
State Water Resources Control Board

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a Public Hearing to determine whether the State Water Board Should Revoke Inyo County Environmental Health Department's Delegation of Primary Responsibility for the Local Primacy Agency Program

The **Public Hearing** will commence on
August 30, 2019
at **9:00 a.m.**

at the
Bishop City Hall
377 W Line St
Bishop, California 93514

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board): 1) to receive evidence relevant to determining whether Inyo County Environmental Health Service (County) failed to comply with the local primacy agency (LPA) program requirements; and 2) if so, to consider whether the State Water Board should revoke Inyo County's delegation of primary responsibility for the LPA program and take over the program within Inyo County.

The State Water Board's Division of Drinking Water (Division) issued a letter dated February 22, 2019, specifying alleged deficiencies with Inyo County's compliance with the LPA program. The Division's letter identified its intent to initiate proceedings to revoke the LPA program, pursuant to Health and Safety Code section 116330, subdivision (c)(3).

BACKGROUND

Section 116330 of the Health and Safety Code allows the State Water Board to delegate primary responsibility for the administration and enforcement of the California

Safe Drinking Water Act¹ (the Act) within a county to a local health officer authorized by that county board of supervisors to assume these duties. The local health officer must first demonstrate that he/she has the capability to meet the LPA program requirements established by the State Water Board. In July 1993, the California Department of Public Health (CDPH), who had responsibility for implementation of the California Safe Drinking Water Act before it was transferred to the State Water Board, entered into an agreement with Inyo County, authorizing its local environmental health officer to administer and enforce the Act.

The County and the State Water Board entered into a revised version of the delegation agreement in 2017, thereby extending the County's obligation to carry out the LPA program requirements within Inyo County. The agreement required, among other things, that the County: issue and maintain valid drinking water permits for each of the 81 public water systems within its jurisdiction, after receiving Water Board concurrence; establish and maintain a system to ensure that each public water system under its jurisdiction is in compliance with applicable monitoring and reporting requirements; and take enforcement against those public water systems that are not in compliance. Subsection (d) of 116330 requires the State Water Board to "evaluate the drinking water program of each local primacy agency at least annually." The State Water Board has undertaken annual evaluations of Inyo County's program since it began in 1993, and quarterly evaluations since January 2018. After each evaluation, the State Water Board was required prepare a report listing any program improvements needed to conform to the LPA program requirements, and provided time for the County to make any needed program improvements, prior to the initiation of any revocation of the LPA program.

On July 2, 2018, the Division sent a letter to Inyo County's Environmental Health Services Department with its evaluation of the performance of the County's "Small Water System" Program, and required an action plan be submitted by July 31, 2018, to address the deficiencies identified. The County submitted its action plan on August 1, 2018. The Division asserted in its February 22, 2019 letter that 11 of the 12 deadlines for the improvements identified in its corrective action plan were not met.

KEY ISSUES

The State Water Board's decision will be based upon evidence in the record developed at the hearing. Parties should submit exhibits and testimony responsive to the following issues:

- 1) Did Inyo County Environmental Health Service fail to comply with the LPA program requirements? This includes, but is not limited to, consideration of any of the following issues:
 - a. Did the County fail to issue permits to water systems under its jurisdiction?
 - b. Did the County fail to inspect water systems under their jurisdiction at the frequency required by the Act?

¹ Health and Saf. Code, §§ 116270-116755.

- c. Did the County fail to ensure that water systems under its jurisdiction were completing required sampling and monitoring?
 - d. Did the County fail to take enforcement against water systems under its jurisdiction that did not meet requirements, including Maximum Contaminant Levels and other primary drinking water standards?
- 2) If the County failed to meet the program requirements, should the State Water Board revoke Inyo County's delegation of primary responsibility for the local primacy program and take over the program itself?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Sean Maguire will preside as the hearing officer for this proceeding. Other members of the Board may be present during the hearing.

A hearing team will assist the hearing officer by providing legal and technical advice. The hearing team members will be Kimberly Niemeyer, Staff Counsel; Robert Brownwood, Principal Engineer and, Jeff O'Keefe, Supervising Sanitary Engineer. The hearing team will assist the hearing officer and other members of the State Water Board throughout this proceeding.

ENFORCEMENT TEAM AND SEPARATION OF FUNCTIONS

A State Water Board staff enforcement team will be a party to this hearing and is composed of: David Rice, Staff Counsel; Kurt Souza, Principal Engineer; Sean McCarthy, Supervising Sanitary Engineer; Eric Zuniga, Senior Sanitary Engineer; and Wendy Killou Senior Environmental Scientist.

The enforcement team is separated from the hearing team and, like all parties, is prohibited from having *ex parte* communications with any members of the State Water Board and any members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team. (Gov. Code, §§ 11430.10-11430.80.)

HEARING PARTICIPATION PROCEDURES

THE COUNTY HAS REQUESTED A HEARING and it is scheduled for **August 30, 2019, at 9:00 a.m.** If the County withdraws their request for a hearing, the Board may revoke the delegation of primary responsibility for the local primacy program without further notice.

At the hearing, the County and the Enforcement Team (also referred to jointly as the "parties") will have the opportunity to present evidence on the two issues identified above. All evidence and information that will be presented at the hearing must be identified and provided in advance of the hearing by the deadlines identified below.

Deadlines for Hearing Participation

By August 2, 2019 each party must submit its legal argument and supporting evidence, including exhibits, written testimony, witness qualifications, and other relevant evidence. Copies must be received by the State Water Board and served on the party. A statement of service with manner of service indicated shall be filed with each party's submission. (See Attached "INFORMATION CONCERNING APPEARANCE AT HEARINGS")

For each exhibit that the party plans to rely upon at the hearing, including each witness' written statement, please number each exhibit submitted, and describe each on the attached Exhibit Identification Index.

SUBMITTALS TO THE STATE WATER BOARD AND THE ENFORCEMENT TEAM

All documents submitted to the State Water Board should be addressed as follows:

How to Submit Documents to the Board

By Email:	kim.niemeyer@waterboards.ca.gov With Subject of "Inyo County LPA Program Revocation Hearing"
By Fax:	(916) 341-5199
By Mail:	State Water Resources Control Board Office of Chief Counsel 1001 I Street, P.O. Box 100 Attention: Kimberly Niemeyer, Staff Counsel Sacramento, CA 95812

Copies of all documents submitted to the State Water Board must also be provided to the enforcement team and should be addressed as follows:

How to Submit Documents to the Enforcement Team

By Email:	david.rice@waterboards.ca.gov With Subject of "Inyo County LPA Program Revocation Hearing"
By Fax:	(916) 341-5199
By Mail:	State Water Resources Control Board Office of Chief Counsel Attention: David Rice, Staff Counsel 1001 I Street, P.O. Box 100 Sacramento, CA 95812

How to Submit Documents to the County

By Email:	kbarton@inyocounty.us With Subject of “ Inyo County LPA Program Revocation Hearing ”
By Fax:	(760) 878-0239
By Mail:	Inyo County Environmental Health Services Department P.O. Box 427 Independence, CA 93526

Note: All hand delivered submittals must be date and time stamped by the Office of Chief Counsel on the twenty-second floor of the Joe Serna Jr. CalEPA Building (CalEPA Building) at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely date and time stamp by the Office of Chief Counsel will be considered late and may not be accepted by the hearing officer.

UNLESS NOTICE TO THE STATE WATER BOARD AND THE OTHER PARTY IS PROVIDED, ELECTRONIC SERVICE OF HEARING-RELATED MATERIALS IS PRESUMED TO BE ACCEPTED. If you do not want to accept electronic service, the State Water Board and the other party must be notified by **July 15, 2019**.

OPPORTUNITY FOR SETTLEMENT

Please read the discussion of settlements in the enclosure entitled “Information Concerning Appearance at Hearings.” In this hearing, the enforcement team is proposing revocation of the County’s LPA program for alleged noncompliance with the Act. The enforcement team and the County may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. **Due to the separation of functions discussed previously, the hearing team cannot participate in settlement discussions.** Should the enforcement team and the County reach settlement, they must notify the hearing team as soon as possible.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the enforcement team. (Gov. Code, §§ 11430.10-11430.80.) Questions concerning non-controversial procedural matters should be directed to Kim Niemeyer at (916) 341-5547, or by e-mail at kim.niemeyer@waterboards.ca.gov (Gov. Code, § 11430.20, subd. (b).)

If you have any legal or technical questions concerning the allegations, or if you wish to discuss settlement prior to hearing, you may contact enforcement team member David Rice, at (916) 341-5182, or by email at David.Rice@waterboards.ca.gov.

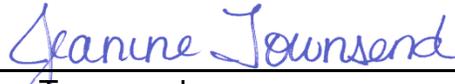
TRAVEL TO AND ACCESSIBILITY AND SECURITY AT THE BISHOP CITY HALL BUILDING

The Bishop City Hall is located at 377 W Line St in Bishop, California, and is accessible to people with disabilities. Individuals who require special accommodations are requested to contact Kim Niemeyer at (916) 341-5547 or by e-mail at kim.niemeyer@waterboards.ca.gov.

Parking is located at the rear of the building, with overflow parking available at the corner of Church and Fowler Streets. There is no fee for parking.

August 5, 2019

Date



Jeanine Townsend
Clerk to the Board

INFORMATION CONCERNING APPEARANCE AT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board or Board) is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each party will have one hour (60 minutes) to may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit closing briefs. Questions by the hearing team will not count against each parties' total allotted time.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

- 2. SETTLEMENTS:** In adjudicatory hearings such as this, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the enforcement team and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Any settlement agreement by the parties must be approved by the State Water Board.
- 3. PARTIES:** The only parties to the hearing are **Inyo County Environmental Health Department and the enforcement team for the State Water Board.**

No additional parties will be designated in accordance with the procedures for this hearing, and only parties will be allowed to present evidence.

- 4. INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested

persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but request hearing documents from the hearing team (kim.niemeyer@waterboards.ca.gov or (916) 341-5547.)

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).) Persons interested in making a policy statement during the hearing are requested to file a copy of that statement by the deadline for the submission of legal argument and evidence by the parties. Policy statements should be sent to both parties and the State Water Board as identified in the Hearing Notice.

- 5. LEGAL ARGUMENTS, WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board 3 paper copies and 1 electronic copy of each of its exhibits. Each party shall also serve a copy of each exhibit and the exhibit index on the other party. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice.

Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

- 6. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged use and accept electronic service. **If a party does not want to accept electronic service, it must notify the State Water Board and**

² The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

the other party by July 15, 2019; otherwise, electronic service will be presumed to be accepted.

Documents submitted or served electronically must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft Office-supported format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indexes. Electronic submittals to the State Water Board of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: kim.niemeyer@waterboards.ca.gov with a subject of **“Inyo County LPA Program Revocation Hearing”**. Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD), digital versatile disc (DVD), or universal serial bus (USB) flash drive. **Each electronically submitted exhibit must be saved as a separate PDF file, with the filename in lower case lettering.**

7. **PRE-HEARING CONFERENCE:** At the hearing officer’s discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
8. **ORDER OF PROCEEDING:** Hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, for good cause.
 - a. **Policy Statements within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. **Oral summaries of the policy statements will be limited to 5 minutes.**
 - b. **Presentation of Cases-In-Chief: Each party will have one hour to present its case-in-chief.** The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party’s witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the party’s exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party’s attorney may make an opening statement briefly and concisely stating 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. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any legal or policy-oriented statements by a party should be included in the opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony.
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral 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 as a panel.
 - iv. **Redirect and Recross Examination:** Redirect or re-cross examination is not required, but may be allowed if approved by the hearing officer, and will count against the time allocated to a party. Any redirect examination and re-cross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively.
 - v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness. Such questions and answers do not count against a party's allocated time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing unless the hearing officer requires otherwise. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officer may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. **If the hearing officer authorizes the parties to file briefs, 3 copies of each brief shall be submitted to the State Water Board, and 1 copy shall be served on each of the other participants on the service list.** A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

- 9. EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
- 10. RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

