ATTACHMENT G

Hearing Procedure

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2016-0546

ISSUED TO
AS INDIVIDUALS AND IN THEIR REPRESENTATIVE CAPACITY AS TRUSTEES FOR
THE BROOKS J & ARLENE J RUSHING TRUST
STANISLAUS COUNTY

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust (Dischargers) for the violations charged in the ACL Complaint. A hearing is scheduled to consider the matter on the following date:

3/4 November 2016
Central Valley Water Board Offices
1685 E Street
Fresno, California

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the Central Valley Water Board will convene a hearing to consider evidence and testimony regarding the ACL Complaint. At the hearing, the Hearing Panel will hear evidence, determine facts, make conclusions of law and propose a recommendation to the Central Valley Water Board about resolution of the ACL Complaint. The Hearing Panel may recommend that the Central Valley Water Board issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Hearing Panel may also recommend that the Central Valley Water Board decline to assess any liability, or may continue the hearing to a later date. After the hearing, the Hearing Panel will report its recommendation and proposed ACL Order to the full Central Valley Water Board at a future meeting. The Meeting Agenda will be posted at least ten days before the meeting on the Board's website, at the following address:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Hearing Panel (the "Advisory Team"). Members of the Board's Prosecution Team have <u>not</u> communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

This Hearing Procedure has been proposed by the Prosecution Team and is subject to further revision by the Hearing Panel's Advisory Team. Objections to this Hearing Procedure must be sent to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Hearing Panel Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

I. Hearing Participants

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Hearing Panel, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Hearing Panel, staff, or others, at the discretion of the Hearing Panel.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person's interest. The Board's Advisory Team will promptly respond to all timely requests for Designated Party status.

II. Hearing Time Limits

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **30 minutes**
2. Brooks and Arlene Rushing, as individuals and in their representative capacity as trustees of the Brooks J & Arlene J Rushing Trust: **25 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Hearing Panel Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during the Hearing Panel's questions and the responses to such questions, or during discussions of procedural issues.

III. Documents in Evidence and Availability of Board Files

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Hearing Panel rules to exclude them. The file is available to the public and may be

inspected or copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements

The Prosecution Team and all other Designated Parties (including the Dischargers) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Hearing Panel to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Hearing Panel Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Hearing Panel.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties' (including the Dischargers') Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

Printing and Page Limitations: For each Designated Party, including the Board's Prosecution Team, the Hearing Panel has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Hearing Panel will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Hearing Panel. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The

Draft ACL Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

Parties without access to computer equipment are encouraged to have their materials scanned at a copy or mailing center. The Hearing Panel will not reject materials solely for failure to provide electronic copies.

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Hearing Panel, which must be received by the Advisory Team at Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Hearing Panel's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

V. Miscellaneous Matters

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Hearing Panel in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Hearing Panel and Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Hearing Panel may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: http://www.waterboards.ca.gov. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

VI. Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM*	
Adam Laputz, Assistant Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726 Adam.Laputz@waterboards.ca.gov	Andrew Deeringer, Attorney State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 322-3575 Andrew.Deeringer@waterboards.ca.gov
BOARD PROSECUTION TEAM**	
Lisa Wilson, Environmental Scientist 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4844 Lisa.Wilson@waterboards.ca.gov	Kailyn Ellison, Attorney State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 445-9557 Kailyn.Ellison@waterboards.ca.gov
DISCHARGERS	
Brooks and Arlene Rushing, Trustees of the Brooks J & Arlene J Rushing Trust 2030 N Washington Rd Turlock, CA 95380	

*The Board's Advisory Team also includes: Pamela Creedon, Executive Officer

**The Board's Prosecution Team also includes: Andrew Altevogt, Assistant Executive Officer; Sue McConnell, Supervising Water Resources Control Engineer; Brett Stevens, Senior Environmental Scientist; Keri Yee, Associate Governmental Program Analyst

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the "Primary Contacts" table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

8 August 2016	▪ Prosecution Team issues ACL Complaint and Hearing Procedure.
18 August 2016	▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. Hard copies of all of these documents must be submitted to the Prosecution Team.
24 August 2016	▪ Dischargers' deadline to submit 90-Day Hearing Waiver Form. If the Prosecution Team accepts the waiver, all the following deadlines may be revised.
2 September 2016	▪ Prosecution Team's deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements."
22 September 2016	▪ Remaining Designated Parties' (including the Dischargers') deadline to submit all materials required under "IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements." ▪ Interested Persons' written statements are due. Hard copies of all of these documents must be submitted to the Prosecution Team.
7 October 2016	▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. Hard copies of rebuttal documents must be submitted to the Prosecution Team. ▪ If a Designated Party's submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Hearing Panel by this date. ▪ Deadline to submit requests for additional time.
13 October 2016	▪ All Designated Parties may submit responses to written statements submitted by Interested Persons. ▪ Prosecution Team submits Summary Sheet. ▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Hearing Panel so that they are received by the Advisory Team by this date.
3/4 November 2016	Hearing Panel