by \$500 per day. (*Id.* at ¶ 21.) The ACL Complaint recommends that the Board impose \$1,000 in administrative civil liability on the Respondent for the alleged violation. (*Id.* at ¶ 26.)

The Respondent submitted a request for a hearing on the ACL Complaint by e-mail, which the Office of Enforcement forwarded to the State Water Board's Administrative Hearings Office (AHO) on June 30, 2022. Water Code section 1112, subdivision (a)(1), provides that an AHO hearing officer shall preside over hearings on administrative civil liability complaints issued under Water Code section 1055. After the hearing, the AHO hearing officer will prepare a proposed order and transmit it to the Clerk of the Board under Water Code section 1114, subdivision (c)(1).

PURPOSE OF HEARING AND HEARING ISSUES

The purpose of this hearing is for the AHO hearing officer to receive evidence and arguments relevant to the following issues:

1. Did the Deputy Director of the Division of Water Rights issue an initial order to Respondent pursuant to California Code of Regulations, title 23, section 876.1, subdivision (c) (section 876.1(c))?
2. Was the Respondent required to submit a Curtailment Certification Form pursuant to California Code of Regulations, title 23, section 879, subdivision (d) (section 879(d)), or an initial order issued to the Respondent by the Deputy Director pursuant to section 876.1(c)?
3. If the Respondent violated 879(d) or an initial order issued to the Respondent by the Deputy Director pursuant to section 876.1(c), should the State Water Board impose administrative civil liability on the Respondent under Water Code sections 1846 and 1055?
4. If the State Water Board decides to impose administrative civil liability on the Respondent, what is the appropriate amount of 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.)

ADMINISTRATIVE RECORD

The AHO hearing officer's proposed order in this matter will be based upon evidence and arguments in the administrative record. The AHO may add documents, in addition to the parties' exhibits, to the administrative record. Documents that are currently in the AHO administrative record for this matter include the following: (1) June 6 ACL Complaint and transmittal letter; (2) June 29 request for hearing by the Respondent; and (3) July 1 e-mail and letter from the AHO to all parties acknowledging receipt of the Respondent's hearing request. Parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the hearing issues outlined above.

The AHO uses the State Water Board's File Transfer Protocol (FTP) site to make AHO administrative record files available to interested parties and the public. The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP Download Folder."

To access the AHO-FTP download folder, please submit an e-mail request to the AHO at AdminHrgOffice@Waterboards.ca.gov with "Request for AHO ftp password" in the subject line. After receiving the e-mail request, the AHO will send a reply e-mail with a password to access the download account. It is not necessary to include any other parties in the cc line for such an e-mail request.

The AHO will create a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain all administrative record documents related to this proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and legal briefs, if applicable, to this folder promptly after each filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings, correspondence and the AHO's order). The documents in this folder will be the AHO's administrative record for this proceeding.

HEARING OFFICER AND HEARING TEAM

Nicole Kuenzi, 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 of its notices and other AHO documents regarding these proceedings on the AHO's Internet webpage: at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

More information about this proceeding may be found by clicking on "Water-Right Enforcement Matters – Other," then "Emergency Curtailment Regulations – Sacramento-San Joaquin Delta Watershed," and then 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.

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.

DEADLINES FOR HEARING PARTICIPATION

Deadline for filing and service of any submittals of proposed testimony or exhibits before the hearing (optional)	September 9, 2022, 12:00 pm
Hearing date and time	September 22, 2022, 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 should be numbered Respondent-1, Respondent-2, etc.

6. SUBMISSIONS OF EXHIBITS: The AHO prefers that participants that decide to submit exhibits before the hearing do so by uploading the exhibits in electronic form to the State Water Board's FTP site. The AHO will provide each party a unique account to upload the party's documents for this hearing approximately one week before the deadline to file exhibits. These accounts are referred to in this hearing notice as the "Parties' Upload Folders." Only the party may upload files to the party's folder, and only the AHO may view, transfer, and download files from this folder.

Each party shall upload its exhibits and Exhibit Identification Index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' Upload Folders to the administrative record folder and advise the parties that these documents are available for downloading from the Download Folder. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the administrative record folder.

If a party cannot upload exhibits to the FTP site, then the party may serve its exhibits on the other parties by mail by the optional exhibit filing deadline specified in this notice.

The party may mail paper copies of all 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 paper copies of its exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

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 60 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**60 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: Parties should participate in the hearing by both audio and video through the Zoom meeting link if possible. 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 a file of the recording 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.

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 on 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 adminhr@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.

August 23, 2022
Date

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

Enclosures:

- Exhibit Identification Index
- Service List

SERVICE LIST

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