



State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will conduct a hearing

**In the Matter of
the Proposed Administrative Civil Liability Complaint
for Failure to Comply with Cease and Desist Order WR 2025-0006
against**

David Collenberg

The hearing will occur on

April 23, 2026, at 9:30 a.m.

Representatives of parties will receive email invitations to join this meeting by Zoom.

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: bit.ly/aho-youtube

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

LANGUAGE SERVICES AND ACCESSIBILITY

The hearing will be offered in English. To request translation of a written document, interpretation services for the hearing or sign language services, please use one of the following options no later than **March 26, 2026**:

- Submit a [Language Services Request online](#)
- Call (916) 341-5254
- E-mail languageservices@waterboards.ca.gov

Comuníquese con nosotros para solicitar servicios lingüísticos o información en su idioma:

આપણ ભસ્તું વિવચ ભસ્તું સર્વ અત્ય/ લંકર બદ્ધ કરન લઈ સર્વ ના સપરક કરાનાં:

Makipag-ugnayan sa amin para humiling ng mga serbisyo sa wika at/o impormasyon sa iyong wika:

Txuas lus rau peb los thov cov kev pab cuam txhais lus thiab/los sis cov ntaub ntawv ua koj hom lus:

[Bit.ly/LanguageAccessForm](https://bit.ly/LanguageAccessForm) | AdminHrgOffice@waterboards.ca.gov

Users of a Telecommunications Device for the Deaf (TDD) may contact the California Relay Service at (800) 735-2929 or the teletype (TTY) voice line at (800) 735-2922.

PURPOSE OF HEARING

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 on the following hearing issues;

- 1) Did Respondent timely comply with Cease and Desist Order WR 2025-0006 (Order)?
- 2) And, if not, what is the appropriate amount of administrative civil liability?

BACKGROUND

On September 10, 2025, the Division issued an Administrative Civil Liability (ACL) Complaint under Water Code section 1055, alleging that Respondent violated the terms of the Order issued to the Respondent on April 2, 2025. The ACL Complaint recommends administrative liability of \$90,000. On September 30, 2025, Respondent requested a hearing.

On October 30, 2025, Sam Bivins, a former Hearing Officer with the Administrative Hearings Office (AHO), conducted a status conference in the matter of the Administrative Civil Liability Complaint issued against David Collenberg for failing to comply with the Order. The status conference was conducted via Zoom and included both Mr. Collenberg and representatives of the Division of Water Rights (Division).

At the status conference, Mr. Collenberg stated that he would not be represented by legal counsel, and that he would be the only witness testifying in his defense. The Division stated that it intends to call three witnesses.

The primary issues at the upcoming hearing are whether Mr. Collenberg complied with Order by timely installing the required meter and, if not, whether he diverted water in violation of the Order. Mr. Collenberg claims that he has timely complied with the Order; the Division claims that he has not.

As set forth in the schedule below, the AHO is requesting that both parties submit any additional briefing concerning the legal issues raised by Mr. Collenberg in his letter of September 30, 2025, no later than **March 18, 2026**. To simplify matters in this proceeding, Mr. Collenberg is also requested to produce the following types of evidence, if available: (a) manufacture and product details concerning the meter; (b) photographs of the meter; (c) receipts for its purchase; (d) statements from individuals who assisted in installing the meter; (e) records concerning the meter's monitoring of diversions (i.e., telemetry or read outs); and (f) the 2025 diversion report that was due on January 31, 2026. This is not an exhaustive list of information that may be relevant to the issues but is intended to help streamline testimony. Mr. Collenberg declined to

identify witnesses other than himself; however, either party may amend their witness list and produce supplemental evidence no later than **April 1, 2026**.

Mr. Collenberg again is urged to retain counsel given that this matter could result in the imposition of a significant fine. The AHO maintains a list of pro bono lawyers who may be willing represent him at no cost. Alternatively, local farm bureaus, bar associations, or non-government organizations may be a source of representation. Though during the status conference Mr. Collenberg described hiring a lawyer as a “waste of time,” the benefit of legal counsel would be that counsel can properly submit evidence, cross-examine witnesses, object where appropriate, and aid in presenting the constitutional issues posed by Mr. Collenberg.

Having been assigned recently to this matter, I reviewed the administrative record and prior proceedings because Mr. Collenberg’s past compliance record is a factor in determining any penalty that may be imposed. Further, Mr. Collenberg is the first and only diverter in the Scott River Watershed who has contested a fine under the emergency regulations at issue and, if a fine is imposed, it would be the first time a diverter has been penalized through a precedential order issued by the State Water Board for not installing a meter. As such, any action taken by the AHO and ultimately the Board may inform future matters relating to measurement and reporting of diversions in the Scott River Watershed or other streams in California.

The Division’s involvement with Mr. Collenberg stems from the 2015 adoption of the Governor’s emergency drought proclamation and subsequent regulations first adopted in 2016 pursuant to Senate Bill 88 codified at Water Code sections 1840 et. seq. (SB 88) requiring monitoring in the Scott River Watershed. Recently adopted legislation concerning the Scott River known as AB 253 will allow the emergency regulations to remain in place until 2031, or until permanent rules establishing and implementing long-term instream flow requirements in the Scott River and Shasta River watersheds are adopted. (Wat. Code, § 1058.5, subd. (c)(2)) AB 263 is not at issue before the AHO at this time; however, the overall application of evolving regulations to diverters on the Scott River appears to be at the crux of some of Mr. Collenberg’s objections.

On September 30, 2025, Mr. Collenberg provided legal arguments based upon his interpretation of the United States' and California Constitutions. (Collenberg Correspondence to Cervantes.) As discussed below, some of these arguments are clearly not applicable; however, others go to the very structure of the separation of powers in California as well as Collenberg’s substantive and procedural due process rights. The reframing of these defenses below does not suggest that they are valid or not, or whether the arguments may have been waived by failure to raise them in the proceeding resulting in Order WR 2025-0006 – only that it would aid the AHO to receive further briefing from the parties.

Specifically,

1. Is it a violation of the California Constitution for the legislature to delegate the authority to adopt regulations requiring measurement and reporting of diversions under valid water rights, and the authority to enforce those regulations through the imposition of fines, to an administrative agency rather than the judiciary? Does such a delegation violate the principle of separation of powers?
2. Is the conditioning of diversions under a pre-1914 appropriative right or a riparian right on providing information and/or installing a meter a violation of substantive due process under the United States or California Constitutions?
3. Is conditioning diversion of a pre-1914 appropriative right or a riparian right on providing information and installing a meter a violation of the Takings Clause of the Fifth or Fourteenth Amendment of the United States Constitution?
4. Does the imposition of a \$90,000 penalty violate the Excessive Fine Clause of the Eighth Amendment?
5. Is it a violation of the Fourteenth Amendment for any such fine to be imposed by an administrative agency rather than a court; and,
6. Whether Mr. Collenberg has waived or is estopped for not timely raising the above objections.

Mr. Collenberg asserts other arguments that do not require briefing. For example, application of Senate Bill 88 to his property is not a Bill of Attainder. A Bill of Attainder is a law passed expressly to penalize an individual. SB 88 is broadly applied to all diverters. Similarly inapposite, Article I Section 10 of the U.S. Constitution does not apply because California is not coining money. Payment with U.S currency of any fine imposed by the State Water Resources Control Board is valid.

In addition to testimony by the parties concerning the alleged violation of WR 2025-0006 and any appropriate legal arguments advanced at the hearing, the AHO would appreciate testimony or argument concerning:

1. The current level of compliance by other diverters subject to regulations implementing SB 88 on the Scott River.
2. Resources available to offset the cost of installing meters and whether diverters have taken advantage of these resources.

3. Outreach efforts that are ongoing in the Scott River to obtain voluntary compliance by either the State Water Board or the Watermaster.

ALTERNATIVE DISPUTE RESOLUTION/MEDIATION OPTIONS

See Notice of Alternative Dispute Resolution Options which is served concurrently with this notice.

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.

HEARING OFFICER AND HEARING TEAM

Hearing Officer McKeith will preside during the hearing in this matter. The Hearing Officer 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.

PROSECUTION TEAM

A Prosecution Team composed of State Water Board staff 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.

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO shall be addressed and submitted by one of the following methods:

E-mail (preferred method for documents other than exhibits):
AdminHrgOffice@Waterboards.ca.gov

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

Hand Delivery or Overnight Delivery:
Joe Serna Jr. CalEPA Building Administrative Hearings Office
1001 I Street Sacramento, CA 95814 ,

By uploading to the File Transfer Protocol (FTP) (Preferred method for exhibits):
All participants must submit exhibits by uploading them to the State Water Board's FTP site. The State Water Board's FTP site may be accessed at
<https://ftp.waterboards.ca.gov/>.

Please see the part of this notice below titled “PROCEDURES FOR THIS WATER RIGHT HEARING” for more information regarding hearing procedures, submission of documents, and proofs of service.

PROHIBITION ON *EX PARTE* COMMUNICATIONS; SEPARATION OF FUNCTIONS

While this proceeding is pending, *ex parte* communications between any party, party representative, or interested person and the hearing officer, any member of the hearing team, or any State Water Board member are prohibited. *Ex parte* communications include any type of communication regarding this proceeding that occurs between a party or interested person and the hearing officer, a member of the hearing team, or a State Water Board member without notice and an opportunity for all parties to participate. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) Additional information about *ex parte* communications is in response number 16 of the AHO’s FAQ posted at bit.ly/aho-faq. (See response to FAQ 16.)

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 adminhrgoffice@waterboards.ca.gov or by letter to the AHO and serve all other parties with copies of the communication.¹ The party shall include a proof of service through a formal proof of service or by other verification.²

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, §§ 11430.10-11430.80.)³ 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/

¹ The AHO’s mailing addresses are provided in Item 6, below.

² 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.

³ 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.

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.

The AHO has also prepared a memorandum with information about how the AHO resolves a matter if (1) the Division withdraws the ACL Complaint in the matter, (2) the parties settle, or (3) the AHO holds a hearing. A copy of this memorandum is available at:

https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020-07-10_aho-dwr_processes_memo.pdf.

DEADLINES FOR HEARING PARTICIPATION

Deadline to request confidential mediation	March 1, 2026
Deadline for parties to submit briefing on legal issues	March 18, 2026
Deadline for filing and service of any proposed testimony, additional evidence or exhibits before the hearing	April 1, 2026
Hearing date and time	April 23, 2026, 9:30 am

HEARING LIVE-STREAM AND RECORDINGS

The hearing will be live streamed through the Administrative Hearings Office YouTube channel: <https://www.youtube.com/@swrcbadministrativehearing728/featured>.

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 she 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 648-648.8, 649.6 and 760. Copies of these regulations are posted on the State Water Board's website: 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.

- 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 unless the parties elect to engage in mediation by a representative of the AHO as outlined in the Alternative Dispute Resolution Option.
- 3. 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 non-evidentiary policy statements during the hearing.
- 4. TESTIMONY AND OTHER EXHIBITS:** Any party submitting proposed testimony or exhibits may do so by following the procedures described in Item 6, below. 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 "State Water Board FTP Download Folder". The AHO will provide each party with 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. State Water Board Download Folder:

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. 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 are the AHO's administrative record for this proceeding. Anyone may download documents from the State Water Board 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. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder.

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 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 proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of unaltered documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the State Water Board's Download 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 by mail or overnight delivery at:

By Mail:	By Hand or Overnight Delivery:
State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100	Joe Serna Jr. CalEPA Building State Water Resources Control Board Administrative Hearings Office 1001 I Street Sacramento, CA 95814

The deadline for filing paper copies, in lieu of electronically filing the exhibits, is the same as the exhibit filing deadline specified in this notice.

7. **PRE-HEARING CONFERENCE:** There will be no pre-hearing conference. A status conference was previously held on October 30, 2025.
8. **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 60 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**30 minutes for each witness**).

- 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.
- 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. It does not need to be submitted before the hearing.

d. **Closing Statements (5 minutes per party).** The hearing officer may allow oral closing arguments or may set a schedule for the parties to file written closing briefs.

9. HEARING LOGISTICS: The AHO is conducting this hearing by Zoom teleconference. 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 State Water Board's 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.

The hearing will be conducted by Zoom Webinar. The AHO has registered each person on the service list for the proceeding as an "Attendee" of the AHO hearing using the e-mail address on the service list. The Zoom Webinar service will generate an individual link for each Attendee which will allow the Attendee to join the hearing. The Zoom service will send an e-mail containing the link to the e-mail address used to register the Attendee.

This link is specific to the named person and should not be shared with other users. The same link cannot be used to access the hearing on more than one device. If you are a party representative who is on the service list and you have not received an individual link for the hearing at least 24 hours prior to the start of the hearing, please first check your junk or spam mail folders, and then e-mail the AHO at adminhrgoffice@waterboards.ca.gov.

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 office. 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.

To join the hearing, participants should click the individual “Join” link sent by e-mail by the Zoom service. Participants will not be able to use a phone line to call in to the hearing. AHO staff will admit Attendees into the virtual hearing room, which will be referred to by the Zoom software as a webinar. Attendees will be able to see and hear video tiles of the hearing officer and other AHO staff but will not be able to turn on their own camera or microphone features when the hearing begins. The hearing officer will call for appearances from each of the parties. When the hearing officer calls for the appearance of the representative or representatives of a party, AHO staff will either allow the representatives' microphones to unmute or the representatives should raise their virtual “Zoom” hand to identify themselves for AHO staff. Once unmuted, the representative shall identify him or herself and AHO staff will then elevate the Attendee to a “Panelist.” Panelists may unmute their own microphone, activate their own video, and take other actions as necessary to participate in the hearing.

During the hearing, AHO staff may change the status of participants who are not actively involved in that portion of the hearing to “Attendee” status. An Attendee may raise his or her virtual “Zoom” hand to gain the attention of the hearing officer and the hearing officer will call on the representative and unmute the representative’s microphone. If you do not plan to speak during that day’s hearing, please do not attend the Zoom Webinar and instead view the livestream of the hearing on the AHO’s YouTube channel.

If the device you are using freezes, please notify staff at [AHO or special e-mail address] 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.

In lieu of participating by Zoom, anyone may watch past or present AHO hearings at the following link: <https://www.youtube.com/@swrcbadministrativehearing728/featured>. Parties watching AHO hearings by this method will not be able to participate in the hearing and will not be identified to anyone else.

February 11, 2026
Date

/s/ Malissa Hathaway McKeith
Malissa Hathaway McKeith
Senior Hearing Officer
Administrative Hearings Office

Attachments:

- Exhibit Identification Index
- Service List

Exhibit Identification Index

SERVICE LIST

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