



State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Status Conference on
Pending Petitions for Change for Licenses
6943 (A005653), 11791 (A005654), 2205 (A007141), 2206 (A007142), 2207 (A007143), 2208
(A008098), 2209 (A008099), 6944 (A008387), 2837 (A009455), AND 5729 (A0011751) of

Santa Clara Valley Water District.

**The Status Conference will begin on
November 21, 2024 at 9:00 a.m.**
and will be held by Zoom teleconference.

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

<https://waterboards.zoom.us/j/94513386251?pwd=bieuaq0Xn1KcDixVbZe7Jx1F2PxIib.1>

Call-in number: 1-669-900-9128

Meeting ID: 945 1338 6251 and Passcode: 283930

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/@swrcbadministrativehearing728/featured>.

BACKGROUND

On May 12, 2015, Santa Clara Valley Water District (Valley Water) filed with the State Water Resources Control Board (State Water Board) 15 petitions for change for its water rights licenses on Coyote Creek, Stevens Creek, and Guadalupe River (Three Creeks). On May 9, 2024, Valley Water submitted revised petitions pursuant to Water Code sections 1701 and 1707 for Licenses 5729, 6944, 2205, 2206, 2207, and 2208, and Water Code section 1701 for Licenses 11791, 2209, 2837, and 6943. Valley Water filed these change petitions to update the water right licenses to account for its existing water supply operations and assist with the resolution of a water right complaint against Valley Water.

In 1996, the Guadalupe-Coyote Resource Conservation District (GCRCD) filed a complaint with the State Water Board claiming Valley Water's operations on the Three Creeks impacted fish and wildlife in conflict with the Water Code, Fish and Game Code, and other state laws. Subsequent negotiations between GCRCD, Valley Water, the California Department of Fish and Wildlife (CDFW), US Fish and Wildlife Service, and National Marine Fisheries Service resulted in the 2003 Fish and Aquatic Habitat Collaborative Effort, Initialed Settlement Agreement (FAHCE). The State Water Board, Division of Water Rights (Division), by letter dated December 24, 2003, closed the GCRCD complaint against Valley Water based on the progress of the settlement negotiations and pending receipt of anticipated petitions to modify Valley Water's water rights. The FAHCE includes the implementation of a Fisheries Habitat Restoration Plan (FHRP) for the Three Creeks with water released from reservoirs to maintain instream flows for fisheries. The FHRP identifies specific reservoir reoperations and releases, and programmatic actions (barrier removals and stream enhancements) to restore and maintain healthy steelhead trout and salmon populations in the Three Creeks. The FHRP, coupled with reservoir reoperations and petitioned changes, were the basis for resolution of the 1996 complaint.

The 15 original Three Creeks petitions have been bifurcated into two petition processes. This matter concerns 10 of the 15 original petitions, for licenses on Stevens Creek and Guadalupe River. The five petitions for licenses on Coyote Creek will be dealt with after completion of the Anderson Dam Seismic Retrofit project.

Valley Water is the lead agency for the project under the California Environmental Quality Act. On August 8, 2023, Valley Water certified a Final Environmental Impact Report (EIR) for the project and selected the FAHCE-plus alternative for implementation.¹

¹ The revised petitions and environmental documents have been added to the AHO's administrative record for this proceeding.

The petitions were publicly noticed on May 23, 2024, and were protested by San Francisco BayKeeper (BayKeeper), California Trout and Northern California Council, Fly Fishers International (collectively, Conservation Groups), and CDFW.² None of the protests have been resolved.

The protests primarily raise issues under the Public Trust Doctrine and Fish and Game Code section 5937. All three protests question whether the proposed flow regime in the change petitions is sufficient to maintain fish in good condition below Valley Water's dams under Fish and Game Code section 5937. While the flow regime was developed through the FAHCE process with input from CDFW and the Conservation Groups, the protestants assert that Valley Water has not proposed a definition of "fish in good condition" or conducted sufficient analysis in its EIR or otherwise to evaluate whether the flow proposal will achieve that goal.

In general, the protests assert that resolution centers on defining "fish in good condition," establishing specific measurable objectives to evaluate the success of the proposed flow regime, and implementing an adaptive management program to make necessary changes should the flow regime fall short of its objectives. The parties have retained a mediator to assist in the protest resolution process. On September 12, 2024, Valley Water filed answers to the protests, denying various protests allegations and indicating a potential for resolution of others. However, the parties have not agreed on any formal protest dismissal terms at this time. The protest resolution period is ongoing and ends on December 23, 2024.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO.

On September 27, 2024, Erik Ekdahl, Deputy Director of the Division of Water Rights (Division), transmitted a memorandum to Eric Oppenheimer, Executive Director of the State Water Board, recommending the State Water Board assigned the pending petitions and application to the AHO.

On September 27, 2024, the Board's Executive Director, Eric Oppenheimer, assigned water right petitions for License 6943, 11791, 2205, 2206, 2207, 2208, 2209, 6944, 2837, and 5729 and to the AHO for further proceedings based on the Division's recommendation. The AHO issued a Notice of Assignment on October 7, 2024.

² The notice is available at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/petitions/standard_change_petition.html

HEARING OFFICER AND HEARING TEAM

AHO Hearing Officer Sam Bivins will preside over any hearing in this matter. Other members of the AHO may be present and assist the hearing officer throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Board's Division of Water Rights and the Board's Office of Research, Planning, and Performance, attorneys in 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.

STATUS CONFERENCE AND STATUS CONFERENCE STATEMENTS

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

During the status conference, the AHO hearing officer will discuss the following issues with the parties' representatives:

1. Whether and how the AHO can support the mediation process currently underway.
2. When and for how long should the AHO schedule a hearing in this matter?
3. Are there any other issues the AHO should consider before scheduling a hearing in this matter?

The parties are encouraged to meet and confer and submit status conference statements addressing these issues by **November 18, 2024, at 11:59 p.m.** Parties who wish to submit status conference statements shall file the status 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. The AHO will post the statements on the Water Board AHO-FTP site in the folder for this matter.

NOTICES OF INTENT TO APPEAR; UPDATED SERVICE LIST

Any person or entity (including the petitioner and protestants) that wants to participate in this status conference and further proceedings before the AHO in this matter, must file a Notice of Intent to Appear (NOI), using the form attached to this notice, with the AHO before the deadline listed below.

If the AHO does not receive an NOI from Valley Water before the deadline specified below, then the AHO may transmit a proposed order to the Board that would cancel the pending petitions without conducting a hearing.

After the status conference, the AHO will issue an updated service list, which the AHO will use for future notices in this proceeding. The AHO will include in this updated service list only the people and entities that have filed an NOI or otherwise have advised the AHO that they want to be on the service list for this proceeding. If you want to continue to receive AHO notices regarding this proceeding, then you must advise the AHO in writing, using one of the methods listed below, that you want to continue to receive AHO notices regarding this proceeding. You do not need to send copies of your request to the other parties.

The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this proceeding. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service. Parties that do not agree to accept electronic service will experience delays in receiving documents by U.S. Mail from the AHO and other parties.

NOI AND STATUS CONFERENCE DEADLINES AND SCHEDULE

Deadlines / Schedule	Dates and Times
Deadline for filing NOIs and optional status conference statements, with proofs of service.	November 18, 2024, at 11:59 pm
Status conference date and time.	November 21, 2024, at 9:00 am

SUBMITTAL OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO, including NOIs and status conference statements, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

Method	Address
By Email (preferred method)	AdminHrgOffice@waterboards.ca.gov with subject line "Valley Water Change Petitions"
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see instructions below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2nd Floor, Room 114 Sacramento, CA 95814

Please plan ahead if you wish to hand deliver documents. Any hand-delivered submittals must be date-and-time stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO will post all of its notices and other AHO documents regarding these proceedings on the AHO's internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person or entity may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

STATUS CONFERENCE LIVE-STREAM AND RECORDING

The status conference will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live stream and recordings may be accessed at the following link:
<https://www.youtube.com/@swrcbadministrativehearing728/streams>

ADMINISTRATIVE RECORD

The AHO has copied documents from the public records the State Water Board's Division of Water Rights has maintained that may be relevant to this proceeding. The AHO has included these documents in the initial administrative record for this proceeding. The AHO has posted files of these documents on the FTP site in the folder for this hearing. Instructions on how to access the FTP site are on the AHO's webpage at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-09_ftp_sites.pdf.

PROHIBITION ON EX PARTE COMMUNICATIONS

As discussed in the AHO's October 7, 2024, Notice of Assignment, all parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, §§ 1110, subd. (c), 1113; Gov. Code, §§ 11430.10-11430.80.) The AHO has posted a discussion of *ex parte* communications on the AHO's webpage at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2022/aho-faq.pdf. (See response to FAQ 16.)

If any party or interested person wants to communicate with any member of the hearing team, or any Board member, at any time while this proceeding is pending regarding any procedural or substantive issue related to this proceeding, then that party or interested person shall make such communication in writing (by e-mail or letter) and serve all parties listed on the service list for this proceeding with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. Until the AHO issues an updated service list, parties should use the service list attached to this notice. 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. Any such communication shall be sent to the AHO by e-mail to AdminHrgOffice@waterboards.ca.gov, or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
P.O. Box 100
Sacramento, CA 95814-0100

If the AHO receives any communication regarding this proceeding that is addressed to the AHO, a Board member, or any other member of the hearing team, then the AHO will file a copy of the communication in the appropriate folder within the AHO-FTP folder for this proceeding.

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 proceeding, 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.

October 30, 2024

/s/ Sam Bivins
Sam Bivins, Hearing Officer

Attachments:

- Attachment 1 - Notice of Intent to Appear (Blank Form)
- Attachment 2 - Service List

ATTACHMENT 1

NOTICE OF INTENT TO APPEAR

I/we, _____ (name of participant) plan to participate in the November 21, 2024 status conference regarding Santa Clara Valley Water District's Pending Petitions for Change for Licenses 6943 (A005653), 11791 (A005654), 2205 (A007141), 2206 (A007142), 2207 (A007143), 2208 (A008098), 2209 (A008099), 6944 (A008387), 2837 (A009455), AND 5729 (A0011751).

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: _____

ATTACHMENT 2

SERVICE LIST

Petitioners

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