
State Water Resources Control Board

PRE-HEARING CONFERENCE ORDER AND AMENDED 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 water-right application (A029657) of

The County of San Joaquin

for a permit to appropriate water from the
South Fork American River at the Freeport Regional Water Authority Facility
on the Sacramento River

**The Pre-Hearing Conference will begin on
September 20, 2021, at 1 p.m.**
and will be held by Zoom teleconference

**The Public Hearing will begin on
September 29, 2021, at 9 a.m.,
and continue on September 30 and October 1, beginning at 9 a.m.,
and will be held by Zoom teleconference.**

Representatives of parties and other people who want to participate in this pre-hearing conference or this hearing may access these Zoom teleconferences by using the following link and call-in information

Please access Zoom by using the link:
<https://waterboards.zoom.us/j/95722679101?pwd=VHdxLzI0dWVXRythck43bWtocU85dz09> with Meeting ID: 957 2267 9101 and Passcode: 382877
or by calling in at:
+16699009128,,95722679101#,,,,*382877# 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>

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence that the Administrative Hearings Office (AHO) and State Water Resources Control Board (State Water Board or Board) will consider when determining whether to: (1) cancel or deny water-right Application 29657 under Water Code section 1276 or section 1335, or California Code of Regulations, title 23, section 840; or (2) establish a time schedule for the applicant to submit information necessary for the State Water Board's Division of Water Rights (Division) to process Application 29657.

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The AHO issued a Notice of Public Hearing and Pre-Hearing Conference in this matter on June 10, 2021 (June 10 Hearing Notice). The information in this Pre-Hearing Conference Order and Amended Notice of Public Hearing supersedes any conflicting information in the June 10 Hearing Notice. All other procedures and information included in the June 10 Hearing Notice and not superseded by this Pre-Hearing Conference Order and Amended Notice of Public Hearing remain in effect.

PRE-HEARING CONFERENCE ORDER

The AHO held a pre-hearing conference in this matter on July 13, 2021, in accordance with the June 10 Hearing Notice. This pre-hearing conference order addresses procedural issues discussed during the July 13 conference.

Amended Hearing Dates: In its pre-hearing conference statement and during the pre-hearing conference, the County of San Joaquin (Applicant) asked the hearing officer to postpone the hearing in this matter. The Applicant requested a nine-month continuance of the hearing to allow time to update its water availability analysis (WAA) based on comments on the WAA by protestants to Application 29657. In the alternative, the Applicant requested that the AHO reschedule the hearing because of a scheduling conflict with a trial in Santa Clara County at the end of August in which the Applicant's counsel is participating.

The purpose of this hearing is to receive evidence that the AHO and the Board will consider to determine whether to cancel or deny water-right Application 29657 for failure of the Applicant to diligently pursue the application or to provide information requested by the Board, or, if the Board does not cancel or deny Application 29657, whether the Board should establish a time schedule for the applicant to submit information necessary for the Division to process the application. The Applicant's development of an updated WAA will not assist the AHO to resolve the hearing issues listed in the June 10 Hearing Notice. Whether unappropriated water is available for appropriation and how much water is available for appropriation under Application 29657 are not directly relevant to this hearing. Therefore, the hearing officer denies the Applicant's request for a nine-month continuance.

The AHO will, however, reschedule the hearing to accommodate the scheduling conflict of the Applicant's counsel. The hearing officer has rescheduled the public hearing in this matter to begin on September 29, 2021, at 9:00 a.m. and continue on September 30 and October 1, 2021, as needed. The hearing officer has also amended the associated procedural deadlines, which are listed in the table in this notice titled "Hearing Schedule and Deadlines."

Amended NOIs: In its pre-hearing conference statement and during the pre-hearing conference, the Applicant asked for an opportunity to amend its NOI. The hearing officer will allow all parties to file amended NOIs, if needed, and has set a deadline for parties to file amended NOIs. Please note that parties are not required to identify rebuttal witnesses in their initial or amended NOIs.

Written Evidentiary Motions: Parties may file written motions in limine or similar evidentiary motions with the AHO by September 13, 2021, at 12 p.m. Parties may file written responses to these motions by September 20, 2021, at 12 p.m. Parties are not required to submit evidentiary motions in writing and may make oral evidentiary motions during the hearing. However, the hearing officer encourages parties to submit evidentiary motions that seek exclusion of significant portions of a witnesses' testimony in writing in advance of the hearing so that the hearing officer may consider and rule on these motions before the hearing begins. The AHO may, on its own motion, exclude evidence not relevant to the hearing issues listed in the June 10 Hearing Notice.

Rebuttal Evidence: Based on the discussion during the pre-hearing conference, the hearing officer will require the submission of rebuttal evidence in advance of the hearing, including the submission of rebuttal testimony in writing. All parties shall file rebuttal exhibits with the AHO by September 20, 2021, at 12:00 p.m. Rebuttal evidence will be limited to evidence that is responsive to evidence presented with another party's case-in-chief. To demonstrate compliance with this requirement, each party shall list, in each part of the party's rebuttal testimony, the evidence presented in another party's case-in-chief to which that part of the rebuttal testimony is responsive

Closing Briefs: Parties may submit closing briefs. The deadline for parties to file closing briefs is October 29, 2021, by 12 p.m. Closing briefs shall be no more than 10 pages single-spaced or 20 pages double-spaced, in a font size not smaller than 12 points.

Order of Proceeding: The hearing will begin at 9 a.m. on September 29, 2021. The hearing will begin with opening statements or policy statements by any party or interested person who will not be presenting a case-in-chief. These opening statements or policy statements will be limited to five minutes. The hearing officer will then address any pending evidentiary motions or other procedural matters before moving to the parties' cases-in-chief. Each party may make an opening statement of no more than five minutes before presenting its case-in-chief witnesses. The Applicant will be the first party to present its case-in-chief.

The hearing officer may limit oral summaries of testimony of any witness if the testimony is repetitive or does not further the hearing officer's understanding of the issues, or as necessary to complete the hearing within the available time. The hearing officer may allow additional time for oral summaries of testimony if the testimony is productive and assists the hearing officer.

Cross-examination may be conducted by individual witness or by witness panels at the hearing officer's discretion. To facilitate the use of documents for cross-examination, please e-mail any documents not already submitted as an exhibit to AdminHrgOffice@waterboards.ca.gov or upload the documents to the party's assigned upload folder on the State Water Board FTP site before beginning cross-examination.

After all parties have presented their cases-in-chief, the hearing officer may continue directly to the rebuttal portion of the hearing. Parties should expect that presentation of rebuttal evidence will occur in the same order as presentation of cases-in-chief, although the hearing officer may, at her discretion, reorder parties or individual witnesses.

PRE-HEARING CONFERENCE

The hearing officer will hold a pre-hearing conference on the date and at the time listed on the first page of this notice. To participate in the pre-hearing conference, please use the Zoom teleconference information provided on the first page of this notice. Because of the current COVID-19 pandemic, no in-person appearances will be allowed for this pre-hearing conference.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the conference. The pre-hearing conference will be electronically recorded by Zoom teleconference. Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO and serve copies of it on the other parties listed in the attached service list.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Deadline for parties to file amended NOIs.	August 13, 2021, 12:00 p.m.
Deadline for parties to file exhibits and exhibit identification indices.	August 27, 2021, 12:00 p.m.
Deadline for parties to file written evidentiary motions.	September 13, 2021, 12:00 p.m.
Deadline for parties to file rebuttal exhibits and exhibit identification indices.	September 20, 2021, 12:00 p.m.
Deadline for parties to file responses to written evidentiary motions.	September 20, 2021, 12:00 p.m.

Pre-hearing conference.	September 20, 2021, 1:00 p.m.
Hearing begins.	September 29, 2021, 9:00 a.m.
Additional hearing days (as necessary).	September 30 and October 1, 2021, 9:00 a.m., and additional dates as necessary.
Deadline for parties to file closing briefs.	October 29, 2021, 12:00 p.m.

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

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

Method	Address
By email (preferred method for documents other than exhibits):	AdminHrgOffice@waterboards.ca.gov adminhrgoffice@waterboards.ca.gov With Subject Line “San Joaquin County Application 29657”
By Uploading to FTP site (preferred method for exhibits):	https://ftp.waterboards.ca.gov The AHO will provide a unique username and password to each party that has filed an NOI, which that party then may use to access the FTP site to upload exhibits and other documents.
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see note below):	State Water Resources Control Board Administrative Hearings Office 980 9 th St., 9 th Floor Sacramento, CA 95814

Please plan ahead if you wish to hand deliver documents and e-mail AHO staff in advance at AdminHrgOffice@waterboards.ca.gov to arrange for hand-delivery of documents. Please note that the Administrative Hearings Office is no longer located at the Joe Serna Jr. CalEPA Building and is now located at 980 9th Street, Sacramento, California.

Prior to the deadline for parties to file amended NOIs on August 13, 2021, the AHO will provide a unique username and password to each party that filed an initial NOI, which that party then may use to access the FTP site to upload exhibits and other documents.

Please see the June 10 Hearing Notice for more information regarding hearing procedures and submittals of exhibits.

HEARING LIVE-STREAM AND RECORDING

The pre-hearing conference and hearing will be live-streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. Each session may be accessed through the appropriate link on the Administrative Hearings Office YouTube channel. To view the morning session, click the link identified as “morning.” The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as “afternoon.” The afternoon session will begin after the lunch break.

After the conclusion of the hearing, a recording of the morning and afternoon YouTube live-stream sessions will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link: <https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

Date: July 22, 2021

SIGNATURE ON FILE
Nicole L. Kuenzi, Hearing Officer

Attachments:
-Service List

SERVICE LIST

Updated July 21, 2021

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