

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

These Revised Hearing Procedures reflect changes per the Advisory Team order on 24 July 2020.

REVISED HEARING PROCEDURES

FOR CEASE AND DESIST ORDER
PROPOSED TO BE ISSUED TO

SETTON PISTACHIO OF TERRA BELLA, INC.
TERRA BELLA PISTACHIO FACILITY
TULARE COUNTY

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

The Central Valley Regional Water Quality Control Board (Board) has the authority to issue Cease and Desist Orders for persons who violate Waste Discharge Requirements. The Board's Prosecution Team has issued a tentative Cease and Desist Order (CDO) for Setton Pistachio of Terra Bella, Inc. (Discharger) related to its operation of a pistachio processing facility in the community of Terra Bella in Tulare County. The CDO describes violations of Waste Discharge Requirements (WDRs) Order 92-191, and proposes compliance before the start of the 2020 processing season. The Board has scheduled a hearing to consider the matter on the following date:

13-14 August 2020
Meeting to be conducted remotely (e.g., via the Zoom
videoconference platform)

At the hearing, the Board will receive testimony regarding the alleged violations. After considering the evidence, the Board may issue the CDO with or without modifications, decline to issue the CDO, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The Meeting Agenda will be posted at least ten days before the meeting on the [Board's website](#), at the following address:

(https://www.waterboards.ca.gov/centralvalley/board_info/meetings/)

To ensure a fair hearing, the Board staff and attorneys that have issued the tentative CDO (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

These Hearing Procedures have been proposed by the Prosecution Team for the adjudication of CDO matters and is subject to further review by the Advisory Team. Objections to these

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Hearing Procedures must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of these Hearing Procedures. The Board's Advisory Team will promptly respond to all timely objections to these Hearing Procedures after consulting with the Board Chair.

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

I. Hearing Participants

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

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

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

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

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

1. Central Valley Water Board Prosecution Team
2. Discharger
3. Terra Bella Voice for Change (TBVC)

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

II. Hearing Time Limits

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

1. Board Prosecution Team: **45 minutes**

2. Discharger: **45 minutes**

3. TBVC: **20 minutes**

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

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the “Important Deadlines” page of these Hearing Procedures. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used but Board questions and the responses to such questions, and discussions of procedural issues will not count against any time limits.

III. Documents in Evidence and Availability of Board Files

The Board’s Prosecution Team maintains a file containing the tentative CDO and all related documents at the Board’s office at 1685 E Street in Fresno, California. Other submittals received in accordance with these Hearing Procedures will be added to the file unless the Board rules to exclude them. Due to restrictions related to Covid-19, it may not be possible to review the file at the Board’s office. Persons interested in reviewing the file should contact the Prosecution Team to discuss such request. Documents may also be [posted online](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.html) at:

(https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.html)

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

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

The Prosecution Team and all other Designated Parties (including the Discharger) must electronically submit (via e-mail or FTP download) the following in advance of the hearing:

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

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

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

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

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

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

120 Page Designation: Each Designated Party, including the Board's Prosecution Team, may submit PDFs totaling no more than 120 pages, derived from such Designated Party's submitted evidence, to be included in a computer folder for the Board's review before and during the hearing. These PDFs must either be excerpts from evidence submitted by such Designated Party, or entire documents included in such evidence. A Designated Party may wish to use this opportunity to select important pages from its evidence, or pages that will be repeatedly referenced during that Designated Party's presentation. The tentative CDO, the proposed CDO (if different), these Hearing Procedures, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

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

V. Miscellaneous Matters

Summary Sheet and Proposed CDO: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing

controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed CDO for the Board's consideration. The proposed CDO shall be substantively based on the allegations made in the tentative CDO but may contain revisions reflecting the evidence submitted after the tentative CDO was issued.

Presentations: PowerPoint and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously submitted material. These presentations must be provided to the Advisory Team before the hearing in electronic format so that they may be included in the administrative record. For hearings conducted remotely (e.g., via the Zoom videoconference platform), anyone wishing to display material during their portion of the presentation should contact the Advisory Team to discuss logistics.

Witnesses: All witnesses who have submitted written testimony should be available to appear during the hearing to affirm that the testimony is true and correct and should be available for cross-examination. The failure of a witness to be available during the hearing may result in the submitted testimony being treated as hearsay. Due to restrictions related to Covid-19, it is anticipated that witnesses will need to be available to appear remotely (e.g., via the Zoom videoconference platform). Log in details will be provided prior to the hearing.

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

Applicable Regulations: The [regulations governing adjudicatory hearings](https://www.waterboards.ca.gov/laws_regulations/) before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: (https://www.waterboards.ca.gov/laws_regulations/). Copies of these regulations will be provided upon request. Any procedures not provided by these Hearing Procedures are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing. Due to impacts from Covid-19, orders by the Governor may impact how the hearing is conducted.

VI. Questions

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

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM	
Patrick Pulupa, Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4839 patrick.pulupa@waterboards.ca.gov	Bayley Toft-Dupuy, Esq. State Water Board, Office of Chief Counsel 1001 I Street, 22 nd Floor Sacramento, CA 95814 Phone: (916) 916-341-5165 bayley.toft-dupuy@waterboards.ca.gov
BOARD PROSECUTION TEAM*	
Clay Rodgers, Assistant Executive Officer 1685 E Street Fresno, CA 95670 Phone: (559) 445-5102 clay.rodgers@waterboards.ca.gov	Daniel S. Kippen, Esq. State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 341-5272 dan.kippen@waterboards.ca.gov
David Lancaster, Esq. State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 341-5195 david.lancaster@waterboards.ca.gov	
DISCHARGER	
Setton Pistachio of Terra Bella, Inc. Attention: Jeffrey Gibbons 9370 Road 234 Terra Bella, CA 93270 Phone: (559) 535-6050 jgibbons@settonfarms.com	

*The Board's Prosecution Team also includes: Dale Harvey, Supervising WRCE, Kari Holmes, Supervising WRCE, Russell Walls, Senior WRCE, and Omar Mostafa, WRCE.

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the “Primary Contacts” table, or by providing information on how to download the documents from an FTP site. It is not necessary to submit documents to Interested Persons.

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

16 July 2020	Prosecution Team issues tentative CDO and Hearing Procedures.
21 July 2020	Objections due on Hearing Procedures. Deadline to request “Designated Party” status. Digital copies of all of these documents must be submitted to the Prosecution Team.
24 July 2020	Prosecution Team’s deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements,” excluding witness information under subparagraphs 3 and 4.
28 July 2020	Prosecution Team’s deadline to submit witness information under subparagraphs 3 and 4 of “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”
29 July 2020	Deadline for public comment on tentative CDO.
6 August 2020	Remaining Designated Parties’ (including the Discharger’s) deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.” Interested Persons’ written statements are due. Digital copies of all of these documents must be submitted to the Prosecution Team.
10 August 2020	All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. Digital copies of rebuttal documents must be submitted to the Prosecution Team. Deadline for each Designated Party to submit PDFs totaling no more than 120 pages derived from that Designated Party’s submittal of evidence. Deadline to submit requests for additional time.

11 August 2020	All Designated Parties may submit responses to written statements submitted by Interested Persons. Prosecution Team submits Summary Sheet.
11 August 2020	Submit PowerPoint to Advisory Team and all Designated Parties.
13-14 August 2020	Board Hearing (to start no earlier than 6:00 pm on 13 August 2020)