



California Regional Water Quality Control Board
Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger
Governor

February 4, 2010

Designated Parties and Interested Persons

**SUBJECT: HEARING PROCEDURES – COMPLAINT NO. R6V-2010-0004 FOR
MANDATORY ADMINISTRATIVE CIVIL LIABILITY ISSUED TO THE CALIFORNIA
DEPARTMENT OF FISH AND GAME, HOT CREEK HATCHERY, MONO COUNTY**

The enclosed Hearing Procedures will govern the April 14-15, 2010 hearing to be held by the California Regional Water Quality Control Board, Lahontan Region on the subject Complaint.

Please read these hearing procedures carefully. Failure to comply with the deadlines and other requirements contained in the hearing procedures may result in the exclusion of your documents and/or testimony.

Harold J. Singer
Executive Officer
Lahontan Regional Water Quality Control Board

Enclosure: Hearing Procedures

California Regional Water Quality Control Board
Lahontan Region

HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R6T-2010-0004
ISSUED TO

CALIFORNIA DEPARTMENT OF FISH AND GAME
HOT CREEK FISH HATCHERY
MAMMOTH LAKES
MONO COUNTY

HEARING SCHEDULED FOR APRIL 14-15, 2010

IMPORTANT

Please read these hearing procedures carefully. Failure to comply with the deadlines and other requirements contained herein may result in the exclusion of your documents and/or testimony.

- A. The California Regional Water Quality Control Board, Lahontan Region (Water Board) must receive the following no later than 5:00 p.m. on Tuesday, February 16, 2010:
1. Submission of evidence, testimony and witness list from the Prosecution Team
 2. Requests from persons requesting designated party status.
 3. Objections to these hearing procedures.
- B. The Water Board must receive written objections to requests for designated party status no later than 5:00 p.m. on Tuesday, February 23, 2010.
- C. The Water Board must receive submission of evidence, testimony and witness lists from designated parties other than the Prosecution Team no later than 5:00 p.m. on Monday, March 8, 2010.
- D. The Water Board must receive the following submittals no later than 5:00 p.m. on Thursday, March 18, 2010:
1. Written non-evidentiary policy statements from interested persons.
 2. Written requests from designated parties or interested persons for additional time for presentation at the hearing.
 3. Written evidentiary objections (if any) to evidence or testimony submitted from all of the designated parties.

- E. The Water Board must receive written rebuttal evidence or testimony from all designated parties no later than 5:00 p.m. on Monday, March 22, 2010.**
 - F. The Water Board must receive written evidentiary objections (if any) to rebuttal evidence or testimony submitted from all of the designated parties pursuant to E. above no later than 5:00 p.m. on Monday, March 29, 2010**
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Background

On February 1, 2010, the Manager of the Cleanup and Enforcement Division issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 to the California Department of Fish and Game alleging that it violated Board Order No. R6V-2006-0027, National Pollutant Discharge Elimination System (NPDES) Permit No. CA102776 issued by the Water Board on June 14, 2006. The Complaint indicates that the alleged violations are subject to mandatory minimum penalties pursuant to Water Code section 13385, subdivision (h)(1). The Complaint proposes that administrative civil liability in the amount of \$225,000 be imposed as authorized by Water Code sections 13385. A hearing is currently scheduled to be held before the Water Board during its April 14-15, 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Water Board will consider whether to adopt an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on April 14-15, 2010 will commence at a time and location as announced in the Water Board meeting agenda. An agenda for the meeting will be available on the Water Board's web page at <http://www.waterboards.ca.gov/lahontan/> no later than March 26, 2010.

Hearing Procedures

The hearing will be conducted in accordance with these hearing procedures or as they may be amended. A copy of the general procedures governing adjudicatory hearings before the Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with California Code of Regulations, title 23, section 648, subdivision (d), any procedure not provided by these Hearing Procedures is deemed waived. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to this hearing.

The Water Board's Advisory Team must receive any objections to these hearing procedures **no later than 5:00 p.m. on Tuesday, February 16, 2010** or they will be considered waived.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Water Board, staff or others, at the discretion of the Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Water Board Prosecution Team
- (2) The California Department of Fish and Game

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) **no later than 5:00 p.m. on Tuesday, February 16, 2010** to Harold Singer, Water Board Executive Officer and one copy to David Coupe, Advisory Team counsel, at the addresses provided below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted **no later than 5:00 p.m. on Tuesday, February 23, 2010**.

Primary Contacts

For the Water Board (Advisory Team):

Originals and specified number of copies of all documents to:	And one copy to:
Harold J. Singer Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 hsinger@waterboards.ca.gov Phone (530) 542-5412 Fax (530) 544-2271	David Coupe Staff Counsel State Water Resources Control Board, Office of Chief Counsel 1001 I Street Sacramento, CA 95814 dcoupe@waterboards.ca.gov Phone (916) 327-4439 Fax (916) 341-5199

For Water Board Staff (Prosecution Team):

One copy of all documents to both:	
Chuck Curtis Manager, Cleanup and Enforcement Division Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 ccurtis@waterboards.ca.gov Phone (530) 542-5460 Fax (530) 544-2271	Mayumi Okamoto Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 mokamoto@waterboards.ca.gov Phone (916) 341- Fax (916) 341-5284

For: California Department of Fish and Game

One copy of all documents to both:	
Jim Starr Department of Fish and Game 830 S Street Sacramento, CA 95814 jstarr@dfg.ca.gov Phone (916) 327-0713 Fax (916) 327-8854	Nancee Murray Office of the General Counsel Department of Fish and Game 1416 9th Street, 12th Floor Sacramento, CA 95814 nmurray@dfg.ca.gov Phone (916) 654-3818 Fax (916) 654-3805

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team). Members of the Advisory Team are: Harold Singer, Executive Officer and David Coupe, Staff Counsel. Members of the Prosecution Team are: Lauri Kemper, Assistant Executive Officer, Chuck Curtis, Manager, Cleanup and Enforcement Division, Scott Ferguson, Senior Water Resources Control Engineer, Taylor Zentner, Environmental Scientist, and Mayumi Okamoto, Staff Counsel, State Water Resource Control Board, Office of Enforcement. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Water Board in other, unrelated matters, but they are not advising the Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 45 minutes to present evidence, cross-examine witnesses, and provide a closing statement; and each interested person shall have five (5) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team **no later than 5:00 p.m. on Thursday, March 18, 2010**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Evidence, Exhibits and Policy Statements

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that the designated party would like the Water Board to consider. Evidence and exhibits already in the public files of the Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The Prosecution Team shall submit an original, 15 hard copies and one electronic copy of the information to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as

listed in the section above specifying primary contacts **no later than 5:00 p.m. on Tuesday, February 16, 2010.**

The remaining designated parties shall submit an original, 15 hard copies and one electronic copy of the information to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as listed in the section above specifying primary contacts **no later than 5:00 p.m. on Monday, March 8, 2010.**

All designated parties have the opportunity to submit rebuttal evidence or testimony. This material shall be submitted **no later than 5:00 p.m. on Monday, March 22, 2010.** The original, 15 hard copies and one electronic copy of the material must be submitted to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as listed in the section above specifying primary contacts.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but **no later than 5:00 p.m. on Thursday, March 18, 2010.** Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A written and electronic copy of such material that Designated Parties or Interested Persons intend to present at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Objections

The Water Board Advisory Team (original to Harold Singer, Executive Officer, and one copy to David Coupe, Staff Counsel) must receive all written objections to the evidence or testimony submitted by any of the Designated Parties **no later than 5:00 p.m. on Thursday, March 18, 2010.** The Water Board Advisory Team (original to Harold Singer, Executive Officer, and one copy to David Coupe, Staff Counsel) must receive all written objections to the rebuttal evidence or testimony submitted by any of the Designated Parties **no later than 5:00 p.m. on Monday, March 29, 2010.** Any objections must also be sent to the other designated parties. The Advisory

Team will notify the parties about further action to be taken on such objections (if any) and when that action will be taken.

Request for Pre-hearing Conference

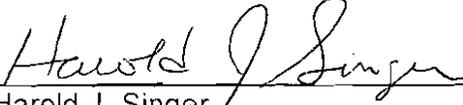
A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Water Board office at 2501 Lake Tahoe Boulevard, South Lake Tahoe. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Water Board Chair.

Questions

Questions concerning these hearing procedures may be addressed to Harold Singer, Executive Officer, at (530) 542-5412 or David Coupe, Staff Counsel, at (916) 327-4439 or at the addresses shown above.


Harold J. Singer
Executive Officer

DATE: February 4, 2010