



State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a Public Hearing
on the Proposed Disciplinary Action against

Benjamin B. Magana, Jr.

(Drinking Water Distribution Operator Grade 3, Certificate No. 34232)

on

August 22, 2023

commencing at 10:00 a.m.,

continuing on August 23, 2023 as necessary,

by Zoom teleconference and
in the Coastal Hearing Room,
at the California Environmental Protection Agency Headquarters,
1001 I Street, Second Floor
Sacramento, California.¹

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/94234671959?pwd=VnV2bHQyeDJaWkpYWm0rWUZveENwUT09>

with Meeting ID: 942 3467 1959 and Passcode: 546251

Or by calling in at:

+16699009128,,94234671959# 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. The live-stream URL will be posted to the State Water Board website approximately two weeks before the first day of the hearing.

¹ The location of the hearing and method by which the hearing will be conducted (in person only, by Zoom teleconference only, or in person and by Zoom teleconference) is subject to change. Any such change will be announced in an amended Notice of Public Hearing.

BACKGROUND

On November 2, 2022, the Executive Director of the State Water Resources Control Board (State Water Board or Board) sent notice to Benjamin B. Magana, Jr. (Respondent) of a Proposed Disciplinary Action by the Board's Office of Enforcement (Office of Enforcement) to revoke Mr. Magana's Grade D3 water distribution operator certificate (Certificate No. 34232). The Notice of Proposed Disciplinary Action (Notice) alleges that Respondent violated Health and Safety Code sections 106877 (subdivisions (b)(2), (b)(3), (b)(4) and (b)(6)) and 106878 (subdivisions (b)(2) and (c)) by providing false or misleading information to the state, failing to ensure proper treatment of the distribution system, and employing a water distribution operator who does not hold a valid, unexpired water distribution operator certificate. The State Water Board's Office of Enforcement proposes revocation of Respondent's Grade D3 drinking water distribution operator certificate and notification of Respondent's current and former employers.

On December 16, 2022, the Respondent requested a hearing before the State Water Board regarding the Proposed Disciplinary Action. On May 1, 2023, the Clerk of the Board issued a Notice of Public Hearing and Tentative Hearing Procedure (Initial Hearing Notice) in this matter. This notice supersedes the Initial Hearing Notice.

Relevant Statutes and Regulations

Health and Safety Code Section 106877

The State Water Board may suspend, revoke, or refuse to grant or renew any water distribution operator certificate to operate a water distribution system or may place on probation or reprimand the certificate holder upon any reasonable grounds. (Health & Saf. Code, § 106877, subd. (b).) Such grounds include but are not limited to: the use of fraud or deception in the course of operating a water distribution system (*Id.*, subd. (b)(2)); the failure to use reasonable care of judgment in the operation of a water distribution system (*Id.*, subd. (b)(3)); the inability to perform operating duties properly in a water distribution system (*Id.*, subd. (b)(4)); and the conduct of willful or negligent acts that cause or allow the violation of the federal Safe Drinking Water Act (subchapter XII (commencing with section 300f) of chapter 6A of title 42 of the United States Code), the California Safe Drinking Water Act (chapter 4 (commencing with section 116270) of part 12 of division 104 of the Health and Safety Code), or the regulations or standards adopted pursuant to either act (*Id.*, subd. (b)(6)).

Prior to suspension or revocation of an operator certificate, the State Water Board shall provide the certificate holder with the opportunity for a hearing in accordance with the Board's regulations for the conduct of adjudicative proceedings. (Health & Saf. Code, § 106877, subd. (c).)

California Code of Regulations, title 22, section 64424

Section 64424 of title 22 of the California Code of Regulations imposes requirements on a public water system if a routine sample tests positive for total coliform. The public

water system must collect a repeat sample set within 24 hours of being notified of the positive result, unless special circumstances apply, and meet other requirements specified in the regulation for the repeat sample set.

California Safe Drinking Water Act, Health and Safety Code Section 116550

Health and Safety Code section 116550, subdivision (a), states that no person operating a public water system shall modify, add to, or change his or her source of supply or method of treatment of, or change his or her distribution system as authorized by a valid existing permit unless the person first submits an application and receives an amended permit from the State Water Board's Division of Drinking Water authorizing the modification, addition, or change in his or her source of supply or method of treatment.

Health and Safety Code Section 106885 and California Code of Regulations, Title 22, Section 63770

Health and Safety Code section 106885, subdivision (b)(1), states that a person who operates a water distribution system shall possess a valid, unexpired water distribution operator certificate of the appropriate grade. California Code of Regulations, title 22, section 63770, subdivisions (b), (c), and (d) state that water systems shall utilize only certified distribution operators or treatment operators to make decisions addressing certain operational activities identified in the regulation.

Health and Safety Code Section 106878

Health and Safety Code section 106878, subdivision (b)(2), states that any person or entity who is in responsible charge of a water distribution system and allows the employment of any person as a water distribution operator who does not hold a valid, unexpired water distribution certificate of the appropriate grade is guilty of a misdemeanor and may be liable civilly in an amount not to exceed one hundred dollars (\$100) for each day of violation.

Health and Safety Code section 106878, subdivision (c), states that any person that commits an act described in paragraph (2), (3), or (6) of subdivision (b) of Health and Safety Code section 106877 may be liable civilly up to five thousand dollars (\$5,000) for each violation.

Notice of Proposed Disciplinary Action

The Notice alleges that Respondent violated Health and Safety Code section 106877, subdivisions (b)(2), (3), (4), and (6), and Health and Safety Code section 106878, subdivisions (b)(2) and (c). The Notice describes three alleged violations by the Respondent to support the proposed disciplinary action of revocation of Respondent's Grade D3 drinking water distribution operator certificate and notification of Respondent's current and former employers.

1. The Notice alleges that Respondent provided false or misleading information to the state in and about water sampling reports submitted by Respondent on behalf of Allensworth Community Services District (Allensworth CSD). The Notice alleges that Respondent's actions constituted use of fraud or deception in the course of operating a water distribution system (Health & Saf. Code, § 106877, subd. (b)(2)); failure to use reasonable care of judgment in the operation of a water distribution system (*Id.*, subd. (b)(3)); inability to perform operating duties properly in a water distribution system (*Id.*, subd. (b)(4)); and willful or negligent acts that caused or allowed Allensworth CSD to violate the California Safe Drinking Water Act by failing to comply with California Code of Regulations, title 22, section 64424 (*Id.*, subd. (b)(6)).
2. The Notice alleges that Respondent failed to ensure proper treatment of the Allensworth CSD distribution system by allowing the system's chlorinator to remain offline in violation of Allensworth CSD Distribution System Permit 03-24-18PA-009 and Health and Safety Code section 116550, subdivision (a), which obligates the operator of a public water system to continue the treatment of a distribution system as specified by the permit for the distribution system unless an amended permit has first been obtained. The Notice alleges that Respondent's actions demonstrated: failure to use reasonable care of judgment in the operation of a water distribution system (Health & Saf. Code, § 106877, subd. (b)(3)); the inability to perform operating duties properly in a water distribution system (*Id.*, subd. (b)(4)); and willful or negligent acts that caused or allowed the violation of the California Safe Drinking Water Act, specifically Health and Safety Code section 116550 (*Id.*, subd. (b)(6)).
3. The Notice alleges that Respondent allowed a person acting in the capacity of a subcontractor, who is not certified as a drinking water distribution operator or drinking water treatment operator, to make decisions regarding operational activities of the water distribution system in violation of Health and Safety Code section 106885, subdivision (b)(1), and California Code of Regulations, title 22, section 63770. The Notice further alleges that Respondent received a letter from the Office of Enforcement while Respondent was acting as a contract operator for Daggett Community Service District, which letter identified actions considered by the Office of Enforcement to be operational activities that must be performed by a certified operator. The Notice alleges that Respondent continued to allow the uncertified subcontractor to perform operational activities after receiving this letter. The Notice alleges that Respondent's actions constituted a violation of Health and Safety Code section 106878, subdivision (b)(2).

The Notice proposes revocation of Drinking Water Distribution Operator Grade 3, Certificate No. 34232, held by Respondent, and notification of Respondent's current and former employers.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the

State Water Board may assign adjudicative hearings to the AHO. Subdivision (c)(3) of this section provides that an AHO hearing officer may perform additional work requested by the Board. On May 11, 2023, the State Water Board's Executive Director issued a memorandum assigning the proposed revocation of Benjamin B. Magana, Jr.'s Drinking Water Distribution Operator Grade 3 Certificate No. 34232 to the AHO for a hearing and preparation of a proposed order.

PRE-HEARING CONFERENCE

On May 25, 2023, the AHO conducted a pre-hearing conference in which Mr. Magana and representatives of the Prosecution Team participated. During the pre-hearing conference, the hearing officer and the parties discussed procedural issues related to the conduct of the hearing in this matter.

The Respondent consented, during the pre-hearing conference, to e-mail as his preferred method of service for documents related to this proceeding.

The hearing officer heard arguments by Respondent and the Prosecution Team about whether the hearing should be conducted remotely by Zoom, in person, or in a hybrid format (both in person and remotely by Zoom). The hearing officer will make a final determination as to the format and location of the hearing after the Prosecution Team has identified its witnesses and indicated whether the witnesses will testify in person or remotely by Zoom if the AHO conducts the hearing in a hybrid format. The hearing officer directs both parties to indicate with their witnesses' proposed written testimony whether the witness will testify in person or remotely by Zoom.

HEARING ISSUES

The AHO will hold a public hearing to receive evidence and arguments relevant to the Proposed Disciplinary Action against the Respondent. During the hearing, the hearing officer will receive evidence and arguments relevant to the following hearing issues:

1. Does the State Water Board have reasonable grounds to suspend or revoke Drinking Water Distribution Operator Grade 3, Certificate No. 34232, held by Respondent, or to place on probation or reprimand Respondent as the certificate holder?
 - a. Did Respondent provide false or misleading information to the state in and about water sampling reports submitted by Respondent on behalf of Allensworth CSD?
 - i. Did Respondent's actions cause or allow a violation of California Code of Regulations, title 22, section 64424, which imposes requirements on a public water system if a routine sample tests positive for total coliform?

- ii. Did Respondent's actions constitute use of fraud or deception in the course of operating a water distribution system (Health & Saf. Code, § 106877, subd. (b)(2))?
 - iii. Did Respondent's actions constitute failure to use reasonable care of judgment in the operation of a water distribution system Health & Saf. Code, § 106877, subd. (b)(3))?
 - iv. Did Respondent's actions constitute an inability to perform operating duties properly in a water distribution system (Health & Saf. Code, § 106877, subd. (b)(4))?
 - v. Did Respondent's actions constitute willful or negligent acts that caused or allowed the violation of California Code of Regulations, title 22, section 64424 (Health & Saf. Code, § 106877, subd. (b)(6))?
- b. Did Respondent fail to ensure proper treatment of the Allensworth CSD distribution system by allowing the system's chlorinator to remain offline in violation of Allensworth CSD Distribution System Permit 03-24-18PA-009?
 - i. Did Respondent's actions violate Health and Safety Code section 116550, subdivision (a), which obligates the operator of a public water system to continue the treatment of a distribution system as specified by the permit for the distribution system?
 - ii. Did Respondent's actions demonstrate failure to use reasonable care of judgment in the operation of a water distribution system (Health & Saf. Code, § 106877, subd. (b)(3))?
 - iii. Did Respondent's actions demonstrate the inability to perform operating duties properly in a water distribution system (Health & Saf. Code, § 106877, subd. (b)(4))?
 - iv. Did Respondent's actions constitute willful or negligent acts that caused or allowed the violation of Health and Safety Code section 116550 (Health & Saf. Code, § 106877, subd. (b)(6))?
- c. Did Respondent allow a person who is not certified as a drinking water distribution operator or drinking water treatment operator to make decisions regarding operational activities of a water distribution system?
 - i. Did Respondent's actions violate Health and Safety Code section 106885, subdivision (b)(1), and California Code of Regulations, title 22, section 63770?

- ii. Did Respondent's actions violate Health & Safety Code section 106878, subd. (b)(2), by allowing the employment of a person as a water distribution operator who does not hold a valid, unexpired water distribution certificate of the appropriate grade?
2. Does Health and Safety Code section 106878, subdivision (c), apply to Respondent because Respondent committed an act described in paragraph (2), (3), or (6) of subdivision (b) of Health and Safety Code section 106877?
3. If the State Water Board has reasonable grounds to suspend or revoke Drinking Water Distribution Operator Grade 3, Certificate No. 34232 or to place on probation or reprimand Respondent as the certificate holder, what disciplinary actions should the Board impose?

HEARING OFFICER AND HEARING TEAM

Nicole Kuenzi, the Presiding Hearing Officer of the State Water Board's Administrative Hearings Office, will be the hearing officer for this proceeding and will prepare a written order, according to the requirements outlined in Water Code section 1114, subdivision (b)(1), within 90 days after the matter is submitted for decision. She may be assisted in an advisory capacity by other AHO staff, Merswind Reyer and Anne Hartridge from the Board's Office of Chief Counsel, and Sahand Rastegarpour from the Division of Financial Assistance. These Board staff, Hearing Officer Kuenzi, and members of the executive management of the State Water Board, with the exception of Executive Director Eileen Sobeck, may advise the State Water Board members (excluding Board Member Nichole Morgan) about a final decision in this matter. All of these individuals (excluding Executive Director Sobeck), including the State Water Board members (excluding Board Member Nichole Morgan), are part of the Hearing Team in this proceeding.

State Water Board Member Nichole Morgan has recused herself from any involvement in this proceeding. Although Board Member Morgan has no impermissible conflict of interest under any applicable laws, she will not participate in any decisions relating to 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 and staff from the State Water Board's Office of Enforcement and Julie M. Osborn from the Office of Chief Counsel.

HEARING SCHEDULE AND DEADLINES

Deadline for Prosecution Team to file exhibits, exhibit identification indices, and optional legal and factual memorandum with the AHO.	June 23, 2023, at 12:00 p.m.
Deadline for Respondent to file exhibits, exhibit identification indices, and optional legal and factual memorandum with the AHO.	July 19, 2023, at 12:00 p.m.
Deadline for all parties to file rebuttal exhibits and rebuttal exhibit identification indices with the AHO.	August 9, 2023, at 12:00 p.m.
Deadline for all parties to submit presentations to be used by witnesses at the hearing.	August 16, 2023, at 12:00 p.m.
Deadline for interested persons to file written policy statements.	August 16, 2023, at 12:00 p.m.
Public Hearing begins	August 22, 2023, at 10:00 a.m.
Public Hearing continues, if necessary.	August 23, 2023, at 10:00 a.m.

PUBLIC RECORDS

The AHO has copied documents from the public records 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 listed in Section 8 below.

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

More information about this proceeding may be accessed on the AHO's Internet webpage by clicking on "Drinking Water Permitting Matters."

For general information about AHO proceedings, an AHO Frequently Asked Questions (FAQs) page is posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/procedures.html.

SEPARATION OF FUNCTIONS AND PROHIBITION ON *EX PARTE* COMMUNICATIONS

While this proceeding is pending, *ex parte* communications between any party, party representative, or interested person and any member of the AHO hearing team or a 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.) 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/2021/2021-07-06_webpage_faq.pdf. (See response to FAQ 16.)

If any party 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 regarding this proceeding, including any issue regarding the pre-hearing conference, hearing procedures or filing of documents, then that party shall make such communication in writing (by e-mail or letter) and serve all other parties with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. 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.

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.

Staff of the State Water Board on the Prosecution Team will maintain a separation from other staff of the State Water Board who are on the Hearing Team while this proceeding is pending. The Prosecution Team is prohibited from having any ex parte communications with any member of the Hearing Team. (See Wat. Code, § 11110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) In addition, Executive Director Sobeck and Board Member Morgan will not engage in any ex parte communications about this proceeding with any member of the Hearing Team.

PROCEDURES FOR THIS 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 Administrative Hearings Office (AHO) will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8 and 649.6. Copies of these regulations are posted on the State Water Resources Control Board's website: http://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 hearing.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

Parties may file a request for exception to or modification of these hearing procedures, or modification to the hearing issues identified in this Notice, by submitting the request in writing with the AHO and serving the request on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

- 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 or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO.

- 3. PARTIES:** The Respondent and the Prosecution Team are parties to this proceeding.

Although representation is not required, a party without an attorney should consider hiring one if the hearing involves complex legal issues. Some attorneys provide legal services free of charge (“pro bono assistance”). The AHO maintains a list of attorneys who may provide pro bono assistance before, during, and after the hearing on the AHO’s webpage under the hearing “AHO Procedures & FAQs”.

- 4. 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 or submit non-evidentiary policy statements. Interested persons may submit policy statements in writing before the hearing by the deadline specified in this notice, or present a policy statement orally during the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections to parties’ exhibits or testimony, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing. The AHO will not add such persons or entities to the service list.

The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements. The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties by the deadline specified in this notice. See section 8 for details regarding electronic submittals of documents.

- 5. SERVICE LIST:** The AHO will maintain a current service list with the names of parties and their representatives, and contact information.
- 6. WRITTEN PROPOSED TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written proposed testimony, statements of qualifications of expert witnesses, summary slides, and other documents to be submitted as evidence.

As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness’s written proposed testimony absent good cause. Each party shall designate each of its witness’s written proposed testimony as a separate exhibit. A witness does not need to sign his or her proposed testimony. After each witness takes the oath, the hearing officer will ask the witness to confirm that his or her written proposed testimony is his or her testimony for the hearing.

Each party must submit all of its witnesses’ written proposed testimony with the party’s other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness’s

qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO strongly encourages each party to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony.

During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of his or her written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline. These presentations must be submitted to the AHO by the separate deadline for submission of presentations identified in this Notice.

If a party is unable to obtain written testimony from a witness by the deadline for submitting exhibits, the party must submit a witness information sheet to the AHO that identifies the witness, the subject matter of the testimony sought, the estimated time required for testimony, and the reason the party cannot obtain written testimony from the witness by the deadline for submission of exhibits.

A party may submit by the deadline for submission of exhibits, a memorandum articulating the party's legal argument, technical analysis, and evidence in support of its position.

- 7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index. The Exhibit Identification Index is a list of exhibits in Excel format.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, Mr. Magana's exhibits should be numbered Magana-1, Magana-2, etc., and the Prosecution Team's exhibits should be numbered PT-1, PT-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about his or her written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's written proposed testimony, but should not number or letter these headings and should not re-start the paragraph numbering in each section.

Each party must submit to the AHO the exhibits and exhibit identification indices for this hearing before the deadline specified in this Hearing Notice.

- 8. SUBMISSIONS OF DOCUMENTS:** To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents by uploading them to the State Water Board's FTP site in

electronic form (in addition to filing one paper copy of each exhibit with the AHO) 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 will create a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain 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 closing briefs to this folder promptly after each 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 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. 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 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.

- 9. PRE-HEARING CONFERENCE:** The hearing officer held a pre-hearing conference on May 25, 2023, in which the Respondent and representatives of the Prosecution Team participated.
- 10. 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. The hearing officer will set time limits for each element of the proceeding specified below before or during the hearing.
 - a. **Policy Statements:** The hearing officer will allow interested persons to present oral policy statements and oral summaries of written policy statements at the start of the hearing before the presentations of cases-in-chief. The hearing officer will limit oral policy statements and oral summaries of written policy statements to 5 minutes.
 - b. **Presentation of Cases-In-Chief:** Each party may present a case-in-chief addressing the key issues in this hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of the witnesses' written proposed testimony. The hearing officer then will allow other parties to cross-examine the witnesses who have presented written proposed testimony or oral summaries of their written proposed testimony. The hearing officer may allow re-direct examination and re-cross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon the party's request or motion after completion of all examinations of the party's witnesses.
 - i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. The hearing officer will limit oral opening statements to 5 minutes per party. A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement.

- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written proposed testimony into the record, but instead shall just provide a summary. A witness provides his or her direct testimony when he or she confirms that a designated exhibit or exhibits is or are his or her testimony. Each party will be allowed a maximum of 30 minutes total for its witnesses to summarize all of their written proposed testimony. The hearing officer may allow additional time for oral summaries or clarifying testimony, and the parties may discuss the need for additional time for such summaries or clarifications during the pre-hearing conference, if one is held, or during the party's presentation of the party's witnesses. The purpose of this part of the hearing is for the witness to briefly summarize his or her testimony. The hearing officer will not allow witnesses to testify orally to matters not in their written proposed testimony.
 - iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. The hearing officer will limit the time allowed for cross-examination of a witness as appropriate for efficient and orderly conduct of the hearing. The hearing officer may allow additional time for cross-examination if the cross-examining party demonstrates in an offer of proof, good cause to take additional time for cross-examination.
 - iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
 - v. **Hearing Officer's Questions:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions, and may cross-examine any witness, at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

The hearing officer has set a schedule for submittal of written proposed rebuttal testimony and rebuttal exhibits after the parties have filed their written proposed direct testimony and exhibits. Each party will be allowed a maximum of 15 minutes total for its witnesses to summarize all of their written proposed rebuttal testimony. The hearing officer normally will limit cross-examination of witnesses offering rebuttal evidence to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** The hearing officer may allow oral closing arguments or may set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the parties' folders on the State Water Board's FTP site when they upload their closing briefs, and shall file one paper copy with the AHO. After the deadline for filing closing briefs, the AHO will file all closing briefs in the AHO-FTP folder for this proceeding.

11. HEARSAY EVIDENCE: Government Code section 11513 shall apply to all evidence offered during this hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

12. COURT REPORTER: The AHO will not order a court reporter for any status conferences, pre-hearing conferences, or hearings in this proceeding. Any interested party may order a court reporter at the party's own expense. Any party that arranges for a court reporter and intends to submit the reporter's transcript to the AHO should inform the court reporter that court reporter's transcripts submitted to the AHO will become public documents upon submission and that the AHO will file them in the AHO-FTP folder for this proceeding. However, even if the AHO files such transcripts, the AHO's official records of this proceeding will be the audio+video recordings described in the following paragraphs and not the reporter's transcripts.

13. OFFICIAL RECORD: The official administrative record for this proceeding will be all the electronic files that the AHO has saved in the AHO-FTP folder this proceeding.

The official record of any part of this proceeding, such as a conference or hearing, is the audio-plus-video recording file of that part of the proceeding. All citations in written briefs to parts of this proceeding shall include the dates and times of the cited portions of the audio-plus-video recordings of those parts of this proceeding. If a party has filed a court reporter's transcript of any part of this proceeding, then the party may include a parallel citation to the transcript, but the first part of each citation shall be to date and time in the audio-plus-video recording.

14. HYBRID HEARING: Unless the hearing officer determines otherwise, the AHO will conduct this hearing in person at a physical meeting location and by Zoom

teleconference. New users of Zoom may want to review Zoom's support guide: <https://support.zoom.us/hc/en-us/categories/200101697>.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the hearing. The hearing officer prefers that parties participate by both audio and video if participating through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.

The AHO will record all status conferences, pre-hearing conferences, and hearings and will post an audio-plus-video file of each such proceeding in the AHO-FTP folder for this proceeding. Interested persons who do not intend to speak at the hearing can watch the meeting by live-stream. The AHO will post the live-stream URL to the State Water Board website approximately two weeks before the first day of the hearing.

Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If the device you are using 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 to you with the Zoom meeting information.

June 16, 2023
Date

/s/ Nicole L. Kuenzi
Nicole L. Kuenzi
Presiding Hearing Officer

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