
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Public Hearing to determine whether to adopt an Order imposing
Administrative Civil Liability for Alleged Failure to File a
Supplemental Statement of Water Diversion and Use for 2018 Diversions
Under the Water Right or Rights claimed in

**Statement of Water Diversion and Use S000486 of
James V. Simoni (“Respondent”)**

The **Public Hearing** will commence on

July 8, 2020 at 1:00 pm

in the

Byron Sher Auditorium

Joe Serna, Jr. CalEPA Building
1001 I Street
Sacramento, California 95814

PURPOSE OF HEARING

The purpose of this hearing is for a hearing officer in the State Water Resources Control Board (“State Water Board” or “Board”), Administrative Hearings Office (“AHO”): (1) to receive evidence and arguments relevant to the issue of whether the Respondent violated the State Water Board’s regulation, title 23 California Code of Regulations, section 920; and (2) to receive evidence and arguments regarding the appropriate amount of any administrative civil liability. (The AHO hearing officer will consider evidence under (2) if he or she determines that a violation occurred.) Specific allegations related to the alleged violation are set forth in the October 18, 2019 administrative civil liability complaint (“ACL Complaint”) in this matter.

BACKGROUND

California Code of Regulations, title 23, section 920 requires all people and entities that have filed initial Statements of Water Diversion and Use under Water Code section 5101 to file Supplemental Statements of Water Diversion and Use for each year’s

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

diversions and use under the water right or rights claimed in the initial statement no later than July 1 of the following year (see Wat. Code, § 5104). These supplemental statements must be filed electronically using the Report Management System, which is a component of the State Water Board's Electronic Water Right Information Management System ("eWRIMS").

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

On October 18, 2019, the State Water Board, Division of Water Rights ("Division"), issued an ACL Complaint under Water Code section 1055, alleging that Respondent failed to file a Supplemental Statement of Water Diversion and Use for 2018 diversions and use by the July 1, 2019 deadline. The ACL Complaint alleges that the Respondent violated California Code of Regulations, title 23, section 920, and recommends the imposition of administrative civil liability in the amount of \$2,000. The ACL Complaint states that the maximum potential liability for the alleged violations is \$54,000.

Information on the eWRIMS website indicates that, by December 9, 2019, Respondent had filed Supplemental Statements of Water Diversion and Use for diversions and use through 2015 under the claimed water right or rights involved in this matter, but has not filed any Supplemental Statements for any year after 2015.

In an e-mail dated November 19, 2019, Respondent requested a hearing in this matter. Water Code section 1112, subdivision (a)(1), provides that an AHO hearing officer shall preside over hearings of ACL Complaints issued under Water Code section 1055. The AHO hearing officer's proposed order in this matter will be issued under Water Code section 1114, subdivision (c).

ADMINISTRATIVE RECORD AND HEARING ISSUES

The AHO hearing officer's proposed order in this matter will be based upon evidence and arguments in the administrative record. The following documents currently are in the AHO administrative record for this matter: (1) October 18, 2010 ACL; and (2) Respondent's November 19, 2019 request for hearing. The parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the following issues:

- 1) Did the Respondent file a Supplemental Statement of Water Diversions and Use for 2018 diversions and use? If so, what was the filing deadline for the supplemental statement and when did Respondent file it?
- 2) Did any violation of a State Water Board regulation or order occur?

- 3) If a violation of any State Water Board regulation or order occurred, should the AHO hearing officer impose administrative civil liability?
- 4) If the AHO hearing officer decides to impose administrative civil liability in this matter, what is the appropriate amount for such administrative civil liability? (Water Code section 1055.3 provides that, in determining the amount of civil liability, the Board shall take into consideration all relevant circumstances, including, but not limited to: (a) the extent of harm caused by the alleged violation; (b) the nature and persistence of the alleged violation; (c) the length of time over which the alleged violation occurred; and (d) the corrective actions, if any, taken by the violator.)

HEARING OFFICER AND HEARING TEAM

An AHO hearing officer will be the hearing officer for this proceeding and will prepare a written proposed order within 90 days after the matter is submitted for decision. Other AHO staff may be present and assist the hearing officer during the hearing and throughout this proceeding.

PROSECUTION TEAM

A State Water Board staff Prosecution Team may decide to file a Notice of Intent ("NOI") and become a Party to this hearing. If so, the Prosecution Team will be comprised of attorneys from the State Water Board's Office of Enforcement and staff from the State Water Board's Division of Water Rights Enforcement Section.

SEPARATION OF FUNCTIONS; PROHIBITION ON EX PARTE COMMUNICATIONS

The Prosecution Team is separated from the AHO hearing team. Like all other Parties, the Prosecution Team is prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) 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 wishes to communicate with the AHO at any time regarding any procedural or substantive issue regarding this proceeding, including any issue regarding 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, such as a list of the Parties and the addresses of them or their representatives in an electronic-mail "cc" (carbon copy) list or the cc portion of a letter.

Before the AHO circulates the list of Parties described below, any Party submitting any document besides a Notice of Intent (“NOI”) or address change to the AHO for this proceeding shall transmit copies of the document to all of the other Parties listed in the attached proof of service by first-class mail (certified mail is not required). Because of the present difficulties in mailing paper copies, Parties are not required to serve copies of their NOIs or notices of address changes on other Parties when they file these documents with the AHO.

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 officer or staff member regarding 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, 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 using the written communications protocols described above.

HEARING PARTICIPATION PROCEDURES

Respondent has requested a hearing, and this hearing is scheduled for the date and time listed on the first page of this notice.¹ If necessary because of the Coronavirus (COVID-19) crisis, the AHO may re-schedule this hearing to a later date or conduct this hearing just through electronic communications. If the AHO decides to take either of these actions, then the AHO will notify all Parties that have filed Notices of Intent to Appear (“NOIs”) (discussed below), will circulate a notice of the new hearing date or electronic method of conducting the hearing to all people who have subscribed to the AHO’s LYRIS e-mail notice list, and will post the notice on the AHO’s webpage, which can be accessed at

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

Any Person or Entity that wants to participate in this hearing as a Party or to present a Policy Statement must file a Notice of Intent to Appear (“NOI”), using the form enclosed with 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

¹ The State Water Board may also hold hearings on other matters for the same date and time. All Parties to this proceeding must be present at the date and time listed on the first page of this notice. The Parties may need to wait until other matters are concluded before the hearing in this matter will begin.

on the NOI form. If this box is not checked, then the AHO will assume that the Party agrees to accept electronic service.

If the AHO does not receive an NOI from the Prosecution Team indicating the Prosecution Team's intent to participate in the hearing as a Party before the deadline specified below, then the AHO may dismiss the ACL Complaint without further notice or opportunity for hearing. The Prosecution Team must file an NOI to preserve the Prosecution Team's right to seek an ACL in this matter.

If the AHO does not receive an NOI from Respondent indicating Respondent's intent to participate in the hearing as a Party before the deadline specified below, then the AHO may deem Respondent's request for a hearing regarding the administrative civil liability complaint to be withdrawn and the AHO may issue an order imposing administrative civil liability without further notice or opportunity for hearing. Respondent must file an NOI to preserve Respondent's right to a hearing.

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 will post that list on the AHO's Internet webpage. This webpage may be accessed at:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

There is no requirement for any Party to submit any proposed testimony or exhibits before the hearing. Any Party that wants to submit proposed testimony or exhibits before the deadline listed below may do so by following the procedures described below and must, at the same time, serve copies of the proposed testimony or exhibits on all other Parties. Any Party submitting proposed testimony before the hearing still must produce the actual witness or witnesses to provide live testimony, and be available for cross-examination, during the hearing.

Any Party that wants to submit any new exhibits during the hearing shall provide three paper copies and one electronic file in pdf format of each new exhibit to the AHO hearing officer and one paper copy to each of the other Parties at the hearing.

Deadlines for Hearing Participation

Deadline for any Party that wants to participate in the hearing to file an NOI	June 3, 2020, 4:00 pm
Deadline for filing and service of any optional submittals of proposed testimony or exhibits before the hearing	June 24, 2020, 4:00 pm
Hearing date and time	July 8, 2020, 1:00 pm

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO, including NOIs, proposed testimony and exhibits submitted before the hearing and statements of service, shall be addressed and submitted as follows:

By Email:	AdminHrgOffice@waterboards.ca.gov With Subject Line “ James Simoni ACL 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 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 and obtain authorization to go to the Water Rights Records Unit.

SETTLEMENT

In this proceeding, the Prosecution Team is prosecuting Respondent for an alleged violation. The Prosecution Team and Respondent may engage in private settlement discussions and may, or may not, include other persons in those discussions. Because of the separation of functions discussed above, no AHO hearing officer or member of the AHO staff will participate in such settlement discussions or receive any evidence of what occurred during them. If the Prosecution Team and Respondent enter in a written settlement agreement signed by representatives of both Parties, then they should notify the AHO of this agreement, using the procedures for submitting documents described above, as soon as possible. If the AHO has not received notice of a written settlement agreement before the hearing date listed above, then the hearing will proceed as scheduled unless the hearing officer issues an order changing the schedule. If the Parties want to settle this matter, then they should do so, and advise the AHO of the settlement, before the hearing date. Absent unusual or unexpected circumstances, the AHO will not postpone the hearing because of on-going settlement discussions.

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 should contact Moises Moreno-Rivera at (916) 341-5261 or by e-mail at moises.moreno-rivera@waterboards.ca.gov.

Because of enhanced security precautions at the CalEPA Building, all visitors must register with security staff before 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 destinations and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can be 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 may take up to fifteen minutes. Please allow adequate time to sign in.

April 15, 2020

Date

SIGNATURE ON FILE

Alan B. Lilly

Presiding Hearing Officer

Enclosures:

- Information Concerning AHO Water Right Administrative Civil Liability Hearings
- Notice of Intent to Appear form
- Service List

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INFORMATION CONCERNING ADMINISTRATIVE HEARING OFFICE WATER RIGHT ADMINISTRATIVE CIVIL LIABILITY HEARINGS

The following procedures will apply to State Water Board Administrative Hearing Office Water Right Administrative Civil Liability Hearings:

- 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, and 649.6. Copies of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board or Board) may be viewed on the State Water Board's website at: http://www.waterboards.ca.gov/laws_regulations. The hearing officer may issue rulings clarifying or amending the hearing process when authorized under applicable statutes and regulations.

- 2. PARTIES:** Besides the Prosecution Team and the Respondent, the hearing officer may, upon a showing of good cause, authorize additional Parties to participate in this hearing, subject to participation conditions specified by the hearing officer. (See Govt. Code, § 11440.50, subd. (c).) Any such additional Party seeking to participate in this hearing shall file a Notice of Intent to Appear before the deadline specified in the Hearing Notice. Except as specifically provided in this notice or by ruling of the hearing officer, only Parties will be allowed to present evidence.

- 3. POLICY STATEMENTS BY INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer may provide an opportunity for interested persons who are not Parties to the hearing to present non-evidentiary policy statements or comments. 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 arguments or otherwise participate in the hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the Parties, but they may access hearing documents from the AHO webpage.

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. Any Interested person wishing to make a policy statement shall file a Notice of Intent to Appear, stating the person's intent to make a policy statement.

- b. Written copies of policy statements shall be provided in writing to the AHO (3 copies) and to all Parties (one copy for each Party) before they are presented orally at the hearing.

- 4. ORDER OF PROCEEDING:** The hearing officer normally will follow the following order of proceedings: (a) an opening statement by the hearing officer; (b) identification of the representatives of all Parties who want to participate in the hearing; (c) presentation of any policy statements; (d) administration of the oath to all people who may testify during the hearing; (e) presentation of exhibits and testimony by the Prosecution Team; (f) presentation of exhibits and testimony by the Respondent; (g) presentation of exhibits and testimony by other Parties; (h) presentation of rebuttal evidence; and (i) closing arguments by all Parties. After each Party has presented its exhibits and testimony, the hearing officer and representatives of other Parties may question that Party's witnesses. The hearing officer, in his or her discretion, may modify this order of proceeding or may direct the Parties to file closing briefs instead of, or in addition to, closing arguments.
- 5. 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 shall not be sufficient in 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 **James Simoni ACL Hearing**, which is scheduled to begin on July 8, 2020, at 1:00 pm.

Scheduled to commence on

1) Check only one of the following boxes:

- Option 1:** I/we intend to participate as a Party.
- Option 2:** I/we intend to present a policy statement only, and not participate as a party.

2) Fill in the following information of the Party or participant who will present a policy statement, attorney, or other representative:

Name (type or print):

Mailing Address:

Telephone Number: _____

E-mail Address: _____

Optional:

- I/we decline electronic service of hearing-related materials and request that copies of all hearing-related materials be mailed to me.

Signature: _____ Date: _____

SERVICE LIST

James V. Simoni
16180 Uvas Road
Morgan Hill, CA 95037
(via certified mail, return receipt requested)
9590 9402 4917 9032 8972 34 (3811)
7019 0160 0000 9004 7662 (3800)

Julé Rizzardo, Assistant Deputy Director
Division of Water Rights
State Water Resources Control Board
P. O. Box 2000
Sacramento, CA 95812-2000
(via certified mail, return receipt requested)
9590 9402 4917 9032 8972 27 (3811)
7019 0160 0000 9004 7631 (3800)