
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Public Hearing on a
proposed Cease and Desist Order issued to

Darrell Sousa (Respondent) (Water Right ID SG005956).

The **Public Hearing** will commence on

April 20, 2023, at 9:00 am

and will be held by Zoom teleconference.

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/95859310520?pwd=RIFNNnN6VW9mM0RoMmg0WWINNIZkdz09>

Meeting ID: 958 5931 0520

Passcode: 520937

or by calling in at: +16699009128,,97355727363#,,,,*496267# US (San Jose)

Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel, at <https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

BACKGROUND

On November 16, 2022, Jule Rizzardo, Assistant Deputy Director for the State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) Enforcement Section, issued a draft cease and desist order (Draft CDO) to the Respondent, Darrell Sousa. The Division sent a copy of the Draft CDO to the Respondent by letter also dated November 16, 2022. The letter notified the Respondent of the right to request a hearing to contest the allegations in the Draft CDO. On December 9, 2022, the Respondent requested a hearing on the Draft CDO by e-mail to the Administrative Hearings Office (AHO).

2021 and 2022 Scott-Shasta Emergency Regulations

On August 17, 2021, the State Water Board adopted California Code of Regulations, title 23, sections 875 through 875.9 (2021 Scott-Shasta Emergency Regulations), which became effective on August 30, 2021. On June 21, 2022, the State Water Board readopted sections 875 through 875.9 with some amendments (2022 Scott-Shasta Emergency Regulations), which went into effect on July 29, 2022. The 2021 and 2022 Scott-Shasta Emergency Regulations (collectively, Scott-Shasta Emergency Regulations) were adopted by the Board under Water Code section 1058.5. The Scott-Shasta Emergency Regulations authorize the Deputy Director of the Division of Water Rights (Deputy Director) to issue curtailment orders to water right holders and claimants in the Scott and Shasta Rivers when flows are insufficient to support all diverters. Because surface water and groundwater are interconnected in the Scott and Shasta River watersheds, the Scott-Shasta Emergency Regulations address both surface water and groundwater rights. For the purpose of determining whether groundwater appropriators are subject to the curtailment, the Scott-Shasta Emergency Regulations assign a priority date to appropriative groundwater rights based on the date a well was constructed and water was first used for appropriative uses. (Cal. Code Regs., tit 23, § 875.5 subd. (b)(1)(A).)

The Scott-Shasta Emergency Regulations prohibit diversion of surface water and groundwater at a diversion point or for use at a place of use that is subject to a curtailment order. (*Id.*, § 875, subd. (a).) The regulations authorize the Deputy Director to issue a curtailment order upon a determination that without curtailment of diversions, flows are likely to be reduced below drought emergency minimum flows for the Scott and Shasta Rivers specified in the regulations. (*Id.*, § 875, subd. (b).) The Scott-Shasta Emergency Regulations provide exceptions to curtailment orders for diversions for human health and safety and minimum livestock watering needs. (*Id.*, §§ 875.2 & 875.3.) All water right users or water right holders issued a curtailment order are required to submit a certification of one or more actions enumerated in the regulations taken in response to the curtailment order. (*Id.*, § 875.6.)

On September 10, 2021, the State Water Board issued a curtailment order, Order WR 2021-0082-DWR (2021 Curtailment Order) to appropriative surface water and groundwater rights in the Shasta River watershed with priority dates later than November 1912.

Draft Cease and Desist Order

California Water Code section 1831 authorizes the State Water Board to issue a cease and desist order when the Board determines any person is violating, or threatening to violate, a regulation adopted under Water Code section 1058.5. (Wat. Code, §1831, subd. (d)(4).)

The Draft CDO alleges that the Respondent owns Siskiyou County Assessor's Parcel Number (APN) 019-661-120-000, the Respondent has an appropriative groundwater right with a priority date that is junior to 1950 (SG005956), and the diversion and use of

water under that right is subject to the 2021 Curtailment Order. On November 18, 2021, the Respondent submitted a curtailment certification, a livestock diversion certification, and a health and human safety needs certification for SG005956. (See Cal. Code Regs., tit. 23, § 875.6.)

In July 2022, the Division received a water rights complaint alleging that the Respondent was selling water pumped from the Respondent's groundwater well to water haulers. On August 5, 2022, Division staff issued a Notice of Complaint to the Respondent which requested information about the amount of water diverted, any sales of water, where the water was being used, and the purpose of use. On August 29, 2022, Division staff inspected the Respondent's property. On October 3, 2022, Division staff issued a Report of Inspection and a Notice of Violation to the Respondent.

On November 16, 2022, the Division issued the Draft CDO which alleges that the Respondent has not met the requirements to continue diversions under the human health and safety exemption to the 2021 Curtailment Order, and therefore is violating or threatening to violate the Scott-Shasta Emergency Regulations and Water Code section 1058.5. As defined by California Code of Regulations, title 23, section 878.1, the exemption from curtailment for diversions for minimum human health and safety needs allows the diversion of up to 55 gallons per person per day unless the diverter files a petition for a different amount and that amount is approved by the Deputy Director. The Draft CDO alleges that the Respondent did not provide information about the number of households served with water diverted and hauled from the Respondent's groundwater well and that the Respondent is unable to measure the amount of water diverted and hauled from the Respondent's groundwater well.

The Draft CDO proposes to require the Respondent to submit information about how the Respondent is or was complying with the human health and safety exemption to the 2021 Curtailment Order, including information about the amount of water sold, the places where the water was used, the number of people served at each location, and the purpose of use. The Respondent would also be required to develop a compliance plan to maintain adequate records of this information and to install a measurement device on the groundwater well and on the filling station to maintain accurate records of the amount of groundwater being diverted and sold. The Respondent could resume appropriate groundwater diversions for human health and safety under the proposed CDO upon implementation of a compliance plan that demonstrates that diversions are no greater than 55 gallons per person per day for minimum health and safety needs or upon approval by the Deputy Director of a petition to allow diversion of more than 55 gallons per person per day for minimum health and safety needs under California Code of Regulations, title 23, section 878.1, subdivision (b)(2).

AHO Proceedings

Water Code section 1112, subdivision (a)(2), provides that an AHO hearing officer shall preside over hearings on a notice of a proposed cease and desist order issued under Water Code section 1834. After the hearing, the AHO hearing officer will prepare a

proposed order and transmit it to the Clerk of the Board under Water Code section 1114, subdivision (c)(1). The Board then may take any of the actions described in Water Code section 1114, subdivision (c)(2).

PURPOSE OF HEARING AND HEARING ISSUES

The purpose of this hearing is for the AHO hearing officer to receive evidence and arguments relevant to the following issues:

- 1) Did the Respondent divert or use water from the Respondent's groundwater well that was subject to a curtailment order issued by the Deputy Director of the Division of Water Rights under California Code of Regulations, title 23, division 3, chapter 2, article 23.5 (sections 875-875.9)?
- 2) Did the Respondent violate or threaten to violate a State Water Board regulation adopted under Water Code section 1058.5?
 - a. Did the Respondent violate or threaten to violate the Scott-Shasta Emergency Regulations?
 - b. Did the Respondent divert or threaten to divert from the Respondent's groundwater well more than 55 gallons per person per day for minimum human health and safety needs?
 - c. Did the Respondent divert or threaten to divert from the Respondent's groundwater well water for a purpose of use other than minimum human health and safety needs?
- 3) If the State Water Board decides to issue a cease and desist order to the Respondent under Water Code section 1831, what provisions should be in the order?

ADMINISTRATIVE RECORD

The AHO hearing officer's proposed order in this matter will be based upon evidence and arguments in the administrative record. The AHO may add additional documents, in addition to the parties' exhibits, to the administrative record. The following documents currently are in the AHO administrative record for this matter: (1) November 17, 2022 draft CDO and transmittal letter; (2) the Respondent's December 9, 2022 request for hearing; and (3) the AHO's December 27, 2022 e-mail and letter to all parties acknowledging receipt of the Respondent's hearing request. These documents are in a file in the Water Board's FTP site in the "AHO Download Folder" for this matter, described in Item 6 below.

Parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the hearing issues outlined above. If a party intends to submit exhibits electronically during the hearing, the party will need to request access to

the FTP site by the date listed in the table titled “Deadlines for Hearing Participation” and then follow the procedures described in Item 6 below.

HEARING OFFICER AND HEARING TEAM

Nicole Kuenzi, the Presiding Hearing Officer of the State Water Board’s Administrative Hearings Office, will be the hearing officer for this proceeding and will prepare a written order, according to the requirements outlined in Water Code section 1114, subdivision (b)(1), within 90 days after the matter is submitted for decision. Other AHO staff may be present and may assist the hearing officer during the hearing and throughout this proceeding.

PROSECUTION TEAM

A State Water Board staff Prosecution Team will be a party to this hearing. 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.

PROHIBITION ON EX PARTE COMMUNICATIONS AND SEPARATION OF FUNCTIONS

While this proceeding is pending, *ex parte* communications between any party or interested person and any member of the AHO hearing team are prohibited. *Ex parte* communications are any type of communication regarding this proceeding that occurs between a party or interested person and the hearing officer or a member of the hearing team without notice and an opportunity for all parties to participate.

Please do not attempt to communicate by telephone with any AHO hearing officer or any AHO staff member regarding this hearing, because other parties would not be able to participate in such communications. If any party wishes to communicate with the AHO at any time regarding any issue related to this proceeding, including any issue regarding hearing procedures or filing of documents, please communicate by e-mail to adminhrgoffice@waterboards.ca.gov or by letter to the AHO and serve all other parties with copies of the communication.¹ The party shall include a proof of service through a formal proof of service or by other verification.²

The Prosecution Team is separated from the AHO hearing team. Like all other parties, members of the Prosecution Team are prohibited from having any *ex parte* communications about this proceeding with members of the AHO hearing team. (See

¹ The AHO’s mailing addresses are provided in Item 6 below.

² All references to “proof of service” in this document refer to either a formal proof of service or a list of the parties and the addresses of them or their representatives in an e-mail “cc” (carbon copy) list or the cc portion of a letter.

Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.)³ These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

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 of its notices and other AHO documents regarding these proceedings on the AHO’s Internet webpage:

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

More information about this proceeding may be accessed on the AHO’s Internet webpage by clicking on “Water-Right Enforcement–Other” and then on “Emergency Curtailment Regulations-Scott-Shasta Rivers” and then on the link with the name of the Respondent.

The AHO webpage has information about accessing the AHO’s YouTube channel to watch live broadcasts or past recordings of hearings.

For general information about AHO proceedings, an AHO Frequently Asked Questions (FAQs) page is posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/procedures.html.

The AHO maintains a list of attorneys who may agree to provide pro bono legal assistance to parties without counsel. This list is available at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/pro_bono_aho.pdf.

DEADLINES FOR HEARING PARTICIPATION

Deadline to request unique log-in to upload exhibits to Water Board’s FTP site	April 6, 2023, 12:00 pm
Deadline for filing and service of any submittals of proposed testimony or exhibits before the hearing (optional)	April 13, 2023, 12:00 pm
Hearing date and time	April 20, 2023, 9:00 am

PROCEDURES FOR THIS WATER-RIGHT HEARING

³ 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.

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during or after the hearing as she deems appropriate.

1. HEARING PROCEDURES: The 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. 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.

2. SETTLEMENTS: The Prosecution Team and the Respondent 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 sign a written settlement agreement, the Respondent shall notify the AHO in writing that the parties have signed a written settlement agreement and that the Respondent withdraws her request for a hearing.

3. 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 non-evidentiary policy statements during the hearing.

4. TESTIMONY AND OTHER EXHIBITS: Exhibits include all written proposed testimony and other documents to be submitted as evidence. There is no requirement for any party to submit any written proposed testimony or exhibits before the hearing, but a party may do so. Any party that wants to submit written proposed testimony or exhibits before the exhibit filing deadline listed above may do so by following the procedures described in Item 6 below. Any party submitting written proposed testimony before the hearing still must produce the actual witness or witnesses to verify the written proposed testimony, provide a summary of it, and be available for cross-examination, during the hearing.

5. EXHIBIT FORMATTING AND ORGANIZATION: A party deciding to submit exhibits before the hearing must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Excel format. A sample is attached to the end of this document.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, the Prosecution Team's exhibits should be numbered PT-1, PT-2, etc. The Respondent's exhibits should be numbered Respondent-1, Respondent-2, etc.

6. SUBMISSIONS OF DOCUMENTS: The AHO prefers that participants that decide to submit exhibits before the hearing do so by uploading the exhibits in electronic form to the State Water Board's FTP site. A party that submits documents electronically also shall file a paper copy of each exhibit with the AHO and mail a paper copy of each

exhibit to the other party. This procedure will remain in place 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".

Upon request by the deadline specified above, 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 Folders".

If a party wants to request a unique account to upload documents to the Upload Folder in preparation for hearing, the party must e-mail the request to the AHO at adminhrgoffice@waterboards.ca.gov by the deadline specified in "Deadlines for Hearing Participation." A party that already has a unique account for the Upload Folder with the AHO does not need to request this log-in information again.

a. AHO-FTP Download Folders:

The AHO will create a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain all administrative record documents related to this 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 legal briefs, if applicable, 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, correspondence and the AHO's order). 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, including this 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. Parties' Upload Folders:

Upon request by the deadline specified in "Deadlines for Hearing Participation," the AHO will create a separate upload account for each party that requests such an account. The separate upload account will be for the party to 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 any 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.

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 also shall serve paper copies of all such documents on the 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 e-mail 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.**

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 the Download 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 serve its exhibits on the other parties by mail by the exhibit filing deadline specified in this notice. The party shall also 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.

7. 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.

- 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 may present a case-in-chief addressing the key issues in this hearing notice. The hearing will proceed in the following order:
 - Party's opening statement (**5 minutes per party**)
 - Summaries of the party's witnesses' written proposed testimony or presentation of the party's oral testimony (**no more than 30 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**30 minutes total for all the other party's witnesses**).
 - Re-direct examination and re-cross examination of the party's witnesses if the hearing officer allows.
 - Questions from the hearing officer. (These questions may occur at any time, but normally will be after all other parties have completed their cross-examinations of a party's witnesses.)
 - Submitting exhibits into evidence, including the AHO's own exhibits, with opportunities for objections by other parties.
- c. **Presentations of parties' rebuttal evidence:** After all parties have presented their cases-in-chief, the hearing officer may allow parties to submit rebuttal exhibits and testimony.
- d. **Closing statements (5 minutes per party):** The hearing officer may instead order the parties to file closing briefs.

8. HEARING LOGISTICS: The hearing officer prefers that parties participate in the hearing by both audio and video through the Zoom meeting link listed on the first page of this notice. If this is not possible, then the hearing officer will accept audio-only participations.

The AHO will not order a court reporter for this hearing. Any interested party may order a court reporter at the party's own expense. The AHO will record the hearing and post audio-plus-video files of the hearing on the Water Board's 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.

Each party should call into the hearing at least 10 minutes before the scheduled hearing time so the party can resolve any technical issues before the hearing begins. Parties initially will be in a virtual waiting room and will be admitted to the hearing by a member of the AHO at the time scheduled for the hearing to begin. When speaking, please turn the video on and unmute the microphone by clicking on the symbols in the lower left-hand side of the Zoom window.

During the hearing, please be respectful and patient. Parties should raise a hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute unless speaking. If other devices are tuned into the meeting, please turn off the speaker of each of those devices. Other participants will be able to see each party's name, depending on the party's Zoom account settings. Other participants may also see the last three digits of a party's phone number unless the party has called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If a party's device freezes, please notify staff at adminhrgoffice@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and then 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 with the Zoom meeting information on the first page.

March 6, 2023
Date

/s/ Nicole Kuenzi
Nicole Kuenzi
Presiding Hearing Officer

Enclosures:

- Exhibit Identification Index
- Service List

SERVICE LIST

Jule Rizzardo

Jule.Rizzardo@waterboards.ca.gov

Yvonne West

Yvonne.west@waterboards.ca.gov

Mayumi Okamoto

Mayumi.okamoto@waterboards.ca.gov

Kenneth Petruzzelli

Kenneth.petruzzelli@waterboards.ca.gov

Debi Ores

Debi.Ores@waterboards.ca.gov

John Prager

John.Prager@waterboards.ca.gov

Samantha Olson

Samantha.Olson@waterboards.ca.gov

Joe Croteau

Joe.Croteau@wildlife.ca.gov

Jim Simondet

Jim.simondet@noaa.gov

Karuk Tribe

gjohnson@karuk.us

craig@suitsandsigns.com

Yurok Tribe

mbelchik@yuroktribe.nsn.us

Steven McDonald, CDFW

steven.mcdonald@wildlife.ca.gov

David Webb, Friends of the Shasta River

Dave.webb@shastariver.org

Watermaster

director@sswatermaster.org

deputy@sswatermaster.org

Matt Parker, Siskiyou County
mparker@co.siskiyou.ca.us