
State Water Resources Control Board

STATUS CONFERENCE RULING, NOTICE OF PRE-HEARING CONFERENCE, AND NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Pre-Hearing Conference and a Public Hearing, **Phase 1A**,
on the pending applications of

**North Kern Water Storage District and City of Shafter (Application 31673),
City of Bakersfield (Application 31674),
Buena Vista Water Storage District (Application 31675),
Kern Water Bank Authority (Application 31676),
Kern County Water Agency (Application 31677), and
Rosedale-Rio Bravo Water Storage District (Application 31819)**

for permits to appropriate water from the Kern River system.

**The Pre-Hearing Conference will begin on
October 28, 2021, at 9:00 am**
and will be held by Zoom teleconference.

**The Public Hearing, Phase 1A, will begin on
December 9, 2021, at 9:00 am**
and continue on December 10, 2021, at 9:00 am,
and additional days as necessary.
The Public Hearing 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/99129930390?pwd=VStJeVNIYmZqKziHTVRTZWs2WDZmQT09> with Meeting ID: 991 2993 0390 and Passcode: 356842
or by calling in at:
+16699009128,,99129930390#,,,,*356842# 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

The purpose of Phase 1A 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 the partial forfeiture of water rights by Kern Delta Water District as determined by the Fifth Circuit Court of Appeal in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555 (*North Kern* decision) resulted in unappropriated water in the Kern River system and the amount of that unappropriated water.

BACKGROUND

In 2007, the State Water Board Division of Water Rights (Division) received applications for permits to appropriate water from the Kern River system from North Kern Water Storage District and City of Shafter (Application 31673), City of Bakersfield (Application 31674), Buena Vista Water Storage District (Application 31675), Kern Water Bank Authority (Application 31676), and Kern County Water Agency (Application 31677). In 2010, the Division received a sixth application for a permit to appropriate water from the Kern River system from Rosedale-Rio Bravo Water Storage District (Application 31819).

The Kern River System

The Kern River originates in the Sierra Nevada mountain range and drains into the southern San Joaquin Valley. The flow of the Kern River is highly variable from year to year, depending on hydrologic conditions. The river is regulated by Isabella Dam and Reservoir, which the Army Corps of Engineers completed in 1954. Below Isabella Reservoir (Lake Isabella), the Kern River flows to the floor of the San Joaquin Valley and continues towards the City of Bakersfield.

The “Law of the River” consists of court decrees and agreements that govern the storage and allocation of water on the Kern River system. The 1888 Miller-Haggin Agreement provides that Kern River water shall be divided pursuant to its terms and measured at two locations entitled First Point of Measurement (First Point), located to the northeast of the City of Bakersfield approximately 45 miles downstream of Lake Isabella, and Second Point of Measurement (Second Point), located approximately 23 miles downstream of First Point. The Miller-Haggin Agreement was amended in 1930, 1955, and 1964. The “Shaw Decree,” issued by Judge Lucien Shaw on August 6, 1900, adjudicates individual appropriative rights held by First Point diverters. Other

agreements, including the December 31, 1962, Kern River Water Rights and Storage Agreement, also control the storage and allocation of Kern River water.

The State Water Board determined in Decision 1196 that all Kern River natural flow had been diverted and beneficially used by First Point diverters, Second Point diverters, and diverters located downstream of Second Point diverters (Lower River diverters) “since prior to 1894.” In 1989, the State Water Board declared that the Kern River was a fully appropriated stream system. (Order WR 89-25.) The Board adopted updated and revised orders modifying the Fully Appropriated Streams Declaration in 1991 and 1998, which did not change the fully appropriated status of the Kern River. (Order WR 91-07; Order WR 98-08.)

In 2007, the *North Kern* decision determined that four pre-1914 appropriative water rights held by Kern Delta Water District, a First Point diverter, had been partially forfeited because of five years of non-use. The Court of Appeal did not determine whether unappropriated water was available for appropriation as a result of its decision, stating that “the initial determination whether the forfeiture creates an allocable excess is reserved in the first instance to [the State Water Board].” (*Id.*, at 584.)

After the court issued the *North Kern* decision, North Kern Water Storage District and the City of Shafter, the City of Bakersfield, Buena Vista Water Storage District, Kern Water Bank Authority, and Kern County Water Agency filed petitions with the State Water Board to revoke or revise the Fully Appropriated Streams Declaration with respect to the Kern River to allow the Division to accept applications for permits to appropriate water from the Kern River system. An application for a water-right permit accompanied each petition. In 2010, Rosedale-Rio Bravo Water Storage District filed a sixth application for a permit to appropriate water from the Kern River system.

State Water Board Order WR 2010-0010

On February 16, 2010, the State Water Board issued Order WR 2010-0010, which amended the Declaration of Fully Appropriated Stream Systems to allow the Division to accept new applications to appropriate water from the Kern River system. The Board concluded that there is unappropriated water on the Kern River system because water in excess of the amounts necessary to satisfy water-right holders on the Kern River had been diverted into the Kern River-California Aqueduct Intertie. The Board did not determine in Order WR 2010-0010 whether the *North Kern* decision resulted in unappropriated water, or how much or under what conditions water is available for appropriation from the Kern River.

The Board denied the petition for reconsideration of Order WR 2010-0010 filed by North Kern Water Storage District, the City of Shafter, Buena Vista Water Storage District, Kern Water Bank Authority, and Kern County Water Agency. In the Order Denying Reconsideration, the Board stated that processing of the pending applications would be

the appropriate mechanism to determine the specific amounts of water available for appropriation, the season of water availability, and other issues relevant to determining whether the Board should issue the requested water-right permits. (Order WR 2010-0016.)

After the State Water Board issued Order WR 2010-0010 and Order WR 2010-0016, the Division began processing the six Kern River water-right applications. Table 1 provides a summary of the six applications.

Table 1 - Applications to Appropriate Water From the Kern River System*

Application information summarized from Division of Water Rights Application Files

Application	Applicant	Source and Point of Diversion	Purpose of Use	Direct Diversion				Storage		
				Rate (cfs)	Acre-Feet (af) per year	Season		Amount (af) per year	Season	
A031673	North Kern Water Storage District, City of Shafter	Lake Isabella, Beardsley Canal, Calloway Canal	Irrigation, Groundwater Replenishment, Municipal and Industrial, Domestic, Other	1,850	500,000**	1-Jan	31-Dec	500,000**	1-Jan	31-Dec
A031674	City of Bakersfield	Lake Isabella, Kern River Canal, 2800 Acre Recharge and Groundwater Facility, City of Bakersfield City Limits	Municipal, Domestic, Constructed Wetlands, Fish and Wildlife Restoration, Recreation, Water Quality, Groundwater Recharge, Groundwater Storage, Irrigation	450	104,541	1-Jan	31-Dec	104,541	1-Jan	31-Dec
A031675	Buena Vista Water Storage District	Lake Isabella, Kern Fan Project, Alejandro Canal, Kern River Flood Channel	Irrigation, Storage	—	180,000	1-Jan	31-Dec	520,000	1-Jan	31-Dec
A031676	Kern Water Bank Authority	Kern River, California Aqueduct	Municipal, Industrial, Irrigation, and Groundwater Storage for Municipal, Industrial, and Irrigation Uses	1,525	500,000	1-Oct	30-Sep	500,000	1-Oct	30-Sep
A031677	Kern County Water Agency	Lake Isabella	Municipal, Industrial, and Irrigation	3,212	940,000	1-Jan	31-Dec	1,339,000	1-Jan	31-Dec
A031819	Rosedale-Rio Bravo Water Storage District	Kern River	Domestic	—	65,750	1-Jan	31-Dec	—	—	—

* Table 1 summarizes the applications on file with the Division of Water Rights as the information is presented in those applications by the applicants. This summary is not an endorsement by the State Water Board of the adequacy or accuracy of the information presented in the applications.

** Application 31673 requests a permit to appropriate a cumulative total of 500,000 af/year by direct diversion and diversion to storage.

State Water Resources Control Board

Proceedings before Assignment to the Administrative Hearings Office

By letter dated October 1, 2018, the Division requested that the six applicants submit water availability analyses (WAA) to demonstrate that water is available in the Kern River system for appropriation and encouraged the applicants to submit a single coordinated WAA. Water Code section 1260, subdivision (k), requires an applicant for a permit to appropriate water to establish that there is a “reasonable likelihood” that water is available for appropriation.

The applicants submitted three separate WAAs in response to the Division’s request. Despite the use of diverse methodologies for the estimates of watershed demand, the WAAs all indicate that there is some unappropriated water in the Kern River system under extremely wet conditions. The methodology used in each analysis for estimating “face values” of pre-1914 rights within the watershed is a significant factor affecting the calculation of the amounts of water that may be available for appropriation. Despite the apparent consensus that Kern River flows exceeded water use at least some of the time during the analyzed period, the applicants did not agree on a specific amount of water, if any, that might be available for appropriation.

On August 9, 2019, the Kern Water Bank Authority (Authority) submitted a water-right complaint (Complaint) to the Division requesting that the State Water Board hold an adjudicatory hearing to determine the scope, nature, and extent of Buena Vista Water Storage District’s (Buena Vista) pre-1914 appropriative water rights. Buena Vista is the successor in interest to pre-1914 appropriative water rights established by Miller & Lux, Inc., to divert and use water from the Kern River and is a Second Point diverter under the Miller-Haggin Agreement. The Authority seeks a determination that Buena Vista has diverted water in excess of its Kern River water rights, forfeited or abandoned a portion of its Kern River water rights, and violated Article X, section 2 of the California Constitution and California Water Code section 100 by diverting and using Kern River water in a wasteful or unreasonable manner. The Authority requests that the Board issue a cease and desist order prohibiting Buena Vista from further diversion and use of Kern River water in excess of its water rights, and prohibiting Buena Vista from using, or employing methods of diversion of, Kern River water in a wasteful or unreasonable manner. Buena Vista responded to the Complaint by letter to the Division dated November 26, 2019.

The Division dismissed the Complaint in a letter to the Authority dated December 21, 2020, stating that the Division had notified the AHO “regarding your concerns about Kern River entitlements at the second point of diversion ... The Division expects that the AHO hearing will clarify factual issues related to second point entitlements....” (Letter from R. Cervantes to K. O’Brien, December 21, 2020.) On December 23, 2020, the Authority sent a letter to the AHO requesting that the AHO include all issues raised

in the Complaint within the scope of any future public hearing relating to water rights on the Kern River.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the Administrative Hearings Office (AHO) as an independent organizational unit within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO.

On February 24, 2021, Erik Ekdahl, Deputy Director of the Division of Water Rights, transmitted a memorandum to Eileen Sobeck, Executive Director of the State Water Board, recommending that the State Water Board assign issues arising from the six Kern River water-right applications to the AHO for further proceedings and an adjudicative hearing (Attachment 1). The memorandum states that the Division is processing the applications in accordance with Water Code section 1250 et seq., but the applicants have not settled on an acceptable method for determining the amount of unappropriated water available, and the cumulative total sought to be appropriated far exceeds any potentially available unappropriated water.

On March 18, 2021, Ms. Sobeck transmitted a memorandum to Alan Lilly, Presiding Hearing Officer of the AHO, assigning to the AHO for an adjudicative hearing the following issues arising from the six Kern River water-right applications:

1. Is unappropriated water available to supply the applicants pursuant to Water Code section 1375, subdivision (d), and if so, how much unappropriated water is available? In determining whether unappropriated water is available, the AHO may consider whether unauthorized diversions or wasteful or unreasonable diversion or use of water are occurring, and whether claimed water rights have been abandoned or forfeited.
2. If unappropriated water is available, in what order should the Division process the applications? How should unappropriated water be allocated among the competing applications to appropriate water?
3. May the City of Bakersfield appropriate water made available due to a partial forfeiture of water rights, as determined by the court in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555? Or, is water made available by a partial forfeiture subject to diversion and use by the next-most senior rights, in order of priority, such that only water remaining after all senior rights are satisfied is subject to new appropriations?

The March 18 memorandum authorizes the AHO to notice an adjudicative hearing that includes consideration of whether unauthorized diversions or misuses of water have occurred or are occurring and whether claimed water rights have been abandoned or forfeited.¹

STATUS CONFERENCE RULING

The AHO held a status conference in this matter on August 17, 2021. Representatives of the City of Bakersfield, North Kern Water Storage District, the City of Shafter, Kern Water Bank Authority, Kern Delta Water District, Buena Vista Water Storage District, Rosedale Rio-Bravo Water Storage District, Kern County Water Agency, California Trout, “the public interest groups” (Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Kern-Kaweah Sierra Club, Panorama Vista Preserve, and Center for Biological Diversity), and California Department of Fish and Wildlife filed Notices of Intent to Appear and made appearances at the status conference. The City of Bakersfield, North Kern Water Storage District and the City of Shafter, Buena Vista Water Storage District, Kern Water Bank Authority, Kern County Water Agency, Kern Delta, and the public interest groups filed status conference statements with the AHO in advance of the status conference. The status conference addressed whether the hearing on the Kern River water-right applications should be conducted in phases and the hearing issues to be addressed in each phase.

In their status conference statements and during the status conference, the City of Bakersfield, North Kern Water Storage District, and the City of Shafter proposed that the initial phase of this hearing address whether the forfeiture of water rights by Kern Delta Water District as a result of the *North Kern* decision resulted in unappropriated water and the amount of any unappropriated water. These issues are related to, but can be separated from, a determination of the amount of other unappropriated water in the Kern River system. Phase 1A of this hearing will address whether Kern Delta Water District’s partial forfeiture of its water rights resulted in unappropriated water in the Kern River system and the amount of that unappropriated water. Phase 1B of this hearing will address the amount of other unappropriated water in the Kern River system. The hearing officer will issue a ruling letter or notice of hearing or status conference, separate from this notice, that addresses next steps for hearing Phase 1B. After conducting hearing Phases 1A and 1B, the AHO will conduct subsequent phases of the hearing as necessary to address the issues assigned to the AHO by the Executive Director in her March 18, 2021 memorandum.

With respect to the Phase 1A issue, the City of Bakersfield asserts that water forfeited by Kern Delta is “unappropriated water which is automatically and necessarily subject to Board jurisdiction and authority.” (2021-08-10 City of Bakersfield Status Conference Statement, p. 4.) The City of Bakersfield further asserts that the Board must “assume

¹ “Misuse of water” or “misuse” is defined by California Code of Regulations, title 23, section 855, as “any waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.”

jurisdiction over the forfeited water and issue a new permit or license for the use of the water through the California water right permitting process ... [and] consider whether and to what extent this new supply of water should be utilized and allocated to protect the 'public interest' and 'public trust resources'....” (*Id.*, p. 5.)

North Kern Water Storage District and the City of Shafter oppose the City of Bakersfield’s claims and do not concede that the forfeiture by Kern Delta Water District of a portion of its water rights resulted in unappropriated water in the Kern River system. North Kern Water Storage District and the City of Shafter cite the *North Kern* decision, in which the court concluded that “forfeiture of an appropriative right may or may not result in unappropriated water that can be awarded to an applicant through the statutory permitting system administered by the [Board] [A] river may be so oversubscribed by pre-1914 common law rights that any water releases to the river by forfeiture of a senior rights holder will simply be used in full by existing junior right holders under their existing entitlements.” (*North Kern, supra*, 147 Cal.App.4th at 583.) In its status conference statement, North Kern Water Storage District and the City of Shafter asked the AHO to confirm, in advance of any hearing, that the AHO will apply the legal conclusions of the court in the *North Kern* decision, in this proceeding.

To clarify the scope of Phase 1A and the legal standard that the AHO will apply to determine whether there is any unappropriated water and the amount of any unappropriated water resulting from the forfeiture of water rights by Kern Delta Water District, the hearing officer directs the City of Bakersfield, North Kern Water Storage District, and the City of Shafter to submit written briefs that address the following legal issues:

- (1) *Does the forfeiture of a portion of a water right necessarily result in unappropriated water on the stream system in the amount of the forfeited portion of the right?*
- (2) *If not, should the State Water Board consider the available supply of water less the amount of water beneficially used pursuant to existing water rights on the stream system to determine the amount of unappropriated water, if any, that results from a forfeiture?*
- (3) *Should the State Water Board consider the protection of public trust uses when determining the amount of unappropriated water, if any, that results from a forfeiture?*

Other parties to this proceeding may but are not required to submit written briefs addressing these legal issues.

Each opening brief addressing these issues shall be a maximum of 14 pages, double-spaced, or 7 pages, single-spaced, in a font size not smaller than 12 points. The opening briefs must be submitted to the AHO before **September 15, 2021, at 12:00 pm**. Each responding brief shall be a maximum of 10 pages, double-spaced, or 5

pages, single-spaced, in a font size not smaller than 12 points. The responding briefs must be submitted to the AHO before **September 24, 2021, at 12:00 pm**.

After considering the briefs submitted by the parties, the hearing officer will issue a ruling on these legal issues and may, if appropriate, amend the hearing issues identified in this Notice of Hearing for Phase 1A.

HEARING ISSUES

The purpose of Phase 1A of this hearing is to receive evidence relevant to the following issue:

Did the partial forfeiture of water rights by Kern Delta Water District as determined by the court in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555 result in unappropriated water in the Kern River system? If so, what is the amount of that unappropriated water?

HEARING OFFICER AND HEARING TEAM

An AHO hearing officer will preside during the pre-hearing conference and the hearing. Other AHO staff members may be present and may assist the hearing officer during the pre-hearing conference and the hearing and throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Division of Water Rights, staff of the Board's Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

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. The hearing officer will prepare a pre-hearing conference order after the conference.

The pre-hearing conference will address the following issues:

1. The deadlines for submitting exhibits and testimony, and the hearing dates, for hearing Phase 1A are listed below. Should the hearing officer change any of

these deadlines or hearing dates or make other changes to the Phase 1A hearing schedule?

2. What time limits should apply to oral summaries of written testimony, cross-examination, and rebuttal testimony during the Phase 1A hearing?
3. Are there any other procedural issues concerning the Phase 1A hearing that the participants want raise? If so, what are those issues?

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, by the deadline listed below. Any pre-hearing conference statement may address any of the issues listed above. After the deadline to submit pre-hearing conference statements, the AHO will post the statements on the Water Board AHO FTP site (FTP site) in the folder for this matter. Because the AHO will be posting all filed pre-hearing conference statements, parties do not need to serve copies of their pre-hearing conference statements on other parties.

NOTICES OF INTENT TO APPEAR

Any person or entity who wants to participate in hearing Phase 1A in this matter must file a Notice of Intent to Appear (NOI) with the AHO, using the form in this notice, before the deadline listed below. The AHO encourages parties to agree to accept electronic e-mail service 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. Parties not agreeing to accept electronic service of documents will experience delays as paper copies of documents are transmitted by U.S. Mail. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service.

After the deadline to submit NOIs, the AHO will post the NOIs on the FTP site in the folder for this matter. Because the AHO will be posting all filed NOIs, parties do not need to serve copies of their NOIs on other parties.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Deadline for filing opening briefs addressing legal issues.	September 15, 2021, 12:00 p.m.
Deadline for filing reply briefs addressing legal issues.	September 24, 2021, 12:00 p.m.
Deadline for any party who wants to participate in the Phase 1A hearing to file an NOI.	October 25, 2021, 12:00 p.m.
Deadline for filing optional pre-hearing conference statements.	October 25, 2021, 12:00 p.m.
Pre-hearing conference.	October 28, 2021, 9:00 a.m.

Deadline for all parties to file exhibits and exhibit identification indices with AHO.	November 4, 2021, 12:00 p.m.
Deadline for all parties to file rebuttal exhibits and exhibit identification indices with AHO.	December 2, 2021, 12:00 p.m.
Phase 1A Hearing begins.	December 9, 2021, 9:00 a.m.
Additional hearing days (as necessary)	December 10, 2021, 9:00 a.m., and additional dates as necessary.

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 below):

Method	Address
By e-mail (preferred method for documents other than exhibits):	AdminHrgOffice@waterboards.ca.gov With subject line “ Kern River Applications ”
By Uploading to FTP site (preferred method for exhibits):	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):	Joe Serna Jr. CalEPA Building Administrative Hearings Office 1001 I Street Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to closures of the CalEPA Building during the COVID-19 pandemic. 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 see the part of this notice below titled “PROCEDURES FOR THIS WATER-RIGHT HEARING” for more information regarding hearing procedures and submittals of exhibits.

DIVISION OF WATER RIGHTS PUBLIC RECORDS

The AHO has copied documents from the public records the State Water Board’s Division of Water Rights Records Unit has maintained that may be relevant to this proceeding. The AHO has included these documents in the initial administrative record

for this hearing. The AHO has posted files of these documents on the FTP site in the folder for this matter. Instructions on how to access the FTP site are listed in Section 8 below. The parties may review the Division of Water Rights Records Unit's public files and may submit as exhibits copies of other relevant documents in these files.

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 at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

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>

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.) The AHO has posted a discussion of *ex parte* communications on the AHO's webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-06_webpage_faq.pdf. (See response to FAQ 16.)

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 the pre-hearing 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 of 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.

Any party submitting any document to the AHO shall transmit copies of the document to all of the other parties on the NOI list. This transmittal may be by e-mail to parties for whom e-mail addresses are listed in the service list. For other parties, this transmittal shall be by U.S. Mail. 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.

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 he or she deems appropriate.

- 1. HEARING PROCEDURES:** The Administrative Hearings Office (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. Copies of these regulations are posted on the State Water Resources Control Board's website: http://www.waterboards.ca.gov/laws_regulations. 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.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer will allow parties to submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any 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 five days after receiving the request, unless the hearing schedule requires an earlier ruling.

- 2. SETTLEMENTS:** In water-right permitting matters, the parties normally include the applicant and protestants. The applicants and protestants 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. If the parties or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO. 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 applicant and protestants in water-right permitting matters.

The State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may issue an order approving a settlement agreement between the applicant and some or all of the protestants in water-right permitting matters even if other parties to the proceeding have not approved the settlement agreement. The hearing officer normally will give all parties opportunities to comment on any settlement agreement submitted to the AHO before the AHO transmits a proposed order approving the settlement agreement to State Water Board or Executive Director, unless all parties to the hearing or their representatives have signed the settlement agreement.

- 3. PARTIES:** As provided in California Code of Regulations, title 23, section 648.1, subdivisions (a) and (b), **North Kern Water Storage District, City of Shafter, City of Bakersfield, Buena Vista Water Storage District, Kern Water Bank Authority, Kern County Water Agency, Rosedale-Rio Bravo Water Storage District, Kern Delta Water District, California Trout, Center for Biological Diversity, California Department of Fish and Wildlife, and “the public interest groups” (Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Kern-Kaweah Sierra Club, and Panorama Vista Preserve)** are parties to this proceeding.

The hearing officer may allow any other person or entity that timely files a Notice of Intent to Appear to participate in the hearing as a party. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) A person or entity that has not been identified as a party in this notice that wants to participate as a party in this hearing shall file a Notice of Intent to Appear with the AHO before the deadline specified in this notice. The person or entity shall include an attachment to the Notice of Intent to Appear form demonstrating good cause as to why the hearing officer should allow the

person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, the hearing office will allow only parties to present evidence, make objections, and examine witnesses.

- 4. 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 or submit non-evidentiary policy statements. Policy statements may be submitted in writing before the hearing or presented or summarized orally during the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing should file Notices of Intent to Appear indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

- 5. NOTICES OF INTENT TO APPEAR:** As provided in California Code of Regulations, title 23, section 648.4, all people and entities that want to participate in the hearing as parties must file either an electronic copy or a paper copy of a Notice of Intent to Appear with the AHO before the deadline specified in this notice. The AHO may interpret a failure to file a Notice of Intent to Appear by this deadline as a decision not to appear. In matters regarding water-right applications, the requirement to file a Notice of Intent to Appear by the deadline is a request for additional information pursuant to Water Code section 1334. The Board may cancel an application if the applicant does not file an NOI by the deadline.

As discussed in the preceding section, the AHO requests that any interested person who will not be participating as a party, but will be presenting only a non-evidentiary policy statement, file a Notice of Intent to Appear before the deadline and specify in the notice that the person only will be presenting a policy statement.

As provided in California Code of Regulations section 648.4, subdivision (b), the Notice of Intent to Appear for parties (but not for people only presenting policy statements) must state the name and address of the participant. For parties, the Notice of Intent to Appear also must state: (1) the name of each witness whom the party intends to call at the hearing; (2) a brief description of the subject of each witness's proposed testimony; and (3) an estimate of the time that the party requests for each of its witnesses to present an oral summary of his or her written testimony. (See section 6 for requirements that apply to written testimony.) The total time requested for summaries of all of each party's witnesses shall not to exceed the total time limit for oral summaries of written testimony described in section 10, part b.ii. If a party intends to call any expert witnesses, the party shall designate each expert witness as an expert witness in the party's Notice of Intent to Appear. Parties that do not intend to present cases-in-chief but want to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.² A party that decides 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 that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

The AHO will e-mail or mail an updated service list with the names of parties and their contact information to each person or entity that has submitted a Notice of Intent to Appear or asked to be on the updated service list. The service list will indicate if any party is not willing to accept electronic service. If there is any change in the hearing schedule, the hearing officer will send a notice of such change to the parties on the service list and interested persons who have filed Notices of Intent to Appear expressing their intentions to present policy statements.

6. WRITTEN TESTIMONY AND OTHER EXHIBITS: Exhibits include all written testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written proposed testimony absent good cause. Each party shall designate each of its witness's written proposed testimony as a separate exhibit. Each party must submit all of its witnesses' written proposed

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

testimony with the party's other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO encourages all parties to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of his or her written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

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

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, the City of Bakersfield's exhibits should be numbered Bakersfield-1, Bakersfield-2, etc., and North Kern Water Storage District's exhibits should be numbered North Kern-1, North Kern-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about his or her written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony, but should not number or letter these headings and should not re-start the paragraph numbering in each section.

Parties may use pleading paper with line numbers in the left margins for their witnesses' written proposed testimony.

Each party must submit to the AHO the exhibits and exhibit identification indices for this hearing before the deadline specified in the Hearing Notice.

The AHO may treat a party's failure to submit exhibits before this deadline as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

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

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient

information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- b. Consistent with California Code of Regulations, title 23, section 648.3, the hearing officer has discretion to decide whether to receive into evidence by reference any relevant, otherwise admissible, public records of the State Water Board and any documents or other evidence that a public agency has prepared or published, provided that the original or a copy was in the possession of the State Water Board before the hearing officer issued this notice. A party offering such an exhibit by reference shall advise the other parties and the AHO of the title of the document, the particular portions of the document, including page and paragraph numbers, that the party will ask the hearing officer to consider, the purpose for which the party will use the portions of the exhibit if it is accepted into evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. The hearing officer normally will exclude exhibits that rely on unpublished technical documents unless the hearing office has admitted the unpublished technical documents into evidence.
- d. Parties submitting large-format exhibits such as maps, charts, and other graphics shall provide the originals for the hearing record in a form that can be folded to 8 ½ x 11 inches. Parties also shall file, for the hearing record, a reduced copy of a large-format original exhibit. The hearing officer will determine whether the large-format version or the reduced copy, or both, will be admitted into evidence.

8. SUBMISSIONS OF DOCUMENTS: To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents by uploading them to the State Water Board's FTP site in electronic form (in addition to filing two paper copies of each exhibit with the AHO) unless the hearing officer authorizes submission of exhibits in different formats.

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 folders". The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the parties' "upload accounts".

a. AHO-FTP Download Folders:

The AHO will create a folder for each proceeding on the State Water Board's FTP site. The folder for each proceeding will contain all administrative record documents related to that 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 closing briefs 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). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the AHO-FTP download folder for any proceeding at any time.

If any party believes that the AHO should add documents to, or remove any documents from, this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the AHO e-mail inbox), and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

b. Upload Folders:

The AHO will create a separate upload account for each party that files an NOI as a party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed.

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and exhibit identification indices and closing briefs) using the party's upload account. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder. After the applicable filing deadline, AHO staff will move documents uploaded by each party to the administrative record in the AHO-FTP download folder for the proceeding, so all other parties may view and download the documents.

Documents uploaded by the parties normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel format, slide presentations may be submitted in Microsoft PowerPoint format, and exhibit identification indices must be submitted in Microsoft Excel format.

If a party wants to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer, and serve copies of the request on all other parties on the service list, at least 14 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit in that format, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

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. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the Board's FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO. **When a party has uploaded all of the party's exhibits to the Board's FTP site, the party or party's representative shall send an email the AHO at AdminHrgOffice@Waterboards.ca.gov, with copies to the other parties on the service list, notifying the AHO that the party has uploaded the documents.**

Each party also shall mail or hand-deliver two paper copies of all its exhibits, except exhibits that exceed 100 pages in length, and exhibit identification index to one of the AHO's two addresses listed below, with a proof of service of these paper copies. A party may but is not required to submit paper copies of exhibits that exceed 100 pages in length to the AHO. A party may provide proof of service of these paper copies by sending an e-mail or letter to the AHO, with the transmittal of copies of the e-mail or letter to the other parties shown in the e-mail "cc" (carbon copy) list or the cc portion of the letter. 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 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 that 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 mail two 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

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.

9. PRE-HEARING CONFERENCE: The hearing officer will conduct a pre-hearing conference before the hearing to discuss any procedural issues. This notice states the date and time of the pre-hearing conference. The hearing officer may issue notices of subsequent pre-hearing conferences. The hearing officer may issue a pre-hearing conference order after each pre-hearing conference.

10. 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. The hearing officer will set time limits for each element of the proceeding specified below 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 that so indicates in its 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 an opening statement, if the party decides to make one, and oral summaries of the witnesses' written testimony. The hearing officer then will allow other parties to cross-examine the witnesses who have presented written testimony or oral summaries of their written testimony. 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 the party's request or motion after completion of all examinations of the party's witnesses.

Unless otherwise specified, documents such as written testimony, motions, written comments, and briefs shall be submitted to the AHO on pleading paper (with each line numbered in the left margin) using 12-point font and one-inch margins. If pleading paper is not available, the documents described above shall be double-spaced. For either format, the party shall sequentially number the paragraphs in the written testimony.

- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative 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 will be limited to 5 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement.
- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written testimony into the record, but instead shall just provide a summary. A witness provides his or her direct testimony when he or she confirms that a designated exhibit or exhibits is or are his or her written testimony. The hearing officer may impose time limits for each party to present oral summaries of the written testimony of their witnesses.
- iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
- iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.

- v. **Hearing Officer's Questions:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions and may cross-examine any witness at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Written rebuttal testimony and exhibits must be submitted by the deadline set by the hearing officer. 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. Cross-examination of witnesses offering rebuttal evidence normally will be limited to the scope of the rebuttal evidence.

- d. **Closing Briefs:** The hearing officer will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the parties' folders on the State Water Board's FTP site when they upload their closing briefs. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will post all closing briefs to the FTP site.

11. RULES OF EVIDENCE: Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

12. TELECONFERENCE HEARING: Due to the on-going COVID-19 pandemic and the associated closure of the Joe Serna Jr. CalEPA Building to the public, the AHO currently is conducting all hearings and conferences by Zoom teleconference. New users of Zoom may want to review Zoom's support guide: <https://support.zoom.us/hc/en-us/categories/200101697>.

The AHO may continue to conduct some or all of its hearings by Zoom teleconference after this pandemic and associated closure end. The hearing notice specifies the method by which this hearing will be conducted.

Before the hearing, the AHO will provide a Zoom meeting link for people who want to participate in the hearing or pre-hearing conference to all parties and interested persons who have filed NOIs. To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.

The AHO will not order a court reporter for videoconference pre-hearing conferences or hearings. Any interested party may order a court reporter at the party's own expense. The AHO will record the teleconference pre-hearing conference and hearing and will post an audio-plus-video file and a Zoom-generated transcript 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. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If the device you are using freezes, please notify staff at AdminHrgOffice@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 to you with the Zoom meeting information.

In lieu of participating in the Zoom hearing, anyone may watch past or present AHO hearings by clicking "Watch AHO Hearings" on https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office. People watching AHO hearings by this method will not be able to participate in the hearing, and will not be identified to anyone else.

Date: August 30, 2021

SIGNATURE ON FILE
Nicole Kuenzi, Hearing Officer

Attachments:

- Notice of Intent to Appear Form
- Exhibit Identification Index
- Service List

NOTICE OF INTENT TO APPEAR

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding Kern River Applications Hearing Phase 1A.

Scheduled to begin on December 9, 2021

1) Check only one of the following boxes:

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

Reason for Requesting Party Status. If you are not identified as a party in the Hearing Notice, describe why you should be allowed to participate as a party:

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

Sent by e-mail only:

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Attachment 3

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Attachment 3

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City Manager
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