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## State Water Resources Control Board

### **NOTICE OF STATUS CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Status Conference  
on the pending application (A030531B) of

**the City of Stockton**

for a permit to appropriate water from the  
San Joaquin River originating from wastewater discharges by the City.

**The Status Conference will begin on  
June 1, 2021, at 9:30 am**

and will be held by Zoom teleconference.

You may participate in the Zoom teleconference by using the link:  
<https://waterboards.zoom.us/j/97180966436?pwd=NmNGd0FZTTThDQm81MUhvTjBwMndiUT09> with Meeting ID: 971 8096 6436 and Passcode: 202883 or  
+16699009128,,97180966436#,,,,\*202883# 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/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

### **BACKGROUND**

#### **A030531**

On April 18, 1996, the City of Stockton (City) filed water-right Application 30531 (A030531) with the State Water Resources Control Board (State Water Board) Division of Water Rights (Division). This application asked the State Water Board to issue a water right permit to appropriate up to 125,900 acre-feet/year (af/yr), at a maximum diversion rate not to exceed 317 cubic-feet per second (cfs), from the San Joaquin River for municipal and industrial uses. The application stated that the water to be diverted

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

from the proposed source would be: a) treated wastewater discharged into the San Joaquin River at the City's Regional Wastewater Control Facility and b) additional water. The City proposed to appropriate treated wastewater discharged into the San Joaquin River pursuant to Water Code section 1485, and to appropriate additional amounts under a claim of seniority pursuant to Water Code section 11460.

On December 19, 1997, the Division issued its public notice of Application 30531. The U.S. Department of the Interior, Bureau of Reclamation (Reclamation), the California Department of Water Resources (DWR) and the San Joaquin River Group Authority (SJRGA) filed protests to Application 30531. Each protestant agreed that its protest could be dismissed if the State Water Board included in any permit issued pursuant to Application 30531: a) a term ensuring that the City would adequately account for all appropriations of water from San Joaquin River flows derived from the City's treated wastewater discharges, under Water Code section 1485, and b) standard Permit Terms 80, 90 and 91 for all diversions of water made from the flow of the San Joaquin River that would not be made under Water Code section 1485. In accordance with the stipulations and agreements made by the parties, the State Water Board dismissed the protests of Reclamation, DWR and SJRGA on March 24, 2005, May 17, 2005 and November 16, 2005, respectively.

The City is proposing to use the permit or permits issued on Application 30531 for the Delta Water Supply Project (DWSP), which will provide a new supplemental water supply for the City's service area.

On April 29, 2005, the City issued its Draft Program Environmental Impact Report for the Stockton Delta Water Supply Project (DPEIR). The DPEIR contains a project-level impact and mitigation analyses for the initial 33,600 af/yr Phase I of the DWSP, but only a program-level analysis for future expansion phases of the DWSP, up to the entire 125,900 af/yr requested under Application 30531.

On July 1, 2005, the City sent the Division a letter requesting that Application 30531 be split into two applications. The City stated that it was seeking a permit only for the initial phase of the project (to be issued on the first of the two applications resulting from the split) at that time.

On June 29, 2005, the Division split Application 30531 into two applications, Application 030531A and Application 030531B. Under Application 30531A the annual amount of water applied for is limited to 33,600 af/yr. Under A030531B, the annual amount of water applied is limited to 92,300 af/yr. All other provisions of A030531, including the 317 cfs diversion rate and the proposed points of diversion, place of use and purpose of use, remained unchanged in each of these applications.

### **A030531A**

On December 20, 2005, the Division issued Permit 21176 to the City on Application 30531A. This permit authorizes the direct diversion of water from the San Joaquin

River at rates not to exceed 317 cfs between January 1 and December 31, with a total annual diversion not to exceed 33,600 af/yr, for municipal and industrial uses within the City's service area. Term 15.a.2. of this permit provides that the 15-day running average of diversions under the permit shall be less than or equal to the 15-day running average of the City's discharges of properly treated effluent into the San Joaquin River.

### **A030531B**

On September 11, 2007, the Division sent the City a letter requesting a schedule for completion of the City's project-level California Environmental Quality Act (CEQA) document for Application 30531B. The Division informed the City that the City's schedule should include dates for the preparation of all biological resource studies, preparation of the Draft EIR, responses to comments on the Draft EIR, and certification of the Final EIR. The Division informed the City that the EIR should consider all impacts related to diversion of 317 cfs, not to exceed 92,300 af/yr, under Application 30531B. (This is the remaining amount after the 33,600 af/yr under Permit 21176 is subtracted from the 125,900 af/yr in Application 30531.) The Division requested this information under Water Code section 1275 and directed the City to submit it within 30 days. The Division noted that failure to timely provide the requested information could result in cancellation of the application under Water Code section 1276.

The City's October 11, 2007 response stated that a Notice of Preparation would be circulated in 2014 and the CEQA document would be completed in 2017. The City's letter stated that, concurrent with the CEQA work, the City would ask the Division to issue the public notice for A30531B. The City anticipated that it would expand its Delta Water Supply Project and begin diversions under the permit to be issued on Application 30531B sometime between 2020 and 2025.

On December 1, 2008, the Division sent the City a letter, which stated that Division staff was prepared to recommend cancellation of A030531B because of the City's failure to exercise due diligence.

On November 7, 2013, the Division sent the City a letter requesting information regarding when water diversions under Permit 21176 would be fully developed. The Division's letter also asked the City to provide a schedule for preparation of the CEQA document for A30531B.

On November 26, 2013, the City responded with a letter, which stated that the City's 2015 Urban Water Management Plan update would more clearly describe the development schedule for Application 30531B.

On June 22, 2020, the Division sent the City a letter requesting an update regarding the specific actions the City had been taking to pursue Application 30531B since 2013, including the status of the City's preparation of a CEQA document for this application.

On August 25, 2020, the City sent the Division a letter, which stated that the City projected that its demands for Delta water diversions would not exceed the amounts

authorized for diversion under Permit 21176 until after 2040, when the City might need to start using the water the City proposes to divert under a permit to be issued on Application 30531B. Regarding the estimated schedule for the City to prepare the CEQA document for Application 30531B, the City stated:

*“Assuming that current [Endangered Species Act] pumping restrictions for Permit 21176 remain in place, and the City needs the water it has applied for under Application 30531B between 2055-2060, the City estimates that planning and CEQA efforts related to Application 30531B will start between 2040 and 2045.”*

### **ASSIGNMENT OF PETITIONS TO THE ADMINISTRATIVE HEARINGS OFFICE**

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the State Water Board may assign adjudicative hearings to the AHO. Subdivision (c)(3) of this section provides that an AHO hearing officer may perform additional work requested by the Board.

On February 17, 2021, Erik Ekdahl, Deputy Director of the State Water Board’s Division of Water Rights (Division), sent a memorandum to Eileen Sobeck, the State Water Board’s Executive Director, proposing to transfer Application A030531B to the AHO. On February 26, 2020, Ms. Sobeck issued a memorandum assigning the application to the AHO.

### **HEARING OFFICER AND HEARING TEAM**

A hearing officer from the AHO will preside during the status conference. Other AHO staff members may be present and assist the hearing officer during the status conference.

### **STATUS CONFERENCE**

The AHO hearing officer will hold a status conference on the date and at the time specified on the first page of this notice. Because of the current COVID-19 pandemic, no in-person appearances will be allowed. The status conference will be electronically recorded by Zoom teleconference. The hearing officer will prepare a status conference order after the conference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at the party’s own expense.

The status conference will address the following issues:

- (1) Does the City still want to pursue Application 30531B?
- (2) What is the status of the City’s work on Application 30531B and schedule for future actions regarding the application, including the City’s schedule for preparing and completing the CEQA document for the application?

- (3) Should the AHO schedule a public hearing to consider whether the State Water Board should cancel, reject, or deny Application 30531B under Water Code section 1276 or section 1335, or California Code of Regulations, title 23, sections 683 or 840? If so, when should the hearing be held?
- (4) Any other procedural issues raised by the participants.

### **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), 1113; 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](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 related to these proceedings, including the status conference, then that party shall make such communication to the AHO by e-mail or letter. The party shall serve all other parties on the service list 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 listed on the service list in the cc portion of the letter. The service list for this proceeding is attached to this notice.

Please do not attempt to communicate by telephone or in person with any AHO team member regarding any procedural or substantive issue concerning this proceeding. If oral communications with any members of the AHO 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 who 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 proceeding. 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. Parties that do not agree to accept electronic service will experience delays in receiving documents by U.S. Mail from the AHO and other parties.

If the AHO does not receive an NOI from the City indicating the City's intent to participate in the status conference before the deadline specified below, then the AHO may transmit a proposed order to the Board that would cancel Application 30531B without a hearing.

### **STATUS CONFERENCE STATEMENTS**

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

#### **NOI and Status Conference Deadlines and Schedule**

Deadline for filing NOIs and status conference statements, including proofs of service.	<b>May 20, 2021, 4:00 pm</b>
Status conference date and time.	<b>June 1, 2021, 9:30 am</b>

### **SUBMITTAL 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):

By Email (preferred method):	<a href="mailto:AdminHrgOffice@waterboards.ca.gov">AdminHrgOffice@waterboards.ca.gov</a> With Subject Line " <b>City of Stockton Application 30531B</b> "
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see instructions below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2nd Floor, Room 114 Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to building or office closures during the COVID-19 pandemic. Please plan ahead if you wish to

hand deliver documents. 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 website accessibility in Government Code section 11546.7, the AHO has posted and will post all notices and other documents regarding this proceeding on the AHO's internet webpage at

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

Any interested person or entity may sign up to receive all AHO notices at

[https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

### **STATUS CONFERENCE LIVE-STREAM AND RECORDING**

The status conference will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference 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?view\\_as=subscriber](https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig?view_as=subscriber)

### **ADMINISTRATIVE RECORD**

The AHO has copied documents from the public records maintained by the State Water Board's Division of Water Rights relevant to this proceeding and has included them in the initial administrative record. The AHO has posted files of these documents to its FTP site. Instructions regarding how to access the FTP site are on the AHO's webpage at:

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2020\\_05\\_05\\_notice\\_ftp2.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020_05_05_notice_ftp2.pdf)

In addition to the YouTube live recording, the AHO will make a Zoom recording of the status conference and will include this recording in the administrative record.

Any interested person or party may contact the Division of Water Rights Records Unit by e-mail at [DWR@waterboards.ca.gov](mailto:DWR@waterboards.ca.gov) or by telephone at (916) 341-5300 to make arrangements to review and copy documents in the Division's public files for Applications 30531, 30531A and 30531B. If the AHO holds a hearing in this matter, then interested parties may submit as hearing exhibits copies of such documents that are not already in the administrative record.

April 28, 2021

**SIGNATURE ON FILE**  
Alan B. Lilly, Presiding Hearing Officer

Enclosures:

- Notice of Intent to Appear Form
- Service List





# State Water Resources Control Board

## NOTICE OF INTENT TO APPEAR FORM

\_\_\_\_\_ (name of participant) plans to participate in the status conference regarding the City of Stockton Application 30531B

**scheduled to begin on June 1, 2021 at 9:30 am.**

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: \_\_\_\_\_

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

## SERVICE LIST

### ***By U.S. Mail and E-Mail (if listed):***

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