
State Water Resources Control Board

PRE-HEARING CONFERENCE ORDER

The State Water Resources Control Board
Administrative Hearings Office
Issues this pre-hearing conference order
regarding the pending petitions of

Garberville Sanitary District

to change water-right License 3404 and Permit 20789 (Applications A009686 and A029981), which authorize diversions of water from the South Fork Eel River in Humboldt County.

**The Public Hearing on these petitions will begin on
June 15, 2021, at 9:00 am,
will continue as needed on June 16, 2021, starting at 9:00 am,
and will be held by Zoom teleconference.**

BACKGROUND

On March 30, 2021, 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 (“Hearing Notice”) regarding the petitions filed by the Garberville Sanitary District (“Garberville”) to change its water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981). The background facts, applicable statutes, hearing issues, hearing procedures and related matters are described in that notice.

On May 11, 2021, the AHO held a pre-hearing conference. This order follows that conference. Except as amended by this order, all provisions of the Hearing Notice remain in effect. The deadline for all parties to file exhibits and exhibit identification indices with the AHO, **June 2, 2021, at 4:00 pm**, is not changed. The hearing dates of **June 15 and 16, 2021**, beginning each day at **9:00 a.m.**, are not changed.

PARTIES

As discussed in the Hearing Notice, in section 3 on pages 11-12, the following parties will be parties to the hearing, pursuant to California Code of Regulations, title 23,

section 648.1, subdivision (b). Where applicable, each party's representatives are listed after the party's name:

- Garberville Sanitary District: Jennie Short, Ralph Emerson and Russ Gans (attorney for Garberville)
- Redway Community Services District: Cody Cox, Robert Diperna and Linda Sutton
- Kristin Vogel
- Edward Voice
- Linda Sutton (appearing as an individual, in addition to appearing as a representative of Redway Community Services District)

All of these parties filed Notices of Intent to Appear at the hearing on or before the April 30, 2021 deadline specified in the Hearing Notice.

The following parties also filed Notices of Intent to Appear before the April 30 deadline:

- South Humboldt Community Park: Carolyn Hino-Bourassa, Laura Cochrane, Meghan Joyce, Carl Hulbert
- Colette Metz Santsche, Humboldt LAFCO

The following person appeared during the pre-hearing conference, advised the hearing officer that he had not received the March 30, 2021 Notice of Public Hearing and Pre-Hearing Conference, and asked to be allowed to participate in the hearing as a party:

- Ron Angier

As authorized by California Code of Regulations, title 23, section 648.1, subdivisions (a) and (b), the hearing officer will authorize these three additional parties to participate as parties during the hearing, unless any other party objects at the beginning of the hearing. If any other party makes such an objection, then the hearing officer will rule on the objection, as provided in section 3 on pages 11-12 of the Hearing Notice.

The current contact information for all of these people is listed in the attached service list.

The AHO has created a separate folder within the Garberville SD folder on the AHO-FTP2 site for each party. Each party should upload the party's exhibits for the hearing into the folder for that party.

PRE-HEARING COMMUNICATIONS AND FILINGS

As discussed in the Hearing Notice, on pages 7-8, all parties 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 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 people listed in the attached 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 the e-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. Parties shall serve copies by e-mail on all other parties with e-mail addresses listed in the attached service list. Parties shall serve paper copies on all parties that do not have e-mail addresses listed in the attached service list.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this hearing, 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.

Please do not include the AHO as a cc on communications between or among parties. Please do not e-mail any documents to the AHO, and please do not upload any files to the AHO-FTP2 site, besides the policy statements, notices of intent to appear, written proposed testimony, exhibits and related documents described in sections 4 through 8 on pages 12-15 of the Hearing Notice, closing briefs, and any necessary communications with the AHO.

PURPOSE OF HEARING AND HEARING ISSUES

As discussed in the Hearing Notice, the purpose of this hearing is for the AHO hearing officer to receive evidence regarding the following issues:

- 1) Should the State Water Board approve Garberville SD's petitions to change the authorized place of use for License 3404 and Permit 20789?
 - a) Would the State Water Board's approval of these petitions result in injury to any other legal user of water?
 - b) Would the State Water Board's approval of these petitions unreasonably affect any fish, wildlife or other instream beneficial use?
 - c) Would the State Water Board's approval of these petitions be in the public interest?

- d) Would the State Water Board's approval of these petitions cause the initiation of any new water right?
 - e) What is the status of Garberville SD's actions to comply with the California Environmental Quality Act (CEQA) for these petitions?
- 2) If the State Water Board grants these petitions, what new terms or conditions, if any, should be added to this license and this permit when the petitions are granted?
- a) Should the AHO hearing officer include the attached Draft Amended License 3404 and Draft Amended Permit 20789 in the draft proposed order the hearing officer will transmit to the Board?
 - b) If so, should the AHO hearing officer make any changes to these drafts before including them in the hearing officer's proposed order?

On April 4, 2021, Jennie Short, on behalf of Garberville, sent an e-mail to Michael Meza of the State Water Board's Division of Water Rights. The AHO has posted a copy of that e-mail in the Correspondence folder within the Administrative Record folder within the Garberville SD folder on the AHO-FTP site. That e-mail asked questions about the potential application to Garberville of the Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy), which is referenced in term 10 of draft amended water-right License 3404, a copy of which is in Attachment A to the Hearing Notice, and in term 11 of draft amended water-right Permit 20789, a copy of which is in Attachment B to the Hearing Notice.

As the hearing officer discussed during the May 11 pre-hearing conference, Garberville and any other interested party may submit proposed written testimony and exhibits regarding the applicability or non-applicability of part 2 of section 3 of Attachment A to the Cannabis Cultivation Policy to Garberville, and any party may address this issue in the party's closing brief. When the hearing officer prepares the proposed order for this proceeding, the hearing officer will consider that testimony and exhibits and the related arguments in the parties' closing briefs.

The AHO has added pdf files of the Cannabis Cultivation Policy and Board Resolution No. 2019-0007, which adopted the updates to the policy, to the Background Documents folder within the Administrative Record folder within the Garberville SD folder on the AHO-FTP site. Section 3 of Attachment A begins on page 105 of this pdf file (using the page numbers that appear at the top of the page when this pdf file is displayed).

The hearing officer adds the following issue to the hearing issues:

- 3) Does part 2 of section 3 of Attachment A of the State Water Board's *Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* apply to Garberville SD?

HEARING PARTICIPATION PROCEDURES; POLICY STATEMENTS

As discussed in section 4 on page 12 of the Hearing Notice, and as the hearing officer discussed during the pre-hearing conference, the hearing officer will allow interested persons who are not designated as parties to present or submit non-evidentiary policy statements. These statements may be submitted in writing before the hearing or presented orally during the hearing. The hearing officer will allow persons who have submitted written policy statements before the hearing to present oral summaries of them during the hearing. The hearing officer will limit oral policy statements and oral summaries of written policy statements to 5 minutes per person.

Date: May 17, 2021

SIGNATURE ON FILE
Alan B. Lilly, Presiding Hearing Officer

Attachment:

-Service List (copies of notice sent by e-mail to listed e-mail addresses and by U.S. Mail to party without listed e-mail address)

SERVICE LIST
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