
State Water Resources Control Board

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 on 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 Pre-Hearing Conference will begin on
May 11, 2021, at 9:30 am**
and will be held by Zoom teleconference.

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

Representatives of parties and other people who want to participate in this pre-hearing conference or this hearing may access these Zoom teleconferences by using the following link or call-in information:

<https://waterboards.zoom.us/j/92881915686?pwd=ZW5SQkZaN2ZhOXQxWHBnUUIFbm9pUT09> with Meeting ID: 928 8191 5686 and Passcode: 449234 or +16699009128,,92881915686#,,,,*449234# 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=2&live_view=502&view_as=subscriber

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence that the hearing officer will consider when determining whether the State Water Resources Control Board (State Water Board or Board) should approve the petitions for change in place of use filed by Garberville Sanitary District (Garberville SD) for its water-right License 3404 (Application A009686) and its water-right Permit 20789 (Application A029981), and, if so, what new terms, if any, should be added to this license and this permit, and what existing terms, if any, should be amended.

WATER RIGHT LICENSE 3404 AND WATER RIGHT PERMIT 20789

On February 29, 1952, the California Department of Public Works, Division of Water Resources, State Engineer (a predecessor of the State Water Resources Control Board) issued water-right License 3404 (License 3404), with a priority date of July 31, 1939, to the Garberville Water Company. This license authorized the direct diversion of water at rates up to 0.155 cubic foot per second (cfs) from the South Fork Eel River in Humboldt County between January 1 and December 31 of each year, for municipal uses within the Town of Garberville.

On May 15, 1995, the State Water Board's Division of Water Rights (Division) issued water-right Permit 20789 (Permit 20789), with a priority date of July 22, 1991, to the Garberville Water Company. This permit authorized the direct diversion of water from the same source at the same point of diversion as those specified in License 3404, at rates up to 0.595 cfs between January 1 and December 31 of each year, with total annual diversions not to exceed 430 acre-feet per year (af/yr), for municipal uses within the Town of Garberville. Term 7 of this permit required construction work be completed by December 31, 1996. Term 8 of this permit required that complete application of the water to the authorized use be made by December 31, 1999.

In 2004, Garberville Sanitary District (Garberville SD) purchased the Garberville Water Company. In 2007, Garberville SD notified the Division of this purchase.

On December 27, 2012, the Division issued Order WR 2012-0036-DWR. Among other things, this order directed Garberville SD to file and diligently pursue petitions for change in the authorized place of use for License 3404 and Permit 20789 to add areas that were being served by Garberville SD and that were not within the authorized place of use. In November 2012, Garberville SD filed these petitions.

On October 11, 2013, the Division issued new versions of License 3404 and Permit 20789, which superseded the prior license and prior permit. The attached Figure 2 shows the location of the authorized place of use in blue in the new versions of this license and this permit. (The attached Figure 1 shows the general location of Figure 2.)

Term 5 of the 2013 version of License 3404 specifies an annual diversion limit of 112.2 af/yr. Term 5 of Permit 20789 specifies an annual diversion limit of 430 af/yr. Term 6 of

License 3404 and Term 6 of Permit 20789 specify an overall total annual diversion limit (under the license and the permit) of 542.2 af/yr.

Term 8 of the 2013 version of Permit 20789 provides that construction work and complete application of water to the authorized use shall be prosecuted with diligence and completed by December 31, 1999.

2012 GARBERVILLE SD PETITION FOR EXTENSION OF TIME AND 2013 WITHDRAWAL; POTENTIAL NEW ANNUAL DIVERSION LIMITS

In November 2012, Garberville SD filed a petition for extension of time for Permit 20789, which asked for a 15-year extension of the December 31, 1999 deadline in Term 8 for complete application of water to the authorized use.

On April 24, 2013, Garberville SD filed a letter dated March 28, 2013 with the Division. In this letter, Garberville SD asked to withdraw the November 2012 petition for extension of time. This letter stated that the maximum total annual diversion under License 3404 and Permit 20789 between 1995 and 1999 was 80 million gallons (approximately 245.5 af), which was diverted in 1999. The letter stated that this amount is representative of the maximum amount Garberville SD will divert. Garberville SD requested that Permit 20789 be licensed, with the understanding that the license would be for a combined maximum annual diversion of 80 million gallons under License 3404 and the new license that would replace Permit 20789.

Because the maximum annual diversion under License 3404 is 112.2 af/yr, the maximum annual diversion under Permit 20789 (or the license replacing it) with this 80-million-gallon-per-year limit would be 133.3 af/yr. ($245.5 \text{ af/yr} - 112.2 \text{ af/yr} = 133.3 \text{ af/yr}$.) The combined annual diversion limit would be 245.5 af/yr.

2019 PETITIONS TO CHANGE WATER RIGHT LICENSE 3404 AND PERMIT 20789

On October 7, 2019, Garberville SD filed petitions to change the authorized place of use for License 3404 and Permit 20789 to add 18 acres within the Southern Humboldt Community Park (Park), to allow Garberville SD to supply potable water to two residences, existing out-buildings, and public drinking water fountains. The areas that the petitions ask the Board to add to the authorized place of use are shown in red in the attached Figure 2.

Garberville SD's Resolution No. 19-02, a copy of which was included with the petitions, states that the Park's usage through the new connection to Garberville SD's potable water system would be limited to 2,000 cubic feet per month, that the Park will be notified each time the Park's monthly usage exceeds 2,000 cubic feet, and that the meter at the new connection will be shut off if the monthly usage ever exceeds 3,000 cubic feet. Garberville SD's addendum to its California Environmental Quality Act (CEQA) Initial Study/Mitigated Negative Declaration states that water usage through this connection "would be limited to 2,000 cubic feet per month." (Garberville SD, CEQA

Initial Study/Mitigated Negative Declaration, Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary & Place of Use (SCH # 2012032025), p. 4 (Sept. 2019).)

On November 11, 2019, the Division issued its public notice of these petitions.

The Division received 27 letters from interested parties supporting the petitions, and letters from four parties protesting the petitions. The protest letters were filed by Redway Community Services District, Linda Sutton, Kristen Vogel, and Edward Voice.

The Division facilitated discussions between Garberville SD and the protestants to attempt to resolve their protests, but the parties did not reach agreement.

ORDER WR 2020-0104-EXEC

In addition to ordering Garberville SD to file the 2012 petitions for changes in the authorized place of use for License 3404 and Permit 20789 discussed above, Order WR 2012-0036-DWR also directed Garberville SD to cease and desist from bulk sales of water for uses outside the authorized place of use in this license and this permit.

In 2018, the Division received a complaint alleging that Garberville SD had violated this provision of Order 2012-0036-DWR. Later in 2018, the Division issued a Notice of Violation and a draft Administrative Civil Liability Complaint (ACLC) to Garberville SD.

In 2020, Garberville SD and the State Water Board's Prosecution Team signed a settlement agreement regarding this draft ACLC. The settlement agreement provided that Garberville SD would pay the Board \$40,000 to resolve the violations alleged in the ACLC and would prohibit its metered customers from purchasing bulk water and transporting it outside the authorized place of use. On August 26, 2020, the Board's Executive Director issued Order WR 2020-0104-EXEC, which approved the settlement agreement and directed Garberville SD to make the payment and take the compliance actions described in the agreement.

This proceeding does not concern the issues addressed in Orders WR 2012-0036-DWR and WR 2020-0104-EXEC.

ASSIGNMENT OF PETITIONS TO ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the Administrative Hearings Office (AHO) as an independent organizational unit within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing to the AHO. Water Code section 1114 provides that, after the AHO hearing officer holds a hearing and the matter is submitted to the AHO, the hearing officer shall prepare a proposed order and deliver it to the Board for the Board's consideration.

On September 30, 2020, Erik Ekdahl, Deputy Director of the Division of Water Rights, transmitted a memorandum to Eileen Sobeck, the State Water Board's Executive

Director, which recommended that the Board assign to the AHO for further proceedings the two petitions to change the authorized place of use in License 3404 and Permit 20789. On September 30, 2020, Ms. Sobek transmitted a memorandum to Alan Lilly, the AHO's Presiding Hearing Officer, which assigned the petitions to the AHO.

APPLICABLE STATUTES AND REGULATIONS

Water Code sections 1701 through 1705 apply to these petitions to change the authorized place of use in License 3404 and Permit 20789. Section 1702 provides that, before the Board may grant permission to make the changes requested in a petition, "the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved." Section 1704, subdivision (a), provides that the Board, "after a hearing, may approve with conditions, or deny, a petition."

As part of its proceedings on these petitions, the Board has an independent obligation to consider the effect of approval of the petitions on public trust resources and protect those resources where feasible, and to consider whether the changes are in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419; Revised Decision 1641, pp. 91, 117 (2000).)

DRAFT AMENDED LICENSE 3404 AND DRAFT AMENDED PERMIT 20789

The AHO has prepared Draft Amended License 3404 and Draft Amended Permit 20789, copies of which are attached to this notice as Attachments A and B. The purpose of these drafts is to notify the parties of the new license and permit terms that the AHO may include in its proposed order for Garberville SD's petitions.

The AHO has not decided whether or not its proposed order will approve Garberville SD's petitions or what terms will be in any such order. The AHO welcomes comments from the parties on this issue of whether these petitions should be approved, and, if so, on these drafts.

PURPOSE OF HEARING AND HEARING ISSUES

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?

HEARING OFFICER AND HEARING TEAM

An AHO hearing officer 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 and other AHO staff members may consult with staff of the Division of Water Rights, 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 the date and at the time listed on the first page of this notice. To participate in the pre-hearing conference, please use the Zoom teleconference information provided on the first page of this notice. Because of the current COVID-19 pandemic, no in-person appearances will be allowed for this pre-hearing conference.

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 conference. The pre-hearing conference will be electronically recorded by Zoom teleconference. The hearing officer will prepare a pre-hearing conference order after the conference.

During the pre-hearing conference, the hearing officer will discuss the following issues with the participants:

1. The proposed hearing issues are listed above. Should the hearing officer amend any of these hearing issues or add any additional hearing issues?
2. The deadlines for submitting exhibits and testimony, and the hearing dates, are listed below. Should the hearing officer change any of these deadlines or hearing dates or make other changes to the hearing schedule?

3. What time limits should apply to policy statements, opening statements, oral summaries of written testimony, cross-examination, and rebuttal testimony during the hearing?
4. Are there any other issues concerning the hearing or applicable procedures that anyone would like to discuss?

Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO, and serve copies of it on the other parties listed in the attached service list, by the deadline listed below. Any pre-hearing conference statement may address any of the issues listed above.

SEPARATION OF FUNCTIONS; 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); Gov. Code, §§ 11430.10-11430.80.) For a discussion of *ex parte* communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf. These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

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

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

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

HEARING PARTICIPATION PROCEDURES; NOTICES OF INTENT TO APPEAR

Any person or entity who wants to participate in the hearing in this matter must file a Notice of Intent to Appear (NOI) with the AHO, using the form in this notice, before the deadline listed below. The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this hearing. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. Parties not agreeing to accept electronic service of documents will experience delays as paper copies of documents are transmitted by U.S. Mail. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service.

After the deadline to submit NOIs, the AHO will post the NOIs and an updated service list on the AHO’s FTP site.

NOI and Exhibit Filing Deadlines
Pre-Hearing Conference Call and Hearing Schedule

| Deadlines / Schedule | Date and Time |
|---|---|
| Deadline for any party who wants to participate in the hearing to file an NOI. | April 30, 2021, 4:00 p.m. |
| Deadline for filing optional pre-hearing conference statements. | May 3, 2021, 4:00 p.m. |
| Pre-hearing conference. | May 11, 2021, 9:30 a.m. |
| Deadline for all parties to file exhibits and exhibit identification indices with AHO and serve copies on all other parties | June 2, 2021, 4:00 p.m. |
| Hearing begins. | June 15, 2021, 9:00 a.m. |
| Additional hearing days (as necessary) | June 16, 2021, 9:00 a.m., and additional dates as necessary. |

SUBMITTALS OF EXHIBITS TO AHO AND OTHER PARTIES

Parties may file their NOIs and pre-hearing conference statements by any of the following methods:

| Method | Address |
|--|---|
| By Uploading to AHO-FTP2 (preferred method) | https://ftp.waterboards.ca.gov Username: AHO-FTP2 Password: Please send an email to AdminHrgOffice@Waterboards.ca.gov with “Request for AHO ftp password” in the subject line. The AHO will reply with the password. |
| By Mail: | State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100 |
| By Hand Delivery (see note below): | Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814 |

Service of documents by hand-delivery may be more difficult or delayed due to closures of the CalEPA Building 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. Please 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.

Please see the part of this notice below titled “PROCEDURES FOR THIS WATER-RIGHT HEARING” for information regarding hearing procedures and submittals of exhibits.

DIVISION OF WATER RIGHTS PUBLIC RECORDS

The AHO has copied documents from the public records maintained by the State Water Board’s Division of Water Rights that may be relevant to this proceeding and has included them in the initial administrative record for this hearing. The AHO has posted files of these documents on its FTP site. Instructions on how to access the FTP site are listed in Section 8 below. The parties may review the Division of Water Rights Records Unit’s public files and may submit as exhibits copies of other relevant documents in these files.

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 notices and other documents regarding these proceedings on the AHO’s Internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

HEARING LIVE-STREAM AND RECORDING

The pre-hearing conference and 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, a recording 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.

PROCEDURES FOR THIS WATER-RIGHT HEARING

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

- 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. 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.** In water-right permitting matters, the parties normally include the petitioner and protestants. The petitioner and protestants 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 the prosecution team and the respondent in water-right enforcement matters, between the applicant or petitioner and protestants in water-right permitting matters, and between the complaining party and respondent in water-right complaint matters.

The State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may approve a settlement agreement between the petitioner and some or all of the protestants in water-right permitting matters, even if other parties to the proceeding have not approved the settlement agreement. 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:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (b), petitioner Garberville SD and protestants Redway Community Services District, Linda Sutton, Kristen Vogel, and Edward Voice are parties to this proceeding.

The hearing officer may allow any other person or entity that timely files a Notice of Intent to Appear to participate in the hearing as a party, and not just to present a policy statement. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) A person or entity that has not been identified as a party in this notice that wants to participate as a party in this hearing shall file a Notice of Intent to Appear with the AHO no later than the deadline specified in this notice. The person or entity shall include in the Notice of Intent to Appear information demonstrating good cause as to why the hearing officer should allow the person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement.

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 the hearing as parties must file either an electronic copy or a paper copy of a 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 a Notice of Intent to Appear by this deadline as a decision not to appear. In matters regarding water-right petitions, the requirement to file a Notice of Intent to Appear by the deadline is a request for additional information pursuant to Water Code section 1703.5. In such matters, the Board may cancel a petition or protest if the petitioner or protestant does not file an NOI by the deadline.

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 described in section 10, part b.ii. 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.¹ 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 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.

¹ 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.

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.

Parties do not need 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, Garberville SD's exhibits should be numbered Garberville-1, Garberville-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.

- 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 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 wants 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 in that format, 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, 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, 2nd 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 before the hearing to discuss the pre-hearing and hearing schedules, the scope of the hearing, the status of any protests, the formats of exhibits, opening statements and policy statements, methods of service, and any other appropriate procedural issues. This notice states the date and time of the pre-hearing conference. 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 each element of the proceeding specified below 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. **Each party will be allowed a maximum of 30 minutes total for its witnesses to summarize all of their 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. **Cross-examinations initially will be limited to 30 minutes per witness or panel of witnesses.** 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 may 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 the pre-hearing conference or the hearing. Any interested party may order a court reporter at the party's own expense. The AHO will record the pre-hearing conference and the hearing and will post a file 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 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. People watching AHO hearings by this method will not be able to participate in the hearing, and will not be identified to anyone else.

Date: March 30, 2021

SIGNATURE ON FILE
Alan B. Lilly, Presiding Hearing Officer

Attachments:

- Notice of Intent to Appear form
- Exhibit Identification Index
- Service List (copies of notice sent by U.S. Mail)

NOTICE OF INTENT TO APPEAR

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding Garberville SD Change Petition Hearing

Scheduled to begin on June 8, 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"/> | | |
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| | <input type="checkbox"/> | <input type="checkbox"/> | | |
| | <input type="checkbox"/> | <input type="checkbox"/> | | |

(If more space is required, please add 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: _____

EXHIBIT IDENTIFICATION INDEX

Garberville SD Change Petition Hearing

The Public Hearing will begin on
June 8, 2021

PARTICIPANT: _____

| Exhibit Identification Number | Exhibit Description | Status of Evidence (for AHO use only) | | |
|-------------------------------------|---------------------|--|-----------------|-----------------------------------|
| | | <i>Introduced</i> | <i>Accepted</i> | <i>By Official Notice</i> |
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SERVICE LIST

Redway Community Services District
Attn: Terrence Williams
1150 Evergreen Road, Unit 2
Redway, CA 95560

Linda Sutton
P.O. Box 631
Redway, CA 95560

Kristin Vogel
P.O. Box 453
Garberville, CA 95542

Ed Voice and Voice Family
P.O. Box 572
Nice, CA 95464

Garberville Sanitary District
Attn: Ralph Emerson
P.O. Box 211
Garberville, CA 95542