

TENTATIVE HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R3-2021-0097

ISSUED TO
CHRIS MATHYS, RHINE, L.P., AND ORO FINANCIAL OF CALIFORNIA, INC.
SANTA BARBARA COUNTY

HEARING SCHEDULED FOR DECEMBER 9/10, 2021

This document contains proposed hearing provisions for consideration by the Respondents (defined below) and Prosecution Team. The provisions herein, including tentative hearing deadlines and time limits, are based on a preliminary review of the Administrative Civil Liability Complaint and the Water Code section 13323, subdivision (c) requirement to hold a hearing on the Administrative Civil Liability Complaint within 90 days after the Respondents have been served. Excluding the deadlines for Interested Persons to submit a request for party status and written comments, the provisions herein are subject to change based on the Respondents' and Prosecution Team's input. The Advisory Team, in consultation with the Presiding Officer, will consider the Respondents' and Prosecution Team's input prior to issuing the Final Hearing Procedure.

California Water Code section 13323 authorizes the California Regional Water Quality Control Board, Central Coast Region (Regional Board) to impose a fine, called administrative civil liability, against any person who violates water quality requirements. The Regional Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes the Regional Board impose civil liability against Chris Mathys, Rhine, L.P., and Oro Financial of California, Inc. (Respondents) for the violations alleged in the ACL Complaint. A copy of the ACL Complaint is available on the Regional Board's Enforcement webpage at https://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/.

I. Hearing Date and Location

The Regional Board has scheduled a hearing to consider this matter during its **December 9/10, 2021** meeting. The specific date of the hearing will be provided at least ten days prior to the hearing. At the hearing, the Regional Board will consider evidence regarding the violation(s) alleged in the ACL Complaint. After considering the evidence, the Regional Board may impose the proposed civil liability, impose a higher or lower amount, or decline to impose any liability.

The hearing will be held at:

**Video and Teleconference Only, Zoom platform
No Physical Meeting Location**

The Parties (defined in Section V.A) will be provided Zoom meeting information prior to the hearing. Interested Persons (defined in Section V.B) presenting oral, non-evidentiary

comments or policy statements on the ACL Complaint should follow instructions and deadlines applicable to the December 9/10, 2021 meeting on the Regional Board's Remote Meeting webpage: https://www.waterboards.ca.gov/centralcoast/board_info/remote_meeting/

For those wishing to watch the meeting without providing public comments to the Regional Board, live video and audio broadcasts of the hearing will be available via the internet at <https://cal-span.org/static/index.php>.

The Regional Board's meeting agenda will be issued at least ten days before the meeting and posted on the Regional Board's meetings webpage at https://www.waterboards.ca.gov/centralcoast/board_info/agendas/. Any changes to the hearing location, e.g., to add a physical location, will be included in the Regional Board's meeting agenda. The hearing may be rescheduled or continued to a later date. Please check the Regional Board's meetings website for the most up-to-date information.

Should there not be a quorum of the Regional Board on the scheduled date of the hearing, the hearing will be conducted before a panel of the Regional Board. Water Code section 13228.14 authorizes a Hearing Panel of three or more Regional Board members to conduct a hearing to consider evidence regarding the alleged violation(s) in the ACL Complaint. After considering the evidence, the Hearing Panel may recommend that the Regional Board impose the proposed civil liability, impose a higher or lower amount, or decline to assess any liability. The Hearing Panel will report its recommendation and proposed ACL Order to the Regional Board at a future meeting.

II. Presiding Officer

For the purposes of this Hearing Procedure, the Presiding Officer is the Chair of the Regional Board or another member of the Regional Board (or Hearing Panel) designated in writing by the Chair of the Regional Board.

III. Hearing Waiver

Water Code section 13323, subdivision (b), requires a hearing on the ACL Complaint within 90 days of service of the ACL Complaint; however, the Respondents may waive this right. The Respondents may decide to waive the hearing requirement and pay the full proposed liability amount and settle the ACL Complaint, contingent on the Regional Board's approval of the settlement. Alternatively, the Respondents may decide to waive the right to a hearing within 90 days to (1) engage in settlement discussions or (2) seek additional time to prepare for the hearing.

To waive the hearing requirement for any of the above reasons, the Respondents should complete and submit the *Waiver Form for Administrative Civil Liability Complaint (Waiver Form)*, included with the ACL Complaint. The ACL Complaint states that the deadline to submit the Waiver Form is October 11, 2021. The cover letter and Waiver Form the Prosecution Team provided to the Respondents and transmitted to the Advisory Team on September 14, 2021, states that the Advisory Team attorney must receive the signed Waiver Form by October 14,

2021. To resolve this potential conflict in due dates, the “Important Deadlines” table, below, incorporates the October 14, 2021 deadline. Any request to postpone the hearing must be approved by the Presiding Officer.

IV. Adjudicatory Hearing Regulatory Framework

A. Applicable Statutes and Regulations

The following statutes and regulations, as implemented by this Hearing Procedure, govern the hearing on the ACL Complaint:

1. California Water Code section 13323.
2. Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.), excluding Article 8 (*Language Assistance*), Article 13 (*Emergency Decision*), Article 14 (*Declaratory Decision*) and Article 16 (*Administrative Adjudication Code of Ethics*).
3. Evidence Code sections 801 through 805.
4. Government Code section 11513.
5. California Code of Regulations, title 23, section 648 et seq.
6. State Water Resources Control Board’s Water Quality Enforcement Policy (Enforcement Policy).

These statutes and regulations are available online at https://www.waterboards.ca.gov/laws_regulations. Except for Government Code section 11513, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

B. Separation of Prosecutorial and Advisory Functions

Regional Board staff and attorneys that have prepared the ACL Complaint (Prosecution Team) have been separated from Regional Board staff and attorneys that will advise the Regional Board (or Hearing Panel) on the ACL Complaint (Advisory Team). The Prosecution Team will present evidence for consideration by the Regional Board (or Hearing Panel). The Advisory Team provides legal and technical advice to the Regional Board (or Hearing Panel). Members of the Advisory Team and Prosecution Team are identified below.

Advisory Team:

Matthew Keeling, Executive Officer
Central Coast Regional Water Quality Control Board

Daniel Pelikan, Engineering Geologist
Central Coast Regional Water Quality Control Board

Stephanie Yu, Attorney IV
Office of the Chief Counsel, State Water Resources Control Board

Christopher Moskal, Attorney
Office of the Chief Counsel, State Water Resources Control Board

Prosecution Team:

Thea Tryon, Assistant Executive Officer
Central Coast Regional Water Quality Control Board

Sheila Soderberg, Senior Engineering Geologist
Central Coast Regional Water Quality Control Board

Sarah Treadwell, Engineering Geologist
Central Coast Regional Water Quality Control Board

Tamara Anderson, Senior Water Resource Control Engineer
Central Coast Regional Water Quality Control Board

Todd Stanley, Water Resource Control Engineer
Central Coast Regional Water Quality Control Board

Naomi Rubin, Attorney III
Office of Enforcement, State Water Resources Control Board

Paul Ciccarelli, Attorney III
Office of Enforcement, State Water Resources Control Board

David Boyers, Assistant Chief Counsel
Office of Enforcement, State Water Resources Control Board

Members of the Prosecution Team who normally supervise members of the Advisory Team are not acting as their supervisors in this proceeding. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding.

C. Ex Parte Communications

Any communication regarding any issue in this proceeding to a Regional Board member or any member of the Advisory Team by a Party or Interested Person that is made without notice and opportunity for all Parties to participate in the communication is considered an “ex parte” communication. Ex parte communications are prohibited, except as authorized by statute

(e.g., communications regarding non-controversial procedural matters). (Gov. Code, § 11430.10 et seq.)

D. Evidentiary Standards

Government Code section 11513 and Evidence Code sections 801 through 805 apply to this proceeding.

The technical rules of evidence do not apply to this proceeding. The Parties may submit any relevant evidence that is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before conclusion of all testimony or closing statement if one is provided.

V. Hearing Participants

A. Parties

Parties are the primary participants in the hearing. Parties may present written evidence, offer witness testimony, cross-examine witnesses, and provide closing statements. Parties may be asked to respond to questions from the Regional Board (or Hearing Panel) and Advisory Team.

The following are Parties to this proceeding:

1. Regional Board Prosecution Team
2. Chris Mathys, Rhine, L.P., and Oro Financial of California, Inc.
3. Any other person or entity designated as a party by the Presiding Officer in accordance with Section V.C.

B. Interested Persons (Non-Parties)

Interested Persons include any persons or entities that are interested in the outcome of the proceeding but that have not been designated as a party. Interested Persons may present written or oral non-evidentiary policy statements.

Interested Persons may not submit evidence (e.g., photographs, eye-witness testimony, and monitoring data). Any person or entity that would like to submit evidence should request to be designated as a party pursuant to Section V.C.

Any Interested Person wishing to present oral non-evidentiary policy comments or statements (i.e., oral comments) on the ACL Complaint during the hearing should submit a virtual speaker card in accordance with the instructions and deadlines applicable to the December 9/10, 2021 meeting on the Regional Board's Remote Meeting webpage, Requesting to Speak (the "Virtual Speaker Card") section:

https://www.waterboards.ca.gov/centralcoast/board_info/remote_meeting/

Interested Persons are not subject to cross-examination but may be asked to respond to clarifying questions from the Regional Board (or Hearing Panel) and Advisory Team.

It is the responsibility of the Prosecution Team to ensure that information distributed by the Advisory Team is promptly available to known Interested Persons, through either direct distribution from the Prosecution Team or posting on the Regional Board's Enforcement webpage.

C. Requesting Party Status

Any Interested Person who wishes to participate in the hearing as a party must submit a request in writing by the deadline listed under "Important Deadlines" below. The request must include the following information at a minimum:

1. How the issues to be addressed at the hearing substantially affect the requestor's interests, and
2. Why the existing Parties do not adequately represent the requestor's interests.

The request for party status must also include any requested revisions to this Hearing Procedure.

A Party must submit any written objection to a request for party status by the deadline listed under "Important Deadlines" below.

Following the deadline to submit objections to party status requests, the Presiding Officer will promptly respond to any timely written requests for party status. The Presiding Officer will not grant a request for party status if the Presiding Officer determines the designation of the requestor as a party will impair the interests of justice or the orderly and prompt conduct of the proceeding. The Presiding Officer, when granting a request for party status, may impose restrictions on the requestor's hearing participation, including limiting or excluding the use of cross-examination and other procedures, to promote the orderly and prompt conduct of the proceeding. Unless and until an Interested Person is granted party status, the deadlines for Interested Persons shall continue to apply.

VI. Prehearing Submittal of Non-Evidentiary Policy Statements by Interested Persons (Written Comments)

A. Non-Evidentiary Policy Statements

On September 14, 2021, the Prosecution Team posted the ACL Complaint on the Regional Board's Enforcement webpage and invited written comments on the ACL Complaint. The deadline for Interested Persons to submit written non-evidentiary policy statements regarding the ACL Complaint is established in this Hearing Procedure and listed in the "Important Deadlines" table, below. Written statements must be submitted in accordance with Section X.A. Interested Persons are not required to submit written statements to speak at the hearing.

As of September 20, 2021, the Regional Board's Enforcement webpage directs Interested Persons to submit written comments regarding the ACL Complaint to Tamara.Anderson@waterboards.ca.gov; however, Section X.A, Submittal Timing and Format, provides that all submittals, including written non-evidentiary policy statements, must be sent to the "Primary Contacts," identified below.

To ensure that the Respondents, any additional Parties, and the Advisory Team receive the written non-evidentiary policy statements that may have been sent to only the Prosecution Team, the Prosecution Team is directed to promptly distribute the written non-evidentiary policy statements it receives to the "Primary Contacts" below when it is unclear whether the Interested Person also sent the comments to the Respondents, any additional Parties, and the Advisory Team.

B. Responding to Interested Person Non-Evidentiary Policy Statements

A Party must submit to the Advisory Team any response to Interested Person written policy statements by the deadline listed in the "Important Deadlines" table, below.

VII. Prehearing Submittals by Parties

A. Prehearing Evidence and Argument Submittals (Excluding Rebuttal Evidence)

The Parties must submit the following information in advance of the hearing by the deadline listed in the "Important Deadlines" table, below:

1. All evidence, excluding witness testimony to be presented orally at the hearing, and an exhibit list providing an exhibit number and brief description of each exhibit. Evidence already in the Regional Board's public files may be submitted by reference as long as the evidence and location are clearly identified. The file names of any electronic copies of exhibits must identify the Party submitting the exhibit, the exhibit number, and a brief identification of the exhibit (e.g., "Resp Ex. 1 - Permit.pdf").

2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the 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.

B. Prehearing Rebuttal Evidence Submittals

Rebuttal evidence is evidence offered to disprove or contradict evidence presented by an opposing Party.

The Parties must submit any rebuttal evidence in advance of the hearing by the deadline listed in the "Important Deadlines" table, below. Rebuttal evidence shall be limited to rebutting the scope of previously submitted materials; rebuttal evidence that is not responsive to previous submittals may be excluded by the Presiding Officer.

The requirement to submit rebuttal evidence in advance of the hearing applies only to rebut timely-submitted written evidence. Rebuttal evidence pertaining to an issue raised solely during oral testimony need not be submitted in advance of the hearing.

C. Prehearing Objections to Evidentiary Submittals

A Party must submit any objections to prehearing evidentiary submittals by the deadlines listed in the "Important Deadlines" table, below.

These deadlines do not apply to objections to late-submitted evidence. Objections to late-submitted evidence must be made within seven days of the late submittal or at the hearing, whichever is earlier.

D. Prehearing Proposed Findings of Fact and Conclusions of Law

The Prosecution Team must submit, and the other Parties may submit, Proposed Findings of Fact and Conclusions of Law for consideration by the Regional Board (or Hearing Panel) and Advisory Team. The Proposed Findings of Fact and Conclusions of Law must include the Party's proposed penalty calculation, using the methodology prescribed by the Enforcement Policy. The Parties may use this opportunity to highlight specific evidence and argument for the Regional Board's (or Hearing Panel's) consideration.

Proposed Findings of Fact and Conclusions of Law must be submitted in Microsoft Word format by the deadline listed in the "Important Deadlines" table, below. The Presiding Officer may prescribe a page limit for the Proposed Findings of Fact and Conclusions of Law.

E. Prohibition on Surprise Evidence

It is the policy of the Regional Board to discourage surprise testimony and exhibits. The Presiding Officer may refuse to admit proposed exhibits or testimony that are not submitted in accordance with this Hearing Procedure and shall refuse to do so when there is a showing of prejudice to any Party or the Regional Board. Excluded material will not be considered.

VIII. Revisions to Hearing Procedure and Prehearing Conference

A. Revisions to Hearing Procedure

The Presiding Officer may revise this Hearing Procedure for good cause (1) on the Presiding Officer's own motion or (2) upon request from any Party or Interested Person seeking party status. A Party or Interested Person seeking party status requesting revisions to this Hearing Procedure must submit the request in writing by the deadline listed under "Important Deadlines" below. Before revising this Hearing Procedure, the Presiding Officer will provide the Parties an opportunity to comment.

B. Prehearing Conference

The Presiding Officer or its designee, upon its own motion or upon request from a Party, may schedule a Prehearing Conference with the Parties to discuss any prehearing matter, such as revisions to this Hearing Procedure, designation of additional parties, or evidentiary objections.

IX. Hearing

A. Order of Proceeding

The Presiding Officer will conduct the hearing on the ACL Complaint generally in the order listed under California Code of Regulations, title 23, section 648.5. The Presiding Officer may modify the order of proceeding for good cause.

B. Administration of Oath

All persons intending to testify at the hearing must take the oath administered by the Presiding Officer.

C. Witnesses

Any witness providing written testimony must appear at the hearing and affirm that the written testimony is true and correct and be available for cross-examination.

D. Hearing Time Limits

Parties: Each Party will have a combined total of **30 minutes** to present evidence (including examining witnesses), cross-examine witnesses, and provide a closing statement.

Interested Persons: Each Interested Person will have **3 minutes** to present oral, non-evidentiary comments or policy statements.

Questions from the Regional Board (or Hearing Panel) and the Advisory Team, responses to such questions, and discussion of procedural issues do not count against these time limits.

E. Requesting Additional Hearing Time

Hearing participants who would like additional time must submit their request by the deadline listed under “Important Deadlines” below. Additional time may be provided at the discretion of the Presiding Officer upon a showing that additional time is necessary.

F. Visual Presentations

Each Party may use PowerPoint and other visual presentations at the hearing. The presentation content shall not exceed the scope of previously submitted written material. The Parties must submit their presentations, if any, by the deadline listed under “Important Deadlines” below.

Interested Persons may use a visual presentation as an aid to their oral, non-evidentiary comments or policy statements only with the Presiding Officer’s prior approval.

X. Miscellaneous

A. Submittal Timing and Format

All submittals made pursuant to this Hearing Procedure must be **received by** 5:00 p.m. on the respective due date within the “Important Deadlines” below. All submittals must be sent to the “Primary Contacts,” identified below. Electronic copies are encouraged. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Presiding Officer will not reject materials solely for failure to provide electronic copies.

B. Availability of Documents

The ACL Complaint and all submittals made in accordance with this Hearing Procedure are available upon request by contacting the Prosecution Team, identified in the “Primary Contacts” below.

C. Questions

Questions concerning this Hearing Procedure may be addressed to the Advisory Team attorneys, identified in the “Primary Contacts” below.

PRIMARY CONTACTS

Advisory Team:

Matthew Keeling, Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
matt.keeling@waterboards.ca.gov
(805) 549-3685

Daniel Pelikan, Engineering Geologist
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Daniel.Pelikan@Waterboards.ca.gov
(805) 549-3880

Stephanie Yu, Attorney IV
Office of the Chief Counsel, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0111
Stephanie.Yu@waterboards.ca.gov
(916) 341-5157

Christopher Moskal, Attorney
Office of the Chief Counsel, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0111
Christopher.Moskal@waterboards.ca.gov
(916) 341-5184

Prosecution Team:

Thea Tryon, Assistant Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
thea.tryon@waterboards.ca.gov
(805) 542-4776

Sheila Soderberg, Senior Engineering Geologist
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
sheila.soderberg@waterboards.ca.gov
(805) 549-3592

Sarah Treadwell, Engineering Geologist
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Sarah.Treadwell@waterboards.ca.gov
(805) 549-3695

Tamara Anderson, Senior Water Resource Control Engineer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tamara.Anderson@waterboards.ca.gov
(805) 549-3334

Todd Stanley, Water Resource Control Engineer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Todd.Stanley@waterboards.ca.gov
(805) 542-4769

Naomi Rubin, Attorney III
Office of Enforcement, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0111
Naomi.Rubin@waterboards.ca.gov
(916) 341-5677

Paul Ciccarelli, Attorney III
Office of Enforcement, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0111
Paul.Ciccarelli@Waterboards.ca.gov
(916) 322-3227

David Boyers, Assistant Chief Counsel
Office of Enforcement, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0111
David.Boyers@waterboards.ca.gov
(916) 341-5276

All persons identified in the cover letter transmitting the ACL Complaint to the Respondents who are not members of the Advisory Team are listed as Primary Contacts for the Prosecution Team in this matter. If not all of the listed persons or additional persons should be included in the list of Primary Contacts, please submit this request to the Advisory Team.

Respondents:

Mr. Chris Mathys
2304 West Shaw Avenue, Suite 102
Fresno, CA 93711
(559) 978-8410
mathys@orofinancial.net

Rhine LP
Attn: Mr. Tom Miles
2304 West Shaw Avenue, Suite 102
Fresno, CA 93711

Oro Financial of California Inc.
Attn: Mr. David Fike
2304 West Shaw Avenue, Suite 102
Fresno, CA 93711

IMPORTANT DEADLINES

Note: Where a deadline falls on a weekend or state holiday, the deadline is extended to the following business day.

Deadline	Event	Hearing Procedure Section
September 14, 2021	Prosecution Team issued ACL Complaint and provided notice of opportunity for Interested Persons to comment	
September 20, 2021	Advisory Team issued Tentative Hearing Procedure	
September 29, 2021	Parties' deadline to request revisions to Hearing Procedure	Section VIII.A
	Interested Persons' deadline to request party status. If requesting party status, this is also the deadline to request revisions to Hearing Procedure.	Section V.C
October 6, 2021	Parties' deadline to submit objections to party status requests	Section V.C
October 14, 2021	Respondent's deadline to submit <i>Waiver Form</i>	Section III
	Interested Persons' deadline to submit written non-evidentiary policy statements	Section VI.A
October 29, 2021	Prosecution Team's deadline to submit prehearing evidence and argument (excluding rebuttal evidence)	Section VII.A
November 10, 2021	Remaining Parties' (including the Respondent(s)) deadline to submit prehearing evidence and argument (excluding rebuttal evidence)	Section VII.A
November 17, 2021	Parties' deadline to submit prehearing rebuttal evidence	Section VII.B
	Parties' deadline to submit responses to Interested Person non-evidentiary policy statements	Section VI.B
	Parties' deadline to submit objections to prehearing evidence submittals (excluding rebuttal evidence)	Section VII.C
	Deadline to submit requests for additional hearing time	Section IX.E

Deadline	Event	Hearing Procedure Section
November 24, 2021	Parties' deadline to submit objections to prehearing rebuttal evidence	Section VII.C
	Parties' deadline to submit Proposed Findings of Fact and Conclusions of Law	Section VII.D
December 6, 2021	Parties' deadline to submit copy of visual presentations	Section IX.F
December 9/10, 2021	Hearing Date	