
State Water Resources Control Board

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Pre-Hearing Conference
and a Public Hearing on the pending petitions of

The County of Sacramento and the Sacramento County Water Agency

to change water-right Licenses 1062 and 4060 (Applications A001061 and A014494),
which authorize diversions of water from the Sacramento River
in Sacramento County
and related issues regarding whether these licenses should be revoked

**The Pre-Hearing Conference will begin on
April 22, 2020 at 1:30 pm**
In Training Room 2 of the
Joe Serna, Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, California

**The Public Hearing will begin on
August 3, 2020 at 9:00 am**
in the **Byron Sher Auditorium**
Joe Serna, Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, California

**This Public Hearing will continue as necessary on
August 13, 2020 at 9:00 am in the Byron Sher Auditorium
and
August 17, 2020 at 9:00 am in the Coastal Hearing Room**

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence to be considered in determining whether the State Water Resources Control Board (“State Water Board” or “Board”) should approve the petitions filed by the County of Sacramento and the Sacramento County Water Agency (jointly referred to in this notice as “Sacramento County”) to change water-right Licenses 1062 and 4060 (Applications A001061 and A014494). This hearing also will consider whether the State Water Board should revoke these licenses.

BACKGROUND

Water Right Licenses 1062 and 4060

The State Water Board’s records (available for public review on the State Water Board’s Electronic Water Right Information Management System (“eWRIMS”)) indicate that water-right License 1062 was issued to various people and entities on June 6, 1931, was assigned to various people and entities, and ultimately was assigned to the County of Sacramento, Public Works Agency – Real Estate Division, on July 2, 1998. The license states that licensee has the right to divert a total of 7.44 cubic-feet per second (“cfs”) of water from the Sacramento River in Sacramento County from about April 1 to about October 1 of each season for irrigation purposes. The June 12, 1931, Order Allowing Correction of Description of Place of Use states that the authorized place of use, as changed by this order, contains a total of 715.56 acres, all of which is within Sacramento County. The May 24, 1954, Order Allowing Change in Points of Diversion specifies four authorized points of diversion, each of which has a specified maximum authorized diversion rate.

The State Water Board’s records indicate that water-right License 4060 was issued to Fong Quock Yen on January 26, 1955. The State Water Board’s files for this license in the Board’s Water Rights Records Unit indicate that this license now is held by Sacramento County. The license states that the licensee has the right to divert 1.57 cfs from the Sacramento River at a specified point of diversion in Sacramento County from about May 1 to about October 1 of each year for irrigation purposes. The authorized place of use contains 123.32 acres, all of which is within Sacramento County.

Recent Historical Diversions and Use

Sacramento County’s November 6, 2017, Project Description/Analysis of Impacts to Fish and Wildlife/Assessment of Injury to Other Legal Users of Water, which Sacramento County filed to supplement its change petitions (described below), estimates that: (a) 735 acre-feet (“af”) were diverted and then used on part of the authorized place of use in License 1062 in 2001, (b) 124 af were diverted and then used on the rest of the License 1062 authorized place of use in 2003; and (c) 108 af were diverted and then used on the License 4060 authorized place of use in 2003. Using

these estimates, this document states that the maximum use during these two years, which this document refers to as the “most recent years of maximum use,” under License 1062 was 859 acre-feet (“af”) and the maximum water use under License 4060 was 108 af. (Nov. 6, 2017 Project Description, pp. 3-7.)

This document also states that no water has been diverted or used under either of these licenses since about 2006 because guidelines of the Federal Aviation Administration (“FAA”) “strongly discourage agriculture on property near airports where farming activities attract birds and other wildlife hazardous to aircraft operations.” As a result, Sacramento County allowed all tenant agricultural leases on County properties south of Interstate 5, which are in the vicinity of the Sacramento International Airport and include the authorized places of use for these properties, to expire on December 31, 2007. This document states that “the County now manages the land exclusively to reduce bird attraction, and the County has no intention of reinstating tenant agriculture.” (Nov. 6, 2017 Project Description, p. 4.) Consistent with this practice and this intent, the annual statements of water diversion and use for these two licenses in the State Water Board’s eWRIMS system state that no diversions or use have occurred under either license since 2008.

On February 23, 2015, an engineer with a Division of Water Rights Enforcement Unit sent a letter to Sacramento County. This letter referred to a recent site inspection, noted that no diversions had occurred under License 1062 since 2006, “that there is no longer agriculture operation, equipment is inoperable, and there are no future agriculture plans.” In this letter, the Division offered Sacramento County the option of revoking the license. On February 27, 2015, a representative of Sacramento County sent a response letter, which stated that Sacramento County rejected the option of revoking License 1062 and requested “full due process for any revocation or related actions taken on License 1062 by the State Water Resources Control Board.”

Sacramento County Change Petitions

On March 12, 2015, Sacramento County filed petitions to change these two licenses to add the Freeport Regional Water Project intake on the Sacramento River as a new authorized point of diversion, to add municipal and industrial as new authorized purposes of use, and to add the Sacramento County Water Agency’s Zone 40 to the authorized place of use.

On November 29, 2018, the State Water Board, Division of Water Rights, issued a public notice of these petitions.

Comments on and Protests to Change Petitions

On December 31, 2018, a representative of the California Department of Fish and Wildlife (“CDFW”) submitted an e-mail with comments on and questions about these petitions. On January 2, 2019, the United States Department of the Interior, Bureau of Reclamation (“Reclamation”), submitted a letter with comments on and questions about

these petitions. The parties have treated Reclamation's letter as a protest to these petitions, so this notice refers to this letter as a "protest." On January 2, 2019, the California Department of Water Resources ("DWR") submitted a protest to these petitions. On April 24, 2019, Sacramento County's representative filed answers to Reclamation's and DWR's protests and a response to CDFW's comments.

Since then, the parties apparently have engaged in some discussions, but have not resolved their issues. On January 16, 2020, Sacramento County's representative sent a letter to the Division of Water Rights, which stated that the parties "remain at an impasse" and asked the State Water Board to resolve the pending issues.

Assignment of Petitions to Administrative Hearings Office

Water Code section 1110 established the Administrative Hearings Office ("AHO") within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. Water Code section 1114 provides that, after such a 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.

On February 10, 2020, Erik Ekdahl, Deputy Director of the Division of Water Rights, sent a memorandum to Eileen Sobeck, the State Water Board's Executive Director, which recommended transferring these two petitions to the AHO. On February 10, 2020, Ms. Sobeck issued a memorandum to AHO, assigning these matters, in whole, to the AHO.

STATUTES APPLICABLE TO WATER RIGHT CHANGE PETITIONS

Water Code sections 1700-1704 apply to these water-right change petitions. Section 1702 provides that, before the Board may grant permission to make the changes requested in a petition, "the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved." Section 1704, subdivision (a) provides that the Board, "after a hearing, may approve with conditions, or deny, a petition." (For a discussion of the "no injury" rule, see *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 736-745.)

The State Water Board's regulations, California Code of Regulations, title 23, sections 791-796, apply to these change petitions.

NOTICE OF POTENTIAL REVOCATION OF LICENSES

Statutes Applicable to Potential Revocations of Licenses

Water Code section 1240 provides that "[t]he appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use

it for such a purpose the right ceases.” Section 1241 provides “[i]f the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him or her, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, that unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. That reversion shall occur upon a finding by the board following notice to the . . . licensee . . . and a public hearing, if requested by the . . . licensee . . .” (For a discussion of forfeitures of pre-1914 appropriative rights, see *Millview County Water Dist. v. State Water Resources Control Bd.* (2014) 229 Cal.App.4th 879, 899-905.)

Water Code section 1675, subdivision (a), provides that, if “the board finds that . . . the licensee has ceased to put the water to that beneficial or useful purpose, . . . the board may revoke the license and declare the water to be subject to appropriation in accordance with this part.” Subdivision (b) of section 1675 provides that the Board may revoke the license “after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1.”

California Code of Regulations, title 23, section 850, provides that “[w]hen it appears to the board . . . that a . . . licensee may have ceased beneficial use of water, . . . the board may consider revocation of the . . . license. The board will notify the . . . licensee of the proposed revocation. The notice will state the reasons for the proposed revocation and provide an opportunity for hearing upon request of the . . . licensee . . .” California Code of Regulations, title 23, sections 851-852, specify the requirements for the notice of hearing and hearing procedures.

Potential Revocation of Licenses 1062 and 4060

Both Sacramento County’s change petition documents and DWR’s and Reclamation’s protests to the petitions discuss the fact that no water has been diverted or used under either of these licenses since 2006. These protests state that the State Water Board should consider whether these licenses have been abandoned, the water authorized to be diverted and used under them should revert to the public, or the water rights should be lost.

Considering that no water has been diverted or used under either of these licenses since 2006 and these statements in DWR’s and Reclamation’s protests, the AHO has determined that it should consider during this hearing the issue of whether or not these licenses should be revoked.

Process for Considering Potential License Revocation Issues

The State Water Board’s normal process for addressing potential license-revocation issues is for the Division of Water Rights Enforcement Section to prepare a notice of proposed license revocation and serve it on the licensee. The licensee then may request a hearing, and, if a hearing is requested, the State Water Board will hold a hearing and issue an order.

To avoid the delays that would be associated with using that process for issues associated with potential revocations of Licenses 1062 and 4060, the AHO is proposing that this Notice of Public Hearing and Pre-Hearing Conference be the notice satisfying the notice requirements of Water Code section 1675.1 and California Code of Regulations, title 23, section 851, and that, if Sacramento County files a Notice of Intent (“NOI”) (discussed below) for this hearing, then the AHO will deem that NOI to be a request for hearing on these issues.

During the status conference, the hearing officer will ask the representatives of Sacramento County and the Division of Water Rights Enforcement Section (if the Division decides to participate in this hearing) if they have any objections to this process.

By including issues associated with potential revocations of these licenses as hearing issues in this notice, the AHO is not making any pre-determinations regarding these issues, and the AHO will not take any position on these issues during the hearing. The AHO will rely on the Parties to present evidence, and make arguments, on these issues during the hearing process.

The AHO is sending copies of this notice to the State Water Board Division of Water Rights Enforcement Section, to advise it of these hearing issues and to give it an opportunity to participate as a Party in this hearing.

PURPOSE OF PRE-HEARING CONFERENCE

The AHO has decided to hold a pre-hearing conference during which the hearing officer and the Parties or their representatives may discuss: (1) the proposed process described above for considering potential license-revocation issues, (2) the hearing issues listed below, (3) pre-hearing and hearing schedules, (4) the applicable procedures, and (5) any related issues.¹

¹ If the currently prevailing concerns about the Coronavirus (COVID 19) still are present during the week before the week of the pre-hearing conference, then the AHO may convert the pre-hearing conference to a conference call. If the AHO decides to do this, then the AHO will notify all Parties that have filed NOIs at least several days before the pre-hearing conference and will provide the necessary call-in information. The AHO also will post a notice of any such action on the AHO webpage and circulate the notice to all people who have signed up to receive electronic notices for the AHO through the State Water Board’s LYRIS system.

PURPOSE OF HEARING; HEARING ISSUES

The purpose of this hearing is for the AHO to receive evidence regarding the following issues:

- 1) Should Licenses 1062 and 4060 be revoked?
 - a) Were the water rights described in these licenses abandoned?
 - b) What are the amounts of recent historical diversions and use under each of these licenses?
 - c) During the period when no water was diverted or used under these licenses, was there any competing or conflicting claim to the water that could have been diverted and used under these licenses?
- 2) If Licenses 1062 and 4060 are not revoked, then should Sacramento County's change petitions be granted?
 - a) Would the State Water Board's approval of these petitions result in injury to any other legal user of water?
 - b) Would the State Water Board's approval of these petitions unreasonably affect any fish, wildlife or any other instream beneficial use?
 - c) Would the State Water Board's approval of these petitions be in the public interest?
 - d) Would the State Water Board's approval of these petitions cause the initiation of a new water right?
 - e) What is the status of Sacramento County's actions to comply with the California Environmental Quality Act ("CEQA") for these petitions?
- 3) If these change petitions should be granted, then what new terms or conditions, if any, should be added to Licenses 1062 and 4060 when the petitions are granted?

The AHO requests that the Parties submit as exhibits, in addition to any other relevant evidence, the best available evidence regarding the amount of water that was diverted and used under each of these licenses during each year from 1977 through 2019. The AHO also requests that Sacramento County submit the final certified CEQA document or documents and other exhibits demonstrating its compliance with CEQA for these petitions.

HEARING OFFICER AND HEARING TEAM

A hearing officer from the State Water Board's Administrative Hearings Office will preside during the pre-hearing conference and any subsequent hearings. Other AHO staff members may be present and assist the hearing officer during the status conference and the hearing, and throughout these proceedings.

SEPARATION OF FUNCTIONS; PROHIBITION ON *EX PARTE* COMMUNICATIONS

All Parties 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. 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 regarding these proceedings, including any issue regarding this status conference, hearing procedures or filing of documents, then that Party shall make such communication to the AHO in writing (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 electronic-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 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, any Party submitting any document to the AHO shall transmit copies of the document to all of 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 above that confirms that the Party has transmitted copies of the document to all other Parties and that describes the method of service.

Please do not attempt to 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, then 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. 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.

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's webpage.

PRE-HEARING CONFERENCE STATEMENTS

On or before the deadline listed below, each Party shall submit and serve a pre-hearing conference statement that separately addresses each of the pre-hearing conference issues listed above that the Party wants to address. The Parties also may include in their pre-hearing conference statements discussions of any other issues they believe are relevant.

Table 1: NOI and Exhibit Filing Deadlines
Pre-Hearing Conference and Hearing Schedule

Item	Date and Time
Deadline for any Party that wants to participate in the hearing to file an NOI with AHO and serve copies on all other Parties	April 6, 2020, 4:00 pm
Deadline for filing and service of Pre-Hearing Conference Statements	April 16, 2020, 4:00 pm
Pre-Hearing Conference	April 22, 2020, 1:30 pm
Deadline for all Parties to file their exhibits and exhibit identification indices with AHO and serve copies on all other Parties	July 6, 2020, 4:00 pm
Hearing begins	August 3, 2020, 9:00 am
Additional Hearing Days (if necessary)	August 13 and 17, 2020

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

NOIs may be submitted in paper (by mail or hand delivery) or electronically. All Parties shall file and serve exhibits and exhibit identification indices electronically, unless a Party applies to the AHO for authorization to file and serve paper copies of exhibits and exhibit identification indices. Any Party seeking such authorization shall file and serve the application for authorization at least three weeks before the exhibit submittal deadline and shall include a justification for the request in the application.

All documents submitted to the AHO, including NOIs, exhibits and exhibit identification indices, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

Table 2: Methods of Submitting Documents

Method	Address
By Email:	AdminHrgOffice@waterboards.ca.gov With Subject Line “Sacramento County Change Petition Hearing”
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see note below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814

Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first 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.

Please see the enclosed Information Concerning Water Right Hearings for more details regarding hearing procedures and requirements for submittals of exhibits, including submittals of electronic files that exceed the capacities for e-mail attachments.

ADMINISTRATIVE RECORD

The AHO has copied several documents from eWRIMS and the State Water Board’s public files for water-right Applications A001061 and A014494 and has included them in the initial administrative record for this hearing. The AHO will post files of these documents to an ftp site and will include instructions for access to this ftp site in the list of NOI parties the AHO will circulate after the deadline for filing NOI. The Parties may review the Board’s public files for these applications and submit copies of other documents in them as exhibits.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet Web site accessibility in Government Code section 11546.7, the AHO has posted and 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/ Any interested party may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

SETTLEMENT

As discussed above, representatives of the petitioner, Sacramento County, CDFW, DWR and Reclamation apparently have engaged in some settlement discussions regarding these petitions. Some or all of these Parties may decide to engage in further 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 any of the Parties enter into a written settlement agreement signed by representatives of the Parties, then they should notify the AHO of this agreement, using the procedures for submitting documents described above, as soon as possible.

TRAVEL TO AND ACCESSIBILITY AND SECURITY AT THE CALEPA BUILDING

A map to the Joe Serna Jr.-CalEPA Building (CalEPA Building) and parking information are available at <http://www.calepa.ca.gov/headquarters-sacramento/location/>. The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Moises Moreno-Rivera at (916) 341-5261 or moises.moreno-rivera@waterboards.ca.gov.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting or hearing. To register, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, sign in and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in.

WEBCAST OF HEARING

Depending on the facilities in the hearing room, broadcasts of the water rights hearings may be available via the internet and accessed at: <https://video.calepa.ca.gov/>.

Date: March 17, 2020

SIGNATURE ON FILE

Alan B. Lilly, Presiding Hearing Officer

Enclosures: -Information Concerning Appearances at Water-Right Hearings
-Notice of Intent to Appear form
-Exhibit Identification Index form
-Service List

INFORMATION CONCERNING WATER-RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted 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 may be viewed at the State Water Board’s website: http://www.waterboards.ca.gov/laws_regulations

Unless otherwise determined by the hearing officer, 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 also be given the opportunity to present closing arguments or to 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 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 party against whom the Prosecution Team’s action is directed.

The consent of other parties is not required 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 party subject to a proposed enforcement action. However, all parties will be given

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 or not 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 and 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 may be decided by specific rulings of the hearing officer, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate and not to just present a policy statement normally will be authorized to participate as a party. The hearing officer may impose limitations on any party's participation. (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, subject to appropriate conditions as determined by the hearing officer. 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. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Such interested persons and entities will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may be able to access some hearing documents from the AHO website.

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 policy statements be submitted to the AHO and copies served on all parties before they are presented at the hearing. Please see section 7, 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, which must be received by the AHO no later than the deadline specified in the Hearing Notice. Failure to submit a Notice of Intent to Appear by this deadline may be interpreted by the AHO as intent not to appear.

Interested persons who will not be participating as parties, but instead will be presenting only non-evidentiary policy statements, also should file Notices of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating 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' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, 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.² 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 7, 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, notice will be sent to those parties on the service list and interested persons that have filed Notices of Intent to Appear expressing their intents to present only policy statements.

² A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed 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 present testimony at the hearing shall submit all of the party's proposed written testimony by the deadline for filing exhibits.³ Proposed written testimony shall be designated as exhibits (one exhibit for each witness), and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony normally will not be allowed. 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 proposed testimony.

The AHO encourages all parties to prepare and submit sets of slides that summarize each of their witnesses' testimony, which then can be used to facilitate the witnesses' summaries of their testimony. The set of such slides for each witness must be labeled as a separate exhibit and submitted and served by the exhibit submittal deadline.

Each party shall submit to the AHO three paper copies and one electronic file of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index in Word or Excel format. Each party also shall serve an electronic file of each exhibit and the exhibit index on every other party on the service list. Each party shall file a statement of service indicating the manner of service with the party's exhibits.

Please label each exhibit with a short version of your party name and sequential numbers. For example, Sacramento County's exhibits should be numbered Sac County-1, Sac County-2, etc., Reclamation's exhibits should be numbered Reclamation-1, Reclamation-2, etc., and DWR's exhibits should be numbered DWR-1, DWR-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

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

The exhibits and indexes for this hearing, and a statement of service, must be received by the AHO and served on the other parties no later than the deadline specified in the Hearing Notice. The AHO may interpret failure to timely submit exhibits as a waiver of the party's right to submit exhibits and the party's status as a party.

³ 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. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models so that a qualified independent expert could reproduce the technical study or model and use it to obtain the same results.
 - b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (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 exhibit will be used 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. A party seeking to enter into evidence as an exhibit a voluminous document or database may so advise the other parties before the filing deadline for exhibits, and may ask the other parties whether or not they wish to receive copies of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the AHO solely in electronic form, using a file format readable by Microsoft Office 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents also are admitted as exhibits.
 - e. 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.
- 7. 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 three paper copies) unless the hearing officer authorizes submission of exhibits in a different format. In addition, the AHO encourages all parties to agree to accept electronic service.

Documents submitted or served electronically 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. Electronic submittals to the AHO of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: adminhrqoffice@waterboards.ca.gov with the subject line, “**Sacramento County Change Petition Hearing**”. Electronic submittals to the AHO of documents greater than 11 megabytes in total size shall be submitted on a compact disc (CD), digital versatile disc (DVD), or universal serial bus (USB) flash drive. **Each electronically submitted exhibit must be saved as a separate PDF file, with the filename in lower case lettering.** If a party submits exhibits to the AHO in one of these formats, the party also must serve copies of these exhibits on all of the other parties.

8. **PRE-HEARING CONFERENCE:** At the hearing officer’s discretion, a pre-hearing conference may be conducted before the proceeding 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.
9. **ORDER OF PROCEEDING:** The hearing officer normally will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5. The time limits specified below may be changed by the hearing officer, for good cause.
 - a. **Policy Statements:** Policy statements normally will be heard at the start of the hearing, before the presentations of cases-in-chief. **Oral summaries of the 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 motion of the party after completion of the party’s case-in-chief.
 - 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. Any policy-oriented statements by a party should be included 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 is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. **Each party will be allowed a maximum of 10 minutes total to summarize all of the party's written testimony on direct examination.**⁴
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted 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 as a panel. **Cross-examiners 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 there is good cause demonstrated in an offer of proof. 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:** Re-direct examination may be allowed at the discretion of the hearing officer. Any re-direct examination and re-cross examination permitted will be limited to 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 presented by another party.

Rebuttal testimony and exhibits do not need be submitted before the hearing unless the hearing officer requires such submittals. Rebuttal evidence will be

⁴ The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. 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.

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. 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 submitting and serving closing briefs. 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.

10. RULES OF EVIDENCE: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection will not be sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding the Sacramento County Change Petition Hearing,

Scheduled to begin on August 3, 2020

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): _____

Represented party (if applicable): _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

Optional:

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

Signature: _____ Date: _____

SERVICE LIST

Robert Cervantes
Supervising WRC Engineer
Enforcement Section
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Bob Colella
Water Rights Specialist
Department of the Interior
Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95812-2000

Erick D. Soderland, Attorney
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Mayumi Okamoto
Assistant Chief Counsel
Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, CA 95814

Dave Underwood, Senior Engineer
Sacramento County Water Agency
10151 Florin Road
Sacramento, CA 95829

Aaron A. Ferguson
Somach, Simmons and Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

Lauren Mulloy, ES
Water Rights Coordinator
California Department of Fish and Wildlife
1701 Nimbus Road
Rancho Cordova, CA 95670

Richard J. Woodley
Regional Resources Manager
U.S. Department of the Interior
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

Anna Fock
California Department of Water Resources
1416 9th Street, Room 1620
Sacramento, CA 94236-001