



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 Public Hearing to consider whether to recommend the Board adopt an Order
imposing Administrative Civil Liability for Failure to File Supplemental Statement of
Water Diversion and Use for the 2022 through 2023 Reporting Year against

Sucha Singh (Statement S017796)

The **Public Hearing** will begin on

November 5, 2024 at 9:00 am

and will be held by Zoom teleconference.

Please access Zoom for the Public Hearing using the link:
<https://waterboards.zoom.us/j/92918713394?pwd=C9JzJBjqXOJAt07O1XJgheEPa4NAy2.1> with Meeting ID: 929 1871 3394 and Passcode: 015484
or
+16699009128,,92918713394#,,,,*015484# US (San Jose)

The **Pre-Hearing Conference** will be held on

September 19, 2024 at 9:30 am

and will be held by Zoom teleconference.
<https://waterboards.zoom.us/j/92918713394?pwd=C9JzJBjqXOJAt07O1XJgheEPa4NAy2.1> with Meeting ID: 929 1871 3394 and Passcode: 015484
or
+16699009128,,92918713394#,,,,*015484# US (San Jose)

If you are an interested person and do not intend to speak at the hearing, you can watch
the meeting by live-stream through the Administrative Hearings Office YouTube
channel, accessible by clicking on “Watch AHO Hearings” at:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

PURPOSE OF HEARING; HEARING ISSUES

The purpose of this hearing is for a hearing officer in the State Water Resources Control Board's Administrative Hearings Office (AHO) to receive evidence and arguments relevant to the following hearing issues and non-exhaustive list of sub-issues below:

- 1) Did Sucha Singh (Respondent) violate Title 23, Chapter 2.7, Article 2, section 920 of the California Code of Regulations and Water Code section 5104 by failing to file a Supplemental Statement of Water Diversion and Use for Statement S017796?
- 2) If the AHO hearing officer decides to impose administrative civil liability in this matter, what is the appropriate amount for such administrative civil liability? (Water Code section 1055.3 provides that, in determining the amount of civil liability, the Board shall take into consideration all relevant circumstances, including, but not limited to: (a) the extent of harm caused by the alleged violation; (b) the nature and persistence of the alleged violation; (c) the length of time over which the alleged violation occurred; and (d) the corrective actions, if any, taken by the violator.)

SCHEDULE AND DEADLINES FOR HEARING PARTICIPATION

Deadline for parties to submit pre-hearing conference statements; deadline for interested persons to request party status or notify AHO of intent to present policy statement.	September 13, 2024, 11:59 pm
Pre-hearing Conference date and time	September 19, 2024, 9:30 am
Deadline for filing and service of any submittals of proposed testimony or exhibits before the hearing	October 4, 2024, 11:59 pm
Hearing date and time	November 5, 2024, 9:00 am
Deadline to submit closing briefs	November 19, 2024, 11:59 pm

BACKGROUND

Respondent or Respondent's predecessor-in-interest filed an Initial Statement of Water Diversion and Use report for Statement S017796 dated June 30, 2010. Diversions reported under Statement S017796 have a claimed amount of 500 acre-feet in the initial statement. Water Code section 5104 and section 920 of Title 23 of the California Code

of Regulations require supplemental statements of diversion and use to be filed annually before February 1 after the close of the prior twelve month reporting period.¹ On June 14, 2024, the State Water Board, Division of Water Rights (Division) issued an Administrative Civil Liability Complaint (Complaint) under Water Code 1055 alleging that Respondent violated Water Code section 5104 and title 23, section 920, of the California Code of Regulations by failing to file a supplemental statement of diversion and use for Statement S017796 for the 2022-2023 reporting period. The Complaint states the maximum administrative civil liability for the alleged violation is \$67,500.

In an email dated July 6, 2024, Respondent requested a hearing on the Complaint. Water Code section 1112, subdivision (a)(1), provides that an AHO hearing officer shall preside over hearings of ACL Complaints issued under Water Code section 1055. The AHO hearing officer's proposed order in this matter will be issued under Water Code section 1114, subdivision (c).

PRE-HEARING STATUS CONFERENCE

The AHO will hold a pre-hearing conference on September 19, 2024, at 9:30 am. The parties shall file pre-hearing conference statements no later than September 13, 2024, at 11:59 pm that addresses the following issues:

1. Whether the schedule and deadlines for hearing participation set forth above should be adjusted in any way;
2. Prospects for settlement;
3. The number of witnesses the parties expect to present;
4. Any other topics the parties wish to address.

ADMINISTRATIVE RECORD

The AHO hearing officer's proposed order in this matter will be based upon evidence and arguments in the administrative record. The AHO may add additional documents, in addition to any exhibits the parties submit, to the administrative record. The following documents currently are in the AHO administrative record for this matter: (1) the Division's June 14, 2024 Complaint; (2) Respondent's July 6, 2024, request for hearing; and the AHO's July 9, 2024 hearing acknowledgment letter. The parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the hearing issues outlined above.

¹ Copies of the California Water Code and Code of Regulations are posted on the State Water Board's website at http://www.waterboards.ca.gov/laws_regulations.

HEARING OFFICER AND HEARING TEAM

Hearing Officer Sam Bivins will be the hearing officer for this proceeding and will prepare a written proposed order. The hearing officer will transmit the written proposed order to the Clerk of the State Water Board (for the Board's consideration) within 90 days after the matter is submitted for decision. Other AHO staff may be present and may assist the hearing officer during the hearing and throughout this proceeding.

PROSECUTION TEAM

A State Water Board staff Prosecution Team will be a party to this hearing. The Prosecution Team will be comprised of attorneys from the State Water Board's Office of Enforcement and staff from the State Water Board's Division of Water Rights Enforcement Section.

PROHIBITION ON EX PARTE COMMUNICATIONS; SEPARATION OF FUNCTIONS

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

Please do not attempt to communicate by telephone with any AHO hearing officer or staff member regarding this hearing, because other parties would not be able to participate in such communications. If any party wishes to communicate with the AHO at any time regarding any issue related to this proceeding, including any issue regarding hearing procedures or filing of documents, please communicate by e-mail to adminhr@waterboards.ca.gov or by letter to the AHO and serve all other parties with copies of the communication.² The party shall include a proof of service through a formal proof of service or by other verification.³

The Prosecution Team is separated from the AHO hearing team. Like all other parties, the Prosecution Team is prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code,

² The AHO's mailing addresses are provided in Item 6, below.

³ All references to "proof of service" in this document refer to either a formal proof of service or a list of the parties and the addresses of them or their representatives in an e-mail "cc" (carbon copy) list or the cc portion of a letter.

§§ 11430.10-11430.80.)⁴ These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's Internet webpage:

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

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

For general information about AHO proceedings, an AHO Procedures and Frequently Asked Questions (FAQs) page is available, with links to an Attorney List for Pro Bono Representation, a guide to Preparing for Your Hearing, and FAQs at

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

LIVE-STREAM AND RECORDINGS

The hearing will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below.

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/@swrcbadministrativehearing728/featured>

PROCEDURES FOR THIS ENFORCEMENT HEARING

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

1. HEARING PROCEDURES: The AHO will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648 to 648.8, 649.6 and 760. If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this proceeding.

⁴ 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.

2. SETTLEMENTS: The Prosecution Team and the Respondent may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO will participate in such settlement discussions. If the parties sign a written settlement agreement, the Respondent shall notify the AHO in writing that the parties have signed a written settlement agreement and that the Respondent withdraws his request for a hearing.

3. PARTY STATUS AND POLICY STATEMENTS BY INTERESTED PERSONS: Respondent Sucha Singh and the Division of Water Rights Prosecution Team are parties to this proceeding. The hearing officer may allow other persons or entities to participate in the hearing as a party for good cause shown. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a)-(b).) The deadline for other persons or entities to request party status is September 13, 2024.

As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present non-evidentiary policy statements during the hearing. The deadline for interested persons to notify the AHO of their intention to present a policy statement is September 13, 2024.

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

5. EXHIBIT FORMATTING AND ORGANIZATION: A party 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. A sample is attached to the end of this document.

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

6. SUBMISSIONS OF DOCUMENTS: If a party chooses to submit exhibits before the hearing, that party shall upload those exhibits to the State Water Board's FTP site in electronic form unless the hearing officer authorizes submission of exhibits in different formats.

The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP Download Folders".

The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the "Parties' Upload Folders".

a. AHO-FTP Download Folders:

The AHO has created a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding contains all administrative record documents related to this proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. This folder is referred to in this notice as the "AHO-FTP folder for this proceeding." Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and any closing briefs (as required by the hearing officer) to this folder promptly after each applicable filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings, correspondence, and the AHO's proposed order). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the AHO-FTP Download Folder for any proceeding, including this proceeding, at any time.

If any party believes that the AHO should add documents to, or remove any documents from, this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the AHO e-mail inbox) and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

b. Parties' Upload Folders:

The AHO will create a separate upload account for each party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed.

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and exhibit identification indices and closing briefs) using the party's upload account. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder. After the applicable filing deadline, AHO staff will move documents uploaded by each party to the administrative record in the AHO-FTP Download Folder for the proceeding, so all other parties may view and download the documents.

Each party shall upload its exhibits and Exhibit Identification Index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site 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 Board'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 Board's FTP site, the party or party's representative shall send an email to the AHO at AdminHrgOffice@Waterboards.ca.gov, with copies to the other parties on the service list, notifying the AHO and the other parties that the party has uploaded the documents.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' Upload Folders to the administrative record folder and advise the parties that these documents are available for downloading from that folder. The AHO may rename or renumber exhibits that do not have clear exhibit names or are not identified by numbers. If the AHO does this, then the AHO may create an electronic folder of documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the administrative record folder.

If a party cannot upload exhibits to the FTP site, then the party may mail two paper copies of all its exhibits to the AHO at:

State Water Resources Control Board
Administrative Hearings Office
P. O. Box 100
Sacramento, CA 95812-0100

Alternatively, a party may send paper copies of its exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

If a party uses either of these alternative means of filing paper copies of its exhibits with the AHO in lieu of electronically filing the exhibits, then the party shall complete the filing of the paper copies by the exhibit filing deadline specified in this notice.

7. ORDER OF PROCEEDING: The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing.

- a. **Policy Statements:** The hearing officer will allow interested persons to present policy statements at the start of the hearing before the presentations of cases-in-chief. **Oral policy statements and oral summaries of written policy statements will be limited to 5 minutes.**
- b. **Presentation of Cases-In-Chief:** Each party may present a case-in-chief addressing the issues in the hearing notice. The hearing will proceed in the following order:
- Party's opening statement (**5 minutes per party**)
 - Summaries of the party's witnesses' written proposed testimony or presentation of the party's oral testimony (**no more than 30 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**60 minutes total for all of the other party's witnesses**).
 - Re-direct examination and re-cross examination of the party's witnesses, if allowed by the hearing officer.
 - Questions from the hearing officer. (These questions may occur at any time, but normally will be after all other parties have completed their cross-examinations of a party's witnesses.)
 - Submitting exhibits into evidence, with opportunities for objections by other parties.
- c. **Presentations of Parties' Rebuttal Evidence:** After all parties have presented their cases-in-chief, the hearing officer may allow parties to submit rebuttal exhibits and testimony. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.
- d. **Closing Briefs (no more than 15 pages per party, due November 19, 2024, at 11:59 pm)**

8. HEARING LOGISTICS: The hearing officer prefers that parties participate in the hearing by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations. New users of Zoom may want to review Zoom's support guide: <https://support.zoom.us/hc/en-us/categories/200101697>.

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

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

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

If a party's device freezes, please notify staff at adminhrgoffice@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer.

If restarting the device does not work, try calling into the hearing using the phone number provided with the Zoom meeting information on the first page.

July 26, 2024
Date

/s/Sam Bivins
Sam Bivins
Hearing Officer

Enclosures:

- Exhibit Identification Index
- Service List

SERVICE LIST

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