
State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Status Conference
regarding the Draft Cease and Desist Orders
that were issued to the following people and entities on the following dates:

Eddie Vierra Farms, December 28, 2009
George Speckman Testamentary Trust, January 4, 2010
Loren and Dolores Ohm, January 13, 2010

The Status Conference will commence on
April 17, 2020, at 9:30 am
in
Training Room 2
Joe Serna, Jr. CalEPA Building
1001 I Street
Sacramento, California 95814

BACKGROUND

Draft Cease and Desist Orders

On December 28, 2009, the State Water Resources Control Board (“State Water Board” or “Board”), Division of Water Rights (“Division”), issued a Draft Cease and Desist Order (“CDO”) to Eddie Vierra Farms (“Vierra”). On January 8, 2010, Vierra requested a hearing on this Draft CDO.

On January 13, 2010, the Division issued a Draft CDO to Loren and Dolores Ohm (“Ohm”). On February 2, 2010, Ohm requested a hearing on this Draft CDO.

On January 4, 2010, the Division issued a Draft CDO to the George Speckman Testamentary Trust (“Speckman”). On February 1, 2010, Speckman requested a hearing on this Draft CDO. On April 7, 2010, the State Water Board issued a notice of public hearing on this Draft CDO. After re-scheduling this hearing, the State Water Board issued a notice of postponement of this hearing on June 17, 2010.

All three of these Draft CDOs allege that the parties listed in the Draft CDOs made unauthorized diversions of water from various waterbodies in the southern portion of the Sacramento-San Joaquin Delta. (Vierra, Ohm and Speckman are collectively referred to in this notice as the “Respondents.”) The State Water Board has not conducted any proceedings regarding any of these three draft CDOs.

Administrative Hearings Office

In 2018, the Legislature and the Governor approved Assembly Bill No. 747, which added sections 1110-1114 to the Water Code, effective July 1, 2019. (2018 Cal. Stats., ch. 668.) Water Code section 1110 established the Administrative Hearings Office (“AHO”) within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that AHO hearing officers shall preside over hearings involving notices of proposed cease and desist orders under Water Code section 1834.

On January 3, 2020, Erik Ekdahl, Deputy Director of the State Water Board’s Division of Water Rights, sent a memorandum to Eileen Sobeck, the State Water Board’s Executive Director, proposing to transfer the proceedings regarding the three Draft CDOs described above to the AHO. On February 7, 2020, Ms. Sobeck issued a memorandum assigning these proceedings to the AHO.

PURPOSE OF STATUS CONFERENCE

Considering this background and the substantial amounts of time that have elapsed since the Division issued the Draft CDOs and the Respondents requested hearings, the AHO has decided to hold a status conference during which the Parties may address the following issues:

- (1) Do the Division and the State Water Board’s Office of Enforcement (“Office of Enforcement”) still want final CDOs to be issued in these proceedings?
- (2) If so, do the Division and the Office of Enforcement want to amend the prior Draft CDOs before the AHO holds hearings in these proceedings?
- (3) Do the Respondents still want the State Water Board to hold hearings on the Draft CDOs?
- (4) If the Division and the Office of Enforcement want to proceed and the Respondents want the State Water Board to hold hearings, then what are the appropriate processes and schedules for pre-hearing submittals of exhibits and testimony?
- (5) Should the AHO consider the status of the actions by the Court of Appeal for the Third Appellate District in *Modesto Irrigation District v. Tanaka*, No. C083430, or the State Water Board’s actions in the pending *Mussi, Pak and Young* matters (see

https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/mussietal_cdo/ and https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/pak_young/) when the AHO sets the schedules for pre-hearing submittals of exhibits and testimony, and the hearing schedules, in the Vierra, Ohm and Speckman proceeding or proceedings? (The AHO is not involved in the *Mussi, Pak and Young* matters.)

- (6) Should the AHO hold one, unified hearing on all three Draft CDOs, or three separate hearings, one on each Draft CDO?
- (7) If the AHO decides to hold hearings in these matters, then when should the hearings be held?
- (8) Which State Water Board staff will be members of the Prosecution Team (described below)?
- (9) What is the appropriate service list or lists for these proceedings?

HEARING OFFICER AND HEARING TEAM

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

PROSECUTION TEAM

If the Division and the Office of Enforcement decide to proceed with the Draft CDOs in these proceedings, then the State Water Board Prosecution Team will be comprised of attorneys from the State Water Board's Office of Enforcement, and possibly the State Water Board's Office of Chief Counsel, and staff from the State Water Board's Division of Water Rights. During the status conference, the AHO hearing officer will ask the Prosecution Team to specify its members.

SEPARATION OF FUNCTIONS; PROHIBITION ON EX PARTE COMMUNICATIONS

All Parties, including the Prosecution Team, are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For a discussion of *ex parte* communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf. These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

If any Party wants to communicate with the AHO at any time regarding any procedural or substantive issue regarding these proceedings, including any issue regarding the status conference, hearing procedures or filing of documents, then that Party shall make such communication to the AHO in writing (by e-mail or letter) and serve all other Parties with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. A Party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the Parties or their representatives in an electronic-mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other Parties or their representatives in the cc portion of the letter.

Before the AHO circulates the list of Parties described below, any Party submitting any document to the AHO for this proceeding (including the Party's NOI, described below) shall transmit copies of the document to all of the other Parties listed in the attached proof of service. After the AHO circulates the list of Parties that have filed NOIs, any Party submitting any document to the AHO shall transmit copies of the document to all of the other Parties on the NOI list. Whenever any Party files any document with the AHO for this proceeding, the Party shall include a proof of service using one of the methods described above that confirms that the Party has transmitted copies of the document to all other Parties and that describes the method of service.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding these proceedings, 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.

NOTICES OF INTENT TO APPEAR

Any Person or Entity that wants to participate in this Status Conference must file a Notice of Intent to Appear ("NOI"), using the form in this notice, with the AHO before the deadline listed below. The AHO encourages Parties to agree to accept electronic service (by e-mail) of all documents regarding this hearing. If a Party is not willing to do this, then the Party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the Party agrees to accept electronic service.

If the AHO does not receive an NOI from the Prosecution Team indicating the Prosecution Team's intent to participate in the status conference before the deadline specified below, then the AHO may dismiss the Draft CDOs without further notice or opportunity for hearing. The Prosecution Team must file an NOI to preserve the Prosecution Team's rights to seek ACLs in these matters.

If the AHO does not receive an NOI from any of the Respondents indicating the Respondent's intent to participate in the status conference before the deadline specified below, then the AHO may deem the Respondent's prior request for a hearing regarding the Draft CDO to be withdrawn and the AHO may issue a Final CDO without further notice or opportunity for hearing. Each 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 post that list on the AHO's webpage.

STATUS CONFERENCE STATEMENTS

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

Table 1: NOI and Status Conference Deadlines and Schedule

Item	Date and Time
Deadline for any Party that wants to participate in the hearing or hearings to file an NOI with AHO and serve copies on all other Parties	April 3, 2020, 4:00 pm
Deadline for filing and service of status conference statements	April 13, 2020, 4:00 pm
Status conference date and time	April 17, 2020, 9:30 am

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

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

Table 2: Document Submitting Methods

Method	Address
By Email:	AdminHrgOffice@waterboards.ca.gov With Subject Line “Vierra-Ohm-Speckman Status Conference”
By Mail:	State Water Resources Control Board Administrative Hearings Office P.O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery	Joe Serna Jr. CalEPA Building

(see note below)	Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814
------------------	---

Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet Web site accessibility in Government Code section 11546.7, the AHO has posted and will post all notices and other documents regarding these proceedings on the AHO's Internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/ Any interested party may sign up to receive all AHO notices on the E-mail Subscription Mailing Lists page within the State Water Resources Control Board website, at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

SETTLEMENT

In this proceeding, the Prosecution Team is prosecuting the Respondents for alleged violations of the Water Code. The Prosecution Team and any of the Respondents 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 member of the AHO hearing team will participate in such settlement discussions or receive any evidence of what occurred during them (except for a written settlement agreement, if the Parties negotiate and sign such an agreement and submit it to the AHO). If the Prosecution Team and any of the Respondents enter into 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.

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.

Date: March 11, 2020

/s/ ALAN B. LILLY

Alan B. Lilly
Presiding Hearing Officer

Enclosures:

- Notice of Intent to Appear form
- Service List

AHO/Water-Right Enforcement – Other/2020-03-10 notice of status conference for Ohm, Vierra and Speckman



State Water Resources Control Board

NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) _____ plans to participate in the status conference regarding the draft cease and desist orders in the Vierra, Ohm and Speckman matters, which is scheduled to begin on April 17, 2020, at 9:30 am.

[Fill in the following information of the Party or participant who will participate in the status conference:]

Name (type or print):

Represented Party (if applicable):

Mailing Address:

Telephone Number: _____

E-mail Address: _____

Optional:

I/we decline electronic service of materials in these matters and request that copies of all such materials be mailed to me/us. (If this box is not checked, the Administrative Hearings Office will assume that you accept electronic service of all hearing-related materials.)

Signature: _____ Date: _____

SERVICE LIST

Dante John Nomellini
Nomellini, Grilli & McDaniel
P.O. Box 1461
Stockton, CA 95201-1461
Attorney for Loren and Dolores Ohm
(via certified mail, return receipt requested)
#7019 0160 0000 9004 7501 (3800)
#9590 9402 4917 9032 8974 56 (3811)

Jennifer Spaletta
Herum\Crabtree\Suntag
5757 Pacific Avenue, Suite 222
Stockton, CA 95207

Diana L. Yelland
Eddie Vierra Farms, LLC
522 First St.
Escalon, CA 95320

David Rose
Office of the Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dante John Nomellini, Jr.
Nomellini, Grilli & McDaniel
P.O. Box 1461
Stockton, CA 95201-1461
Attorney for George Speckman
Testamentary Trust
(via certified mail, return receipt requested)
#7019 0160 0000 9005 0013 (3800)
#9590 9402 4917 9032 8974 63 (3811)

George Speckman Testamentary Trust
P.O. Box 185
Holt, CA 95234
(via certified mail, return receipt requested)
#7019 0160 0000 9004 7495 (3800)
#9590 9402 4917 9032 8974 70 (3811)

George Speckman Farms
941 Windsail Lane
Stockton, CA 95206

Dean Ruiz
Harris, Perisho & Ruiz

3439 Brookside Road, Suite 210
Stockton, CA 95219

DeeAnne M. Gillick
Neumiller & Beardslee
P.O. Box 20
Stockton, CA 95201-3020

Loren & Dolores Ohm Revocable Trust
7656 S. Roberts Rd.
Stockton, CA 95206
(via certified mail, return receipt requested)
#7019 0160 0000 9004 7471 (3800)
#9590 9402 4917 9032 8974 87 (3811)

Jennifer Spaletta
Spaletta Law PC
P.O. Box 2660
Lodi, CA 95241
Attorney for Eddie Vierra Farms
(via certified mail, return receipt requested)
#7019 0160 0000 9004 7488 (3800)
#9590 9402 4917 9032 8975 00 (3811)

Eddie Vierra Farms, LLC
P.O. Box 114
Escalon, CA 95320
(via certified mail, return receipt requested)
#7019 0160 0000 9004 7464 (3800)
#9590 9402 4917 9032 8975 00 (3811)

Andrew Deeringer
Office of the Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Yvonne West
Director, Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, CA 95814

Service List cont'd.

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

John Herrick
1806 W. Kettleman Lane, Suite L
Lodi, CA 95242

Stanley C. Powell
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814

Tim O'Laughlin
O'Laughlin & Paris, LLP
117 Meyers Street, Suite 110
P.O. Box 9259
Chico, CA 95927-9259

Bruce Blodgett
3290 North Ad Art Road
Stockton, CA 95215-2296