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## State Water Resources Control Board

### **AMENDED NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Pre-Hearing Conference and a Public Hearing (**Phase 1A**) on  
the pending petitions of

**Consolidated Irrigation District, Fresno Irrigation District,  
and Alta Irrigation District,  
and  
Semitropic Improvement District of Semitropic Water Storage District**

to revoke or revise the Declaration of Fully Appropriated Stream Systems  
with respect to the Kings River System; and

on potential revocations of

**Water-Right Licenses 11517 and 11521;**

and a proposed cease and desist order against

**the Kings River Water Association and its member units**

for the alleged unauthorized diversions  
or threat of unauthorized diversions of water from the Kings River System,  
as alleged in the complaint filed by

**Semitropic Improvement District of Semitropic Water Storage District.**

**The Pre-Hearing Conference will begin on  
March 23, 2021, at 9:00 a.m.**  
by Zoom teleconference.

**The Public Hearing (Phase 1A) will be held on  
June 2, 2021, from 9:00 a.m. to 5 p.m.**  
by Zoom teleconference.

**The Public Hearing (Phase 1A) will continue as necessary on  
June 3 and June 4, 2021, beginning at 9:00 a.m.,  
and additional dates as necessary,**  
by Zoom teleconference.

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/94202484362?pwd=SlhRd2dvL3hadk1CdFNFcGhCYk81Zz09> with Meeting ID: 942 0248 4362 and Password: 315070

**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=2&live\\_view=502&view\\_as=subscriber](https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=2&live_view=502&view_as=subscriber)

## **BACKGROUND**

On December 2, 2020, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (State Water Board or Board) issued a Notice of Public Hearing and Pre-Hearing Conference (Notice of Public Hearing) on two pending petitions to revoke or revise the Declaration of Fully Appropriated Stream Systems (FAS Declaration) with respect to the Kings River System and related issues raised in a complaint (Semitropic Complaint) filed by Semitropic Improvement District of Semitropic Water Storage District (Semitropic) against Kings River Water Association (KRWA) and its member units.

The AHO held a pre-hearing conference on January 26, 2021, and issued a procedural ruling on February 19, 2021. The procedural ruling states that the hearing in this matter will be held in phases and describes the phases. Phase 1A of the hearing will address the threshold question of whether there is evidence tending to show that Licenses 11517 and 11521 should be revoked or a violation of a requirement described in Water Code section 1831, subdivision (d), is occurring or threatening to occur. The AHO will consider the evidence and determine whether the evidence supports giving notice pursuant to Water Code sections 1675.1 and 1834 with a statement of facts and information on which the Board's consideration during Phase 1B of the hearing of a

proposed revocation of Licenses 11517 and 11521 and a proposed cease-and-desist order would be based.

On February 25, 2021, Semitropic, KRWA, and Tulare Lake Basin Water Storage District executed a stipulation (February 25, 2021 Stipulation) regarding the scope of Semitropic's petition to revoke or revise the FAS Declaration with respect to the Kings River system, Semitropic's May 25, 2017 Proposed Application to Appropriate Unappropriated Water, and Semitropic's Complaint. The February 25, 2021 Stipulation requests that the AHO issue a written statement providing that the scope of the hearing includes only the diversion, use, and potential availability of water from the Kings River and does not include tributaries to Tulare Lake Basin or Tulare Lakebed other than the Kings River.

### **PURPOSE OF HEARING AND HEARING ISSUES**

The purpose of Phase 1A of the hearing is to determine whether evidence supports the AHO's giving notice pursuant to Water Code sections 1675.1 and 1834 with a statement of facts and information on which the Board's consideration of a proposed revocation of Licenses 11517 and 11521 and a proposed cease-and-desist order against KRWA or any of its member units may be based.

In accordance with the February 25, 2021 Stipulation, all phases of this hearing are limited to the diversion, use, and potential availability of water from the Kings River system, not including tributaries to Tulare Lake Basin or Tulare Lakebed other than the Kings River.

Parties may submit exhibits and testimony for Phase 1A of the hearing relevant to the following issues:

- 1. Should the AHO issue a notice of proposed revocation of Licenses 11517 or 11521, with respect to the diversion or use of water from the Kings River system, under Water Code sections 1241, 1675, 1675.1, and California Code of Regulations, title 23, sections 850 to 852?**
  - a. Is there evidence that the licensee ceased to put the water authorized to be diverted and used under the licenses to useful or beneficial purposes?
  - b. Is there evidence that the licensee failed to observe any of the terms or conditions of the licenses?
  - c. Is there evidence to support any other bases for revocation of the licenses that the Board should consider?
  - d. Is the evidence sufficient to support a statement of facts and information upon which consideration by the Board of a proposed revocation may be based?

**2. Should the AHO issue a notice of proposed cease and desist order against KRWA or any of its member units with respect to the diversion or use of water from the Kings River system under Water Code section 1831 and 1834?**

- a. Is there evidence that KRWA or any of its member units are violating, or threatening to violate, the prohibition in Water Code section 1052, subdivision (a), against the unauthorized diversion or use of water subject to Division 2 of the Water Code?
- b. Is there evidence that KRWA or any of its member units are violating, or threatening to violate, any term or condition of Licenses 11517 or 11521?
- c. If there is evidence that any such violations or threatened violations are occurring, is the evidence sufficient to support a statement of facts and information that would tend to show the proscribed action and on which consideration by the Board of a cease and desist order would be based?

If the AHO determines after Phase 1A that Semitropic or other parties presented sufficient evidence, the AHO will give notice and provide “statement[s] of facts and information” pursuant to Water Code sections 1675.1 and 1834 to initiate Phase 1B of the hearing. If the AHO determines after Phase 1A that the evidence presented is insufficient to hold Phase 1B of the hearing, the AHO will proceed directly to Phase 2 of the hearing.

**HEARING OFFICER AND HEARING TEAM**

Nicole Kuenzi, a hearing officer in the State Water Board’s Administrative Hearings Office, will preside during the pre-hearing conference and the hearing. Other AHO staff members may be present and may assist the hearing officer during the pre-hearing conference and the hearing and throughout these proceedings. The hearing officer may also consult with other AHO hearing officers and staff members when deliberating on matters relevant to this proceeding. In addition, the hearing officer and other AHO staff members may consult with staff of the Division of Water Rights (excluding staff in the Division’s Enforcement Section), staff of the Board’s Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

**PRE-HEARING CONFERENCE**

The hearing officer will hold a pre-hearing conference on March 23, 2021, at 9:00 a.m. To participate in the pre-hearing teleconference, please use the Zoom teleconference information provided on the second page of this Notice. Because of the current COVID-19 crisis, no in-person appearances will be allowed for this pre-hearing conference. The pre-hearing conference will be electronically recorded by Zoom teleconference.

The parties may, but are not required to, file pre-hearing conference statements prior to the pre-hearing conference.

**AMENDED NOTICES OF INTENT TO APPEAR**

Any party who wants to participate in Phase 1A of the hearing in this matter must file an amended Notice of Intent to Appear (NOI) with the AHO, using the form in this notice, by March 30, 2021.

**PRE-HEARING CONFERENCE AND HEARING SCHEDULE**

<b>Deadlines / Schedule</b>	<b>Date and Time</b>
Pre-hearing conference.	<b>March 23, 2021, 9:00 a.m.</b>
Deadline for all parties who want to participate in Phase 1A of the hearing to file amended NOIs, including proofs of service.	<b>March 30, 2021, 4:00 p.m.</b>
Deadline for all parties to file case-in-chief exhibits and exhibit identification indices.	<b>May 3, 2021, 4:00 p.m.</b>
Phase 1A of the hearing begins.	<b>June 2, 2021, 9:00 a.m.</b>
Additional Phase 1A hearing days (as necessary)	<b>June 3 and June 4, 2021, 9:00 a.m., and additional dates as necessary.</b>

**HEARING LIVE-STREAM AND RECORDING**

The pre-hearing conference and the hearing will be live-streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. Each session may be accessed through the appropriate link on the Administrative Hearings Office YouTube channel. To view the morning session, click the link identified as “morning.” The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as “afternoon.” The afternoon session will begin after the lunch break.

After the conclusion of the hearing, recordings of the morning and afternoon YouTube live-stream sessions 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-g8lC7Nig/videos?view=2&live\\_view=502&view\\_as=subscriber.](https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8lC7Nig/videos?view=2&live_view=502&view_as=subscriber)

**AMENDMENTS TO THIS HEARING NOTICE**

The information in this Amended Hearing Notice supersedes any conflicting information in the Notice of Public Hearing issued by the AHO on December 3, 2020. All other procedures and information included in the December 3, 2020 Notice of Public Hearing and not superseded by this Amended Hearing Notice remain in effect. This hearing notice may be further amended by the AHO. Amendments may include changes to the times and dates of the hearing days, the hearing issues, and procedural deadlines.

Date: March 19, 2021

SIGNATURE ON FILE

Nicole L. Kuenzi

Hearing Officer, Administrative Hearings Office

- Enclosures:
- Procedures for this Water-Right Hearing
  - Notice of Intent to Appear Form
  - Exhibit Identification Index Form
  - Service List

## PROCEDURES FOR THIS WATER-RIGHT HEARING

The following procedures apply to this hearing:

- 1. HEARING PROCEDURES:** The Administrative Hearings Office (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. Copies of these regulations are posted on the State Water Resources Control Board's website: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations). 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.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

- 2. SETTLEMENTS:** Parties 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 or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO. Although the AHO may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between other parties.

The State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may approve a settlement agreement between parties even if other parties to the proceeding have not approved the settlement agreement. However, the hearing officer normally will give all parties opportunities to comment

on any settlement agreement submitted to the State Water Board or the Executive Director for approval before the State Water Board or Executive Director acts on the request, unless all parties to the hearing or their representatives have signed the settlement agreement.

3. **PARTIES: Semitropic, KRWA, Alta Irrigation District, Consolidated Irrigation District, Fresno Irrigation District, Tulare Lake Basin Water Storage District, McMullen Area Groundwater Sustainability Agency, Laguna Irrigation District, Burrel Ditch Company, Stinson Canal & Irrigation Co., Upper San Jose Water Co., Liberty Mill Race Company, Liberty Mutual Canal Company, Clarks Fork Reclamation District, Peoples Ditch Company, Last Chance Water Ditch Company, Terranova Ranch, Inc., and California Department of Fish and Wildlife** filed initial NOIs and are parties to this proceeding.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence, make objections, and examine witnesses.

4. **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 or submit non-evidentiary policy statements. Policy statements may be submitted in writing in advance of the hearing or presented orally during the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing. The AHO will not add such persons or entities to the service list.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing are requested to file a Notice of Intent to Appear indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

5. **NOTICES OF INTENT TO APPEAR:** As provided in California Code of Regulations, title 23, section 648.4, all people and entities that intend to participate in Phase 1A of



the hearing as parties must file either an electronic copy or a paper copy of an amended Notice of Intent to Appear with the AHO no later than the deadline specified in this notice. The AHO may interpret a failure to file an amended Notice of Intent to Appear by this deadline as a decision not to appear.

The AHO requests that any interested person who will not be participating as a party, but will be presenting only a non-evidentiary policy statement, file a Notice of Intent to Appear by the deadline and specify in the notice that the person only will be presenting a policy statement.

As provided in California Code of Regulations section 648.4, subdivision (b), the Notice of Intent to Appear for parties (but not for people only presenting policy statements) must state the name and address of the participant. For parties, the Notice of Intent to Appear also must state: (1) the name of each witness whom the party intends to call at the hearing; (2) a brief description of the subject of each witness's proposed testimony; and (3) an estimate of the time that the party requests for each of its witnesses to present an oral summary of his or her written testimony. (See section 6 for requirements that apply to written testimony.) The total time requested for summaries of all of each party's witnesses shall not to exceed the total time limit for oral summaries of written testimony set by the hearing officer. If a party intends to call any expert witnesses, the party shall designate each expert witness in the party's Notice of Intent to Appear.

Parties that do not intend to present cases-in-chief but wish to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.<sup>1</sup> A party that decides not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the AHO and the other parties as soon as possible.

Parties that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

The AHO will e-mail or mail a service list with the names of parties and their contact information to each person or entity that has submitted a Notice of Intent to Appear. The service list will indicate if any party is not willing to accept electronic service. If there is any change in the hearing schedule, the hearing officer will send a notice of such change to the parties on the service list and interested persons who have filed

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<sup>1</sup> A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as cases-in-chief to participate through opening statements, cross-examination, and rebuttal, and to present closing statements or briefs, if the hearing officer allows other parties to present such closing statements or briefs.

Notices of Intent to Appear expressing their intentions to present only policy statements.

**6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit proposed direct testimony of each witness in writing by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written testimony absent good cause. Each party shall designate each of its witness's written testimony as a separate exhibit. Each party must submit all of its witnesses' written testimony with the party's other exhibits by the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written testimony.

The AHO encourages all parties to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of his or her written testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

At this time, the hearing officer is not requiring parties to submit rebuttal testimony or exhibits before the hearing. See section 10, part c. for more information about rebuttal evidence.

**7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Word or Excel format.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, Semitropic's exhibits should be numbered Semitropic-1, Semitropic-2, etc., KRWA's exhibits should be numbered KRWA-1, KRWA-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about his or her written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony, but should not number or letter these headings and should not re-start the paragraph numbering in each section.

**Each party must submit to the AHO the exhibits and exhibit indices for this hearing no later than the deadline specified in the Hearing Notice.** The AHO may treat a party's failure to timely submit exhibits as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

The following requirements apply to exhibits:

- a. Parties submitting exhibits based on complex technical analyses also must submit sufficient information so that a qualified independent expert could reproduce the results.

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- b. Consistent with California Code of Regulations, title 23, section 648.3, the hearing officer has discretion to decide whether to receive into evidence by reference any relevant, otherwise admissible, public records of the State Water Board and any documents or other evidence that a public agency has prepared or published, provided that the original or a copy was in the possession of the State Water Board before the hearing officer issued this notice. A party offering such an exhibit by reference shall advise the other parties and the AHO of the title of the document, the particular portions of the document, including page and paragraph numbers, that the party will ask the hearing officer to consider, the purpose for which the party will use the portions of the exhibit if it is accepted into evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. The hearing officer normally will exclude exhibits that rely on unpublished technical documents unless the unpublished technical documents also are admitted as exhibits.
- d. Parties submitting large-format exhibits such as maps, charts, and other graphics shall provide the originals for the hearing record in a form that can be folded to 8 ½ x 11 inches. Parties also shall file, for the hearing record, a reduced copy of a large-format original exhibit. The hearing officer will determine whether both the large-format version and reduced copy will be admitted into evidence.

**8. SUBMISSIONS OF DOCUMENTS:** To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents to the AHO in electronic form (in addition to two

paper copies) unless the hearing officer authorizes submission of exhibits in different formats.

The following AHO FTP sites may be accessed at <https://ftp.waterboards.ca.gov/> :

**a. Username: AHO-FTP**

Anyone may download from the AHO-FTP site the administrative record documents the AHO has uploaded for this proceeding. Only AHO personnel may upload files to this FTP site. The administrative record documents include documents that AHO personnel have copied from the Division of Water Rights Records Unit's public files and may include other documents. The AHO will post exhibits and indices to this FTP site promptly after each filing deadline. The AHO may add other documents to the administrative record during this proceeding (including recordings of hearings) by posting them to this FTP site. The documents posted to this FTP site for this matter will be the AHO's administrative record for this proceeding.

If any party believes that the AHO should add any additional documents to this FTP site, or remove any documents from this FTP site, for this matter, then the party shall file a request to the hearing officer for such action, and transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings on such requests.

**b. Username: AHO-FTP2**

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and Exhibit Identification Indices) to the AHO-FTP2 site. No one besides AHO personnel may download or delete any files from this FTP site. After the deadline for submitting exhibits, AHO staff will move the documents the parties have uploaded to the AHO-FTP2 site to the AHO-FTP site, so all other parties may download them.

To obtain authorization to access either of these FTP sites, please submit an email request to the AHO at [AdminHrgOffice@Waterboards.ca.gov](mailto:AdminHrgOffice@Waterboards.ca.gov) with "Request for AHO ftp password" in the subject line. After receiving an e-mail request, AHO staff will provide a password to access these FTP sites. It is not necessary to include other parties in the cc line for these email requests.

Documents that parties upload to the AHO-FTP2 site normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel, slide presentations may be submitted in Microsoft PowerPoint, and Exhibit Identification Indices shall be submitted in Microsoft Excel or Word.

If a party wishes to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer, and serve copies of the request on all other parties on the service list, at least 14 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

Each party shall upload its exhibits and Exhibit Identification Index to the AHO-FTP2 site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the AHO-FTP2 site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the AHO's FTP site also shall serve paper copies of all such documents on that 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 AHO-FTP2 site, the party or party's representative shall send an email the AHO at [AdminHrgOffice@Waterboards.ca.gov](mailto:AdminHrgOffice@Waterboards.ca.gov), with copies to the other parties on the service list, notifying the AHO that the party has uploaded the documents.

Each party also shall mail or hand-deliver two paper copies of its exhibits and Exhibit Identification Index to one of the AHO's two addresses listed below, with a proof of service of these paper copies. A party may provide this proof of service of these paper copies by sending an e-mail or letter to the AHO, with the transmittal of copies of the e-mail or letter to the other parties shown in the e-mail "cc" (carbon copy) list or the cc portion of the letter. The party shall make this mailing of the paper copies of the party's exhibits by the exhibit filing deadline, but the AHO does not need to receive the mailed paper copies of the exhibits by this deadline.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the AHO-FTP2 site to the AHO-FTP site and advise the parties that these documents are available for downloading from that site. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO will 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, and the AHO will post both folders on the AHO-FTP site.

If a party cannot upload exhibits to the AHO-FTP2 site, then the party may mail paper copies of 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  
c/o Water Rights Records Unit  
1001 I Street, 2<sup>nd</sup> Floor, Room 114  
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.

**9. PRE-HEARING CONFERENCE:** The hearing officer will conduct a pre-hearing conference on the date and at the time specified in this notice. The hearing officer may issue additional notices of subsequent pre-hearing conferences. The hearing officer may issue a pre-hearing conference order after each pre-hearing conference.

**10. 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. The hearing officer will set time limits for oral summaries of written testimony after the deadline for filing amended NOIs, and may set time limits for cross-examination and presentation of rebuttal evidence 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 that so indicates in its Notice of Intent to Appear may present a case-in-chief addressing the key issues in the hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of the witnesses' written testimony. The hearing officer then will allow other parties to cross-examine the witnesses who have presented written testimony or oral summaries of their written testimony. The hearing officer may allow re-direct examination and re-cross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a request or motion by the party after completion of all examination of the party's witnesses.
- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief,

the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements will be limited to 5 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement.

- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written testimony into the record. A witness provides his or her direct testimony when he or she confirms that a designated exhibit or exhibits is or are his or her written testimony. The hearing officer may allow additional time for oral summaries or clarifying testimony, and the parties may discuss the need for additional time for such summaries or clarifications during the pre-hearing conference, if one is held, or during the party's presentation of the party's witnesses.
  - iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. The hearing officer may allow additional time for cross-examination if the cross-examining party demonstrates in an offer of proof good cause to take additional time for cross-examination. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
  - iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
  - v. **Questions by Hearing Officer:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions and may cross-examine any witness at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to

present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Unless the hearing officer orders otherwise, parties do not need to submit rebuttal testimony or exhibits before the hearing. The hearing officer may set a schedule for submittal of written rebuttal testimony or exhibits after the parties have presented their cases-in-chief. The hearing officer may require written rebuttal testimony to specify the previously submitted testimony that is being rebutted. Cross-examination of witnesses offering rebuttal evidence normally will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** The hearing officer may allow oral closing arguments or will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the AHO-FTP2 site when they upload their closing briefs, and shall file two paper copies with the AHO. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will post all closing briefs to the AHO-FTP site.

**11. RULES OF EVIDENCE:** Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

**12. TELECONFERENCE HEARING:** Due to the on-going COVID-19 pandemic and the associated closure of the Joe Serna Jr. CalEPA Building to the public, the AHO currently is conducting all hearings and conferences by Zoom teleconference. The AHO may continue to conduct some or all of its hearings by Zoom teleconference after this pandemic and associated closure end. The hearing notice specifies the method by which this hearing will be conducted.

Before the hearing, the AHO will provide a Zoom meeting link for people who want to participate in the hearing or pre-hearing conference to all parties and interested persons who have filed NOIs. To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.



The AHO will not order a court reporter for videoconference pre-hearing conferences or hearings. Any interested party may order a court reporter at the party's own expense. The AHO will record the teleconference pre-hearing conference or hearing and post audio-only and audio-plus-video files of the hearing on the AHO-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 or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If the device you are using freezes, please notify staff at [AdminHrgOffice@Waterboards.ca.gov](mailto:AdminHrgOffice@Waterboards.ca.gov) or by calling (916) 341-6940 and leaving a voicemail message and 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 to you with the Zoom meeting information.

In lieu of participating in the Zoom hearing, anyone may watch past or present AHO hearings by clicking "Watch AHO Hearings" on [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office). People watching AHO hearings by this method will not be able to participate in the hearing, and will not be identified to anyone else.

### NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) \_\_\_\_\_ plans to participate in the water right hearing regarding the Kings River FAS Hearing (Phase 1A),

**Scheduled to begin on June 2, 2021**

**1) Check only one of the following boxes:**

**Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.

**Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination or rebuttal, and intend to participate as a party in this hearing.

**2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below.** If not, skip to item 3 below.

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please attach additional pages.)

**3) Fill in the following information of the participant, party, attorney, or other representative:**

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: \_\_\_\_\_



## SERVICE LIST

Updated March 4, 2021

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