

**State Water Resources Control Board
Administrative Hearings Office
Alan B. Lilly, Presiding Hearing Officer**



**State Water Resources
Control Board Meeting
August 2, 2022
Agenda item 6**

OVERVIEW OF PRESENTATION

- AHO setup
- AHO hearings and orders since June 2020
- Pending AHO proceedings
- AHO goals

CREATION OF ADMINISTRATIVE HEARINGS OFFICE

- Assembly Bill 747 was enacted as Chapter 668 of 2018 California Statutes
- This legislation established Water Code sections 1110-1114, effective July 1, 2019

ADMINISTRATIVE HEARINGS OFFICE STATUTORY PROVISIONS

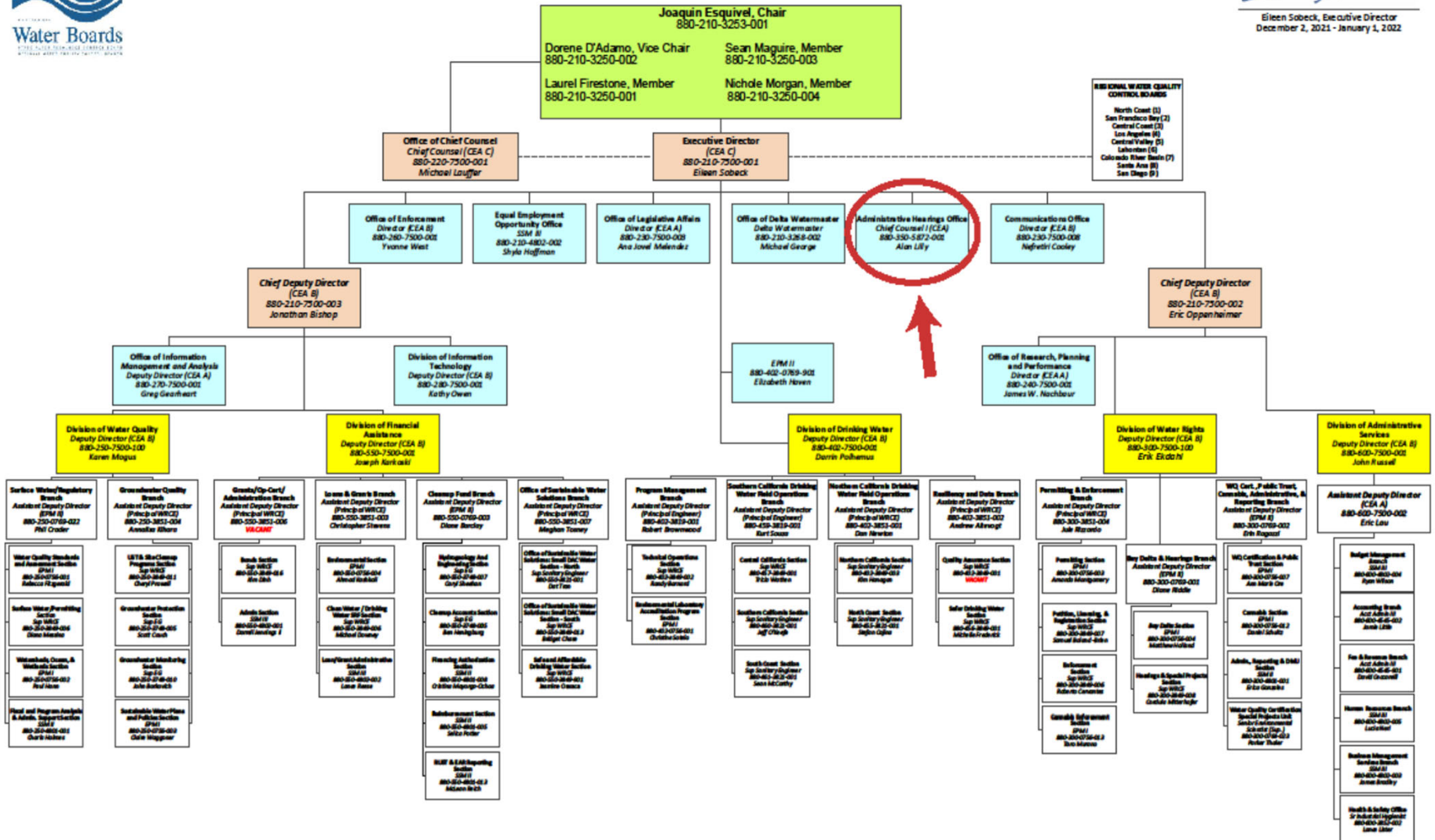
Water Code § 1110

-Administrative Hearings Office is an “independent organizational unit” within State Water Board to provide “a neutral, fair, and efficient forum for adjudications”



STATE WATER RESOURCES CONTROL BOARD

Eileen Sobock
 Eileen Sobock, Executive Director
 December 2, 2021 - January 1, 2022



ADMINISTRATIVE HEARINGS OFFICE STATUTORY PROVISIONS

Water Code § 1111

- Created Presiding Hearing Officer position
- Authorizes Presiding Hearing Officer to hire other personnel, including other hearing officers and technical experts

Budget Change Proposal 18 (FY 2019-2020)

- Authorized Presiding Hearing Officer and two other hearing officer positions, and four technical and support staff positions



Media Release

State Water Board Selects Alan Lilly as First Administrative Hearings Officer for Specified Water Rights Proceedings
Appointment Follows 2018 Legislative Mandate for Administrative Hearings Office

September 18, 2019

Contact: George Kostyrko

george.kostyrko@waterboards.ca.gov

AHO PERSONNEL

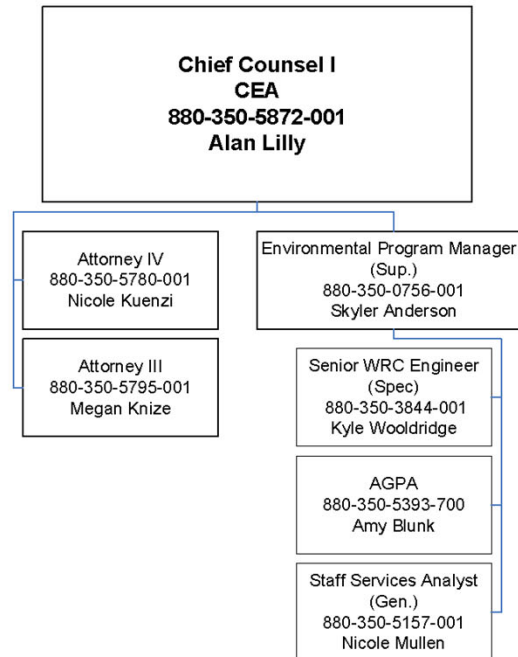


STATE WATER RESOURCES CONTROL BOARD ADMINISTRATIVE HEARINGS OFFICE



Gavin Newsom
Governor

Eileen Sobeck, Executive Director
April 2, 2022 - May 1, 2022



Entire 350 Org.: 7.0
Authorized positions: 7.0
Temporary blanket positions: 0.0
Total Vacancies: 0.0

ASSIGNMENTS TO ADMINISTRATIVE HEARINGS OFFICE

Water Code § 1112

- An AHO hearing officer shall preside over all hearings involving the following types of water-right enforcement matters:
 - administrative civil liability complaints
 - proposed cease-and-desist orders
 - proposed revocations of water-right permits and licenses
- State Water Board may assign other adjudicative hearings to AHO
- AHO hearing officers may perform additional work requested by Board, including hearings in non-adjudicative matters, mediations, overseeing investigations, and assisting Board members in hearings


AHO ORDERS

Water Code § 1114

- For most proceedings, AHO hearing officer normally must prepare proposed orders within 90 days for consideration by the State Water Board.
- Board then may, within 90 days:
 - adopt proposed order, without any changes or with minor amendments;
 - reduce or otherwise mitigate the proposed administrative civil liability and adopt the balance of the proposed order
 - reject proposed order and remand the matter to the AHO for further proceedings;
or
 - reject proposed order and decide the case, with or without additional evidence

Administrative Hearings Office

The Administrative Hearings Office (AHO) is an independent unit of the State Water Resources Control Board created in 2019 to conduct neutral, fair, and efficient hearings on water-right matters. Qualified and impartial AHO hearing officers conduct these hearings, and either issue final orders or submit proposed orders for consideration by the Board.

- Calendar
-  Watch AHO Hearings
- AHO Procedures & FAQs
- Prohibition on Ex Parte Communication
- **Current AHO Proceedings**
 - Court References
 - Water-Right Enforcement Matters – Annual Reports
 - Water-Right Enforcement Matters – Other
 - Water-Right Licensing & Permitting Matters
 - Fully Appropriated Stream Petitions

- AHO FTP Site
- AHO Notices, Rulings and Orders
- State Water Board Orders in AHO Matters
- About Us

- **Completed AHO Proceedings**
 - Court References
 - Water-Right Enforcement Matters – Annual Reports
 - Water-Right Enforcement Matters – Cannabis
 - Water-Right Enforcement Matters – Other
 - Water-Right Licensing & Permitting Matters
 - Fully Appropriated Stream Petitions



Subscribe to our E-mail Lists

Sign up to receive all AHO notifications.



Contacts

Tel: (916) 341-6940

E-mail: AdminHrgOffice@Waterboards.ca.gov

Recent AHO Notices & Orders

AHO FOLDERS ON BOARD'S FTP SITE

The screenshot shows a web browser window with the URL <https://ftp.waterboards.ca.gov/#/>. The page features the California Water Boards logo and a navigation bar with options like Download, User Options, Search, Add To Basket, Show Basket, and Logout. Below the navigation bar, there is a filter input field, a 'Clear' button, a 'Select' button, and a 'Show 100 items on page' link. The main content area displays a list of 9 items (8 folders and 1 file) in a table format. The table has columns for Name, Size, Modified, and Keywords. The folders listed are: Completed Proceedings, Court References, Investigations, Petitions to Change FAS Declaration, Water Right Enforcement - Cannabis, Water-Right Enforcement - Annual Reports, Water-Right Enforcement - Other, and Water-Right Permitting. The file listed is SWRCB Organizational Chart.pdf, which is 1.6 MB in size and was modified on 02/24/22. At the bottom right of the table, there is a note: (Total file size in list 1.6 MB).

<input type="checkbox"/>	Name	Size	Modified	Keywords
<input type="checkbox"/>	▶ Completed Proceedings		01/25/22	
<input type="checkbox"/>	▶ Court References		03/02/22	
<input type="checkbox"/>	▶ Investigations		09/03/21	
<input type="checkbox"/>	▶ Petitions to Change FAS Declaration		07/22/21	
<input type="checkbox"/>	▶ Water Right Enforcement - Cannabis		06/20/22	
<input type="checkbox"/>	▶ Water-Right Enforcement - Annual Reports		06/08/22	
<input type="checkbox"/>	▶ Water-Right Enforcement - Other		07/05/22	
<input type="checkbox"/>	▶ Water-Right Permitting		12/28/21	
<input type="checkbox"/>	SWRCB Organizational Chart.pdf	1.6 MB	02/24/22	

(Total file size in list 1.6 MB)

AHO HEARINGS AND BOARD ORDERS

- AHO held its first hearing in June 2020
- Board adopted its first orders approving AHO proposed orders in Nov. 2020
- All AHO hearings have been by Zoom teleconference
 - Multi-format presentations (people and exhibits)
 - Zoom hearing process has worked well, significantly reducing interested parties' travel times
 - Recordings and Zoom-generated transcripts are immediately available

AHO HEARINGS

The image shows a screenshot of a YouTube channel page for the SWRCB Administrative Hearings Office. The channel has 125 subscribers and a red 'SUBSCRIBE' button. The page displays a list of uploads under the 'Uploads' tab, with a 'PLAY ALL' button. The uploads include:

- 2022-07-07 Kern River Phase 1B Status Conference (35:28, 20 views, Streamed 5 days ago)
- 2022-06-30 El Sur Ranch Status Conference (1:38:52, 36 views, Streamed 12 days ago)
- 2022-06-23 Kern River Phase 1B Public Hearing, continue... (2:48:26, 154 views, Streamed 2 weeks ago)
- 2022-06-22 Kern River Phase 1B Public Hearing, continue... (2:45:41, 94 views, Streamed 2 weeks ago)
- 2022-06-22 Kern River Phase 1B Public Hearing, continue... (3:14:38, 119 views, Streamed 2 weeks ago)

The YouTube interface includes a search bar, a 'SIGN IN' button, and a navigation menu on the left with options for Home, Explore, Shorts, Subscriptions, Library, and History.

AHO ZOOM-GENERATED HEARING TRANSCRIPT

991

01:57:35.370 --> 01:57:36.270
Alan Lilly: before we hang up.

992

01:57:38.130 --> 01:57:43.500
Alan Lilly: Everybody have a good day and thank you all very much. I really appreciate everyone's professional attitude.

993

01:57:43.530 --> 01:57:44.040
Alan Lilly: Toward this

994

01:57:45.000 --> 01:57:46.740
Alan Lilly: I know that we have some big issues, but I

995

01:57:46.920 --> 01:57:49.980
Alan Lilly: Appreciate you're all working professionally to

996

01:57:50.040 --> 01:57:53.070
Alan Lilly: Try to come up with a process to address them so

997

01:57:53.340 --> 01:57:54.480
Darren Brumback: Have a good day. Thank you.

998

01:57:54.960 --> 01:57:56.280
Brett Stroud: Thank you. Thank you.

999

01:57:56.520 --> 01:57:57.180
Jessica Diaz: Thank you.

ADOPTED BOARD AND EXECUTIVE DIRECTOR ORDERS IN AHO PROCEEDINGS

- 2022-01-19 Order WR 2022-0087 (Kern River)
- 2022-01-19 Order WR 2022-0086 (Merced ID)
- 2021-10-05 Order WR 2021-0093 (E.W. Merritt Farms)
- 2021-10-05 Order WR 2021-0094 (Gonzalves)
- 2021-08-03 Order WR 2021-0062 (Simoni)
- 2021-07-21 Order WR 2021-0061 (Sacramento County)
- 2021-07-13 Order WR 2021-0059-EXEC (Ciro Toma)
- 2021-07-13 Order WR 2021-0058-EXEC (Helen & Marvin Anderson Revocable Trust)
- 2021-01-28 Order WR 2021-0002-EXEC (Ohm)
- 2021-01-05 Order WR 2021-0001 (Simoni)
- 2020-12-21 Order WR 2020-0014-EXEC (Speckman)
- 2020-12-07 Order WR 2020-0113-EXEC (Eddie Vierra Farms)
- 2020-11-17 Order WR 2020-0111 (Pimentel Family RLT)
- 2020-11-17 Order WR 2020-0112 (Timberlake Estates Homeowners Association)
- 2020-09-01 Order WR 2020-0105-EXEC (Gowan)
- 2020-08-10 Order WR 2020-0103-EXEC (Sacramento County)

ADOPTED BOARD ORDERS IN AHO PROCEEDINGS

-Water-right enforcement proceedings (hearings on ACL complaints and draft CDOs) regarding alleged failures to file annual reports and alleged unauthorized diversions:

- seven Board orders after AHO hearings

- eight Executive Director orders after settlements

- Division of Water Rights Enforcement Section has withdrawn ten other ACL complaints, and seven respondents have withdrawn their hearing requests, both after pre-hearing resolutions of the complaints

-Water-right permitting proceedings (hearings on applications for new water-right permits and petitions to change existing water-right permits and licenses)

- five Board orders after AHO hearings

CURRENT AHO PROCEEDINGS

- Proposed order prepared by AHO in water-right permitting proceeding: Board will consider during Aug. 16 Board meeting
- Water-right enforcement proceedings for which hearings have been held and AHO is preparing proposed orders: three proceedings
- Water-right enforcement proceedings for which AHO has scheduled hearing: one proceeding
- Water-right permitting proceedings for which AHO has scheduled and will schedule hearings: four proceedings
- Court reference to Board (Water Code § 2000): AHO will hold hearing and then prepare proposed report of referee (for consideration by Board)
- AHO investigation of proposed water transfer: comments on AHO draft report of investigation due Aug. 31; AHO then will prepare final report
- Petition to change fully appropriated stream designation: one pending AHO proceeding

NEUTRAL AND FAIR HEARINGS

- Administrative Adjudication Code of Ethics (Govt. Code §§ 11475-11475.70) applies to AHO hearing officers (Water Code § 1113)
- AHO is independent from other Water Board divisions and offices (but may coordinate and collaborate with Division of Water Rights hearing and permitting staffs in some matters)
- AHO personnel avoid individual (*ex parte*) contacts with parties
- AHO posts all communications to Board's FTP site, in AHO folder that is accessible by all interested parties
- AHO hearing officers and staff members recuse themselves when conflicts of interest are present, and AHO advises parties of recusals

PROMPT AND EFFICIENT HEARINGS

- AHO strives to promptly schedule hearings
- AHO includes proposed amended water-right permits and licenses in most hearing notices in permitting proceedings
- AHO holds pre-hearing conferences and status conferences (with all parties) as necessary
- AHO conducts site visits when appropriate (with notice to all parties and opportunities for all parties to participate, and photographs and recordings of key observations and discussions)
- Entire process of holding hearings and preparing proposed orders is within AHO, and AHO hearing officers and staff have expertise in water-right proceedings
- AHO normally includes amended water-right permits and licenses as appendices to proposed orders in permitting proceedings

PROCESS FOR PREPARING PROPOSED ORDERS

- Statutes specify various deadlines, normally 90 days after matter is submitted, for all adjudicatory hearings
 - Zoom recordings avoid delays for preparation of hearing transcripts, closing briefs and proposed orders
- AHO circulates draft proposed orders in most proceedings to interested parties for their review and comments before AHO prepares final proposed orders and transmits them to Board clerk
 - AHO considers parties' comments and edits draft proposed orders as appropriate
 - AHO normally includes an appendix to each final proposed order summarizing parties' comments and AHO's responses

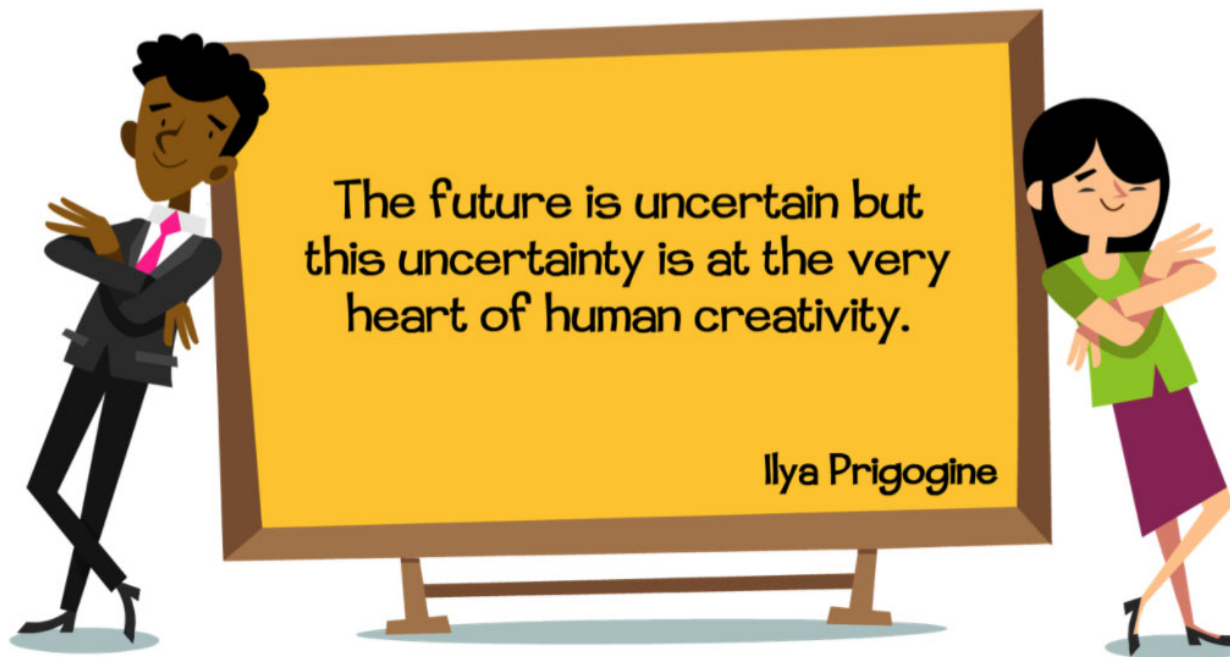
ADMINISTRATIVE HEARING OFFICE GOALS

- Continue to refine processes for promptly resolving future water-right disputes
 - Enforcement matters (ACL complaints, draft CDOs)
 - Permitting matters (including petitions to revise fully appropriated stream declarations)
 - Court references
 - Investigations
 - Statutory adjudications
- Work with Division of Water Rights and Office of Enforcement to prepare memorandum regarding processes for considering water-right enforcement issues that arise during water-right permitting proceedings
- Continue to help Division of Water Rights reduce its water-right application and petition backlogs

ADMINISTRATIVE HEARING OFFICE GOALS

- AHO will continue to prioritize its processing of water-right enforcement proceedings, as required by Water Code § 1112, subd. (d)
- AHO will continue to work with Division of Water Rights to determine which water-right permitting proceedings and other matters to recommend to Executive Director for assignment to AHO
- AHO will use orders setting deadlines for applicants and petitioners to complete various pre-hearing actions in appropriate proceedings
- AHO will start conducting meditations in appropriate proceedings assigned to AHO

NEXT YEAR AND BEYOND



CONCLUSION

