
Colorado River Basin Regional Water Quality Control Board

Public Notice No. 7-23-29-3
Issued May 16, 2023
Reissued June 20, 2023
Further Revised August 1, 2023

REISSUED NOTICE OF PUBLIC HEARING AND TENTATIVE HEARING PROCEDURE

TENTATIVE CEASE AND DESIST ORDER R7-2023-XXXX

TWO-NINE HOSPITALITY, INC.
HOLIDAY INN EXPRESS — TWENTYNINE PALMS / JOSHUA TREE
WASTEWATER TREATMENT AND DISPOSAL SYSTEM
TWENTYNINE PALMS
SAN BERNARDINO COUNTY

REISSUED NOTICE OF PUBLIC HEARING

October 10, 2023
9:00 am
Colorado River Basin Water Board's Boardroom
73-720 Fred Waring Drive, Suite 100
Palm Desert, California 92260

Remote Participation Option Available
(see *instructions below*)

Tentative Order Proposed for Adoption

Pursuant to Water Code section 13301, the California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board or Board) may issue an order directing parties to cease and desist certain existing or threatened violations of Waste Discharge Requirements (WDRs). Such orders are referred to as Cease and Desist Orders (CDOs).

On May 10, 2023, the Executive Officer was notified that Colorado River Basin Water Board staff had issued a Tentative Cease and Desist Order (Tentative Order or Tentative CDO) to Two-Nine Hospitality, Inc. (Discharger), which owns and operates the

EDWARD MUZIK, CHAIR | PAULA RASMUSSEN, EXECUTIVE OFFICER

TWO-NINE HOSPITALITY, INC.

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Holiday Inn Express—Twentynine Palms/Joshua Tree, Wastewater Treatment and Disposal System (Facility), which is currently regulated under WDRs Order R7-2009-0010 (WDRs Order). The Tentative Order describes multiple violations of the WDRs Order; and requires immediate compliance with the WDRs Order, as well as other relevant deliverables (e.g., submittal of technical reports).

The Colorado River Basin Water Board has scheduled a hearing to consider issuance of the Tentative Order at its upcoming public meeting at **9:00 am on October 10, 2023**. The hearing will be conducted in-person in the Boardroom at the Board's office in Palm Desert, California, with an option for remote participation of Interested Parties via the Zoom videoconferencing platform.¹ In accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the [Board's website](http://www.waterboards.ca.gov/coloradoriver/board_info/agenda) (www.waterboards.ca.gov/coloradoriver/board_info/agenda) at least 10 days in advance of the meeting.

At the hearing, the Colorado River Basin Water Board members will receive testimony regarding the alleged violations. At the hearing, the Board may: (a) issue the Tentative Order as a CDO, with or without modifications; (b) decline to issue the Tentative Order; or (c) continue the hearing to a later date.

Adoption of Hearing Procedure

Attached to this Notice is the adopted Hearing Procedure, as revised on August 1, 2023, which governs the conduct of proceedings related to consideration of the Tentative Order. For the purposes of California Code of Regulations, title 23, section 648 et seq., the adopted Hearing Procedure (including any subsequent revisions thereto) shall be incorporated as part of this Notice.

¹ Although Interested Persons may submit oral comments at the hearing, the parties' will be required to attend the hearing and participate in person.

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REISSUED NOTICE OF PUBLIC HEARING**Opportunity for Public Participation**

The Colorado River Basin Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments. The deadline to submit written comments was July 11, 2023. **No further written comments will be accepted at this time.**

Interested Persons will also be provided the opportunity to orally present general policy statements to the Colorado River Basin Water Board members at the hearing. Such statements will generally be limited to **3 minutes** per Interested Person, though the Board may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless they are formally recognized as a “Designated Party” per the Hearing Procedure, Interested Persons are not parties entitled to directly participate in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to cross-examination. Although the Board will consider oral and written comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

Requests for “Designated Party” Status

The Hearing Procedure governs the process by which Interested Persons apply for “Designated Party” status. The deadline for such applications was June 27, 2023. No applications were received. **No further requests will be considered at this time.**

Public File Available for Review

The Colorado River Basin Water Board maintains a public file containing the Tentative CDO and related documents (including party submittals per the attached Hearing Procedure) at its office located at **73-720 Fred Waring Drive, Suite 100, Palm Desert, California 92260**. Persons interested in reviewing the file should contact **Jose Cortez** via email at Jose.Cortez@WaterBoards.ca.gov. Please also copy **Cassandra Owens** (Cassandra.Owens@WaterBoards.ca.gov) on your email to Jose Cortez.

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Instructions for Access to Remote Meeting

The hearing on the Tentative Order will be conducted remotely via the ZOOM video conferencing platform and also broadcasted via [Cal-Span](https://cal-span.org) (<https://cal-span.org>).

If you do not intend to speak at the hearing, you can watch the meeting via Cal-Span livestream. However, if you intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. To obtain the ZOOM Meeting ID and Passcode, send an email with the following information to Mary.Castaneda@WaterBoards.ca.gov.

- Subject Line: October 10, 2023 – Speaker Comment
- Body of Email: (1) Your name;
- (2) Any individuals and/or organizations you will be representing at the hearing;
- (3) The agenda item name and agenda item number of the agenda item on which you will be speaking;
- (4) Whether you definitely intend to speak, or alternatively, whether you are unsure and will decide at the meeting (i.e., prior to hearing itself);
- (5) Whether you intend to participate via videoconference or telephone; and
- (6) If calling in, the last three digits of the phone number you will be calling from.

The Clerk will promptly respond to your email with the Meeting ID and Password. However, if you do not send your email by 5:00 pm on the day before the meeting, there is a possibility you will not receive a response prior to the start of the meeting. This means that you may need to begin watching the meeting via the livestream until the Meeting ID and Passcode are provided. In any event, please send your email request as soon as possible once the agenda has been posted online.

For general questions on meeting access, to request a special accommodation, or to request interpreter services, please send an e-mail to Mary.Castaneda@waterboards.ca.gov or call (916) 464-3291. Please request special

Revised August 1, 2023

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accommodations or interpreter services at least 10 business days in advance of the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Questions

All questions regarding this proceeding should be addressed via email to the Advisory Team attorney at David.Lancaster@WaterBoards.ca.gov.



Paula Rasmussen
Executive Officer

Attachments:
Adopted Hearing Procedure (rev. August 1, 2023)

Colorado River Basin Regional Water Quality Control Board

HEARING PROCEDURE

Effective Date: August 1, 2023

Proposed Action: Adoption of Tentative Cease and Desist Order R7-2023-XXXX for Two-Nine Hospitality, Inc., Holiday Inn Express—Twentynine Palms/Joshua Tree, Twentynine Palms, San Bernardino County

Hearing Date: October 10, 2023 (previously September 12, 2023)

Time: 9:00 am

Location: Boardroom of Colorado River Basin Water Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, California 92260

Discharger: Two-Nine Hospitality, Inc.

Facility: Holiday Inn Express — Twentynine Palms / Joshua Tree
Wastewater Treatment and Disposal System
WDID: 7A361023001

County: San Bernardino County

TWO-NINE HOSPITALITY, INC.

HOLIDAY INN EXPRESS — TWENTYNINE PALMS / JOSHUA TREE

WASTEWATER TREATMENT AND DISPOSAL SYSTEM,

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ADOPTED HEARING PROCEDURE**A. Applicable Laws & Regulations**

For purposes of California Code of Regulations, title 23 (Title 23), section 648 et seq., this hearing constitutes an “adjudicative proceeding.” This proceeding is governed by the following statutes, regulations and policies:

- (1) California Water Code section 13301;
- (2) Title 23, sections 648 through 648.8, available review on the [State Water Board's laws and regulations page](https://www.waterboards.ca.gov/laws_regulations) (https://www.waterboards.ca.gov/laws_regulations);
- (3) 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*);
- (4) Evidence Code sections 801 through 805;
- (5) Government Code section 11513; and
- (6) State Water Board's [Water Quality Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf), effective October 5, 2017 (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf).

Apart from Government Code section 11513 (see above), Chapter 5 of the Administrative Procedure Act (Gov. Code, § 11500 et seq.) shall not apply to this hearing.

Any procedures not provided by the Hearing Procedure prescribed herein are inapplicable to this hearing.

B. Parties and Separation of Functions

To ensure that the Discharger receives a fair hearing, Colorado River Basin Water Board staff and counsel have undertaken a separation of functions wherein Board members will be advised by an “Advisory Team” comprised of staff and counsel that have not participated in development of the Tentative Order. (See Gov. Code, § 11425.10, subd. (a)(4).) The Advisory Team, Prosecution Team and Discharger (i.e., parties) in this proceeding are listed below:

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Advisory Team

Paula Rasmussen
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Colorado River Basin Water Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
(760) 776-8981
Paula.Rasmussen@WaterBoards.ca.gov

David Lancaster
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State Water Board, Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5195
David.Lancaster@WaterBoards.ca.gov

Prosecution Team

Cassandra Owens
Assistant Executive Officer
Colorado River Basin Water Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
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Cassandra.Owens@WaterBoards.ca.gov

Jose Cortez
Senior Water Resources Control Engineer
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73-720 Fred Waring Drive, Suite 100
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Jose.Cortez@Waterboards.ca.gov

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Michael Perez

Water Resources Control Engineer

Colorado River Basin Water Board

73-720 Fred Waring Drive, Suite 100

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Wendy Wyels

Environmental Program Manager

State Water Board, Office of Enforcement

P.O. Box 100, Sacramento, CA 95812

(916) 323-0595

Wendy.Wyels@WaterBoards.ca.gov

David Boyers

Assistant Chief Counsel

State Water Board, Office of Enforcement

P.O. Box 100, Sacramento, CA 95812

(916) 341-5276

David.Boyers@WaterBoards.ca.gov

Discharger and Representatives

Two-Nine Hospitality, Inc.

Discharger (Corporation)

Prakash (Peter) Bhakta²

Director / Chief Financial Officer / Registered Agent for Service of Process

17871 Park Plaza Drive # 225, Cerritos, CA 90703

(562) 412-1307

<mailto:Peter@phmgrs.com>

² Prakash (Peter) Bhakta is designated as the principal agent, representative and point of contact for the Discharger.

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Neel Bhakta P.E. C9157

Discharger's Consultant

12316 Primrose Avenue, Whittier, CA 90602

(562) 858-4330

NBhak001@gmail.com

C. Ex Parte Contacts Prohibited

To maintain the Colorado River Basin Water Board's impartiality, ex parte contacts are prohibited. (See, e.g., Gov. Code, § 11430.10 et seq.) Ex parte contacts are those communications that are directed at the Colorado River Basin Water Board members or the Advisory Team members, regarding the pending matter, and which are not communicated in a manner open to all other persons. Communications regarding non-controversial procedural matters are not considered ex parte contacts, and are therefore not restricted under this Hearing Procedure.

To avoid ex parte contacts in pre-hearing communications, the Discharger's representatives should ensure that the Prosecution Team is copied on all written and email correspondence directed to the Advisory Team, and *vice-versa*.

D. Interested Persons (Non-Parties)

The Colorado River Basin Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments.

The deadline to submit written comments was July 11, 2023. No written comments will be accepted at this time.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Colorado River Basin Water Board at the hearing. Such statements will be limited to **3 minutes** per Interested Person for this hearing, though the Board Chair may grant additional time on a case-by-case basis. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless they are formally recognized as a "Designated Party" per the Hearing Procedure, Interested Persons are not parties entitled to directly participate in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to

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cross-examination, but may be asked to respond to clarifying questions from the Colorado River Basin Water Board or the Advisory Team. Although the Board will consider oral and written comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

E. Applications for “Designated Party” Status

By default, the only parties to an adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Dischargers named in the proposed order. (See Gov. Code, § 11405.60; Title 23, § 648.1, subd. (a).) In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a “Designated Party.” (Gov. Code, § 11440.50, Title 23, § 648.1, subd. (a).) Such determinations shall be made discretionarily on a case-by-case basis by the Executive Officer, at the direction of the Board Chair.

The deadline to request “designated party” status was June 27, 2023. No further requests will be considered at this time.

F. Pre-Hearing Submittals

To avoid the introduction of surprise testimony and exhibits (Title 23, § 648.4, subd. (a)), and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the parties to submit documentary evidence (§ 648.4, subd. (c)), witness information (§ 648.4, subd. (b)), and legal/technical memoranda to the Advisory Team prior to the hearing. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude materials that are not submitted in accordance with this Hearing Procedure. Excluded materials will not be considered by the Board. (§ 648.4, subd. (e).)

1. Electronic Submittals to Advisory Team [All Parties]

All pre-hearing submittals and rebuttals to the Advisory Team under this Hearing Procedure shall occur electronically via [File Transfer Protocol](https://ftp.waterboards.ca.gov/WebInterface/login.html) (FTP) (<https://ftp.waterboards.ca.gov/WebInterface/login.html>), except as otherwise provided below. Parties may obtain FTP log-in information from the Advisory Team.

Once a party has uploaded its materials to the FTP site, the party shall notify the Advisory Team and other parties via email, and identify each of the files that have been uploaded.

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Exhibits shall be uploaded as sequentially numbered pdf files with file names in all lower case, and following the naming conventions set forth below:

Prosecution Team: **holiday_inn_express_cdo_pt_exh_###.pdf**

Dischargers: **holiday_inn_express_cdo_disch_exh_###.pdf**

2. Submittal Index [All Parties]

Except as otherwise expressly provided below, each pre-hearing submittal shall be accompanied by a table listing each document included as part of the submittal. The table shall include the following columns: *Document Title*; *Exhibit Number*; *Exhibit Date* (i.e., when the document was generated); and *File Name*.

3. Prosecution Team Submittals

No later than 5:00 pm on **June 27, 2023**, the Prosecution Team shall submit the following materials to the Advisory Team:

- (a) All documentary evidence supporting adoption of the proposed order, with each document separately designated as sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). Each finding in the proposed order shall be supported by exhibits and/or witness testimony to be offered at the hearing.
- (b) [OPTIONAL] A memorandum articulating the Prosecution Team's legal arguments and technical analyses in support of the proposed order.
- (c) A Witness Information Sheet containing the name of each witness the Prosecution Team intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses' qualifications as an expert.
- (d) [OPTIONAL] Evidentiary objections to materials included in the Prosecution Team's submittal.

4. Discharger Submittals

No later than 5:00 pm on **August 22, 2023**, the Discharger shall submit the following materials to the Advisory Team:

- (a) Any additional documentary evidence that supports the submitting party's position with respect to the proposed order. These materials shall be separately designated as sequentially-numbered exhibits, starting with "Exhibit 1."
- (b) [OPTIONAL] A memorandum articulating the submitting party's legal arguments and technical analyses in support of their position(s) with respect to the proposed order.
- (c) A Witness Information Sheet containing the name of each witness the submitting party intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses' qualifications as an expert.

5. Prosecution Team Evidentiary Objections to Prehearing Submittals

No later than 5:00 pm on **August 29, 2023**, the Prosecution Team shall submit all evidentiary objections to materials included in the Discharger submittals. (See also Hearing Procedure, § F.4.)

6. Rebuttal Evidence [All Parties; Optional]

Notwithstanding the pre-hearing evidence submission deadlines specified above, the parties will be permitted to introduce additional evidence necessary to disprove or contradict evidence submitted by another party (Rebuttal Evidence).

By default, subdivision (f) of Title 23, section 648.4 permits parties to introduce Rebuttal Evidence for the first time during the hearing. However, the Hearing Procedure may waive this provision and require pre-submission of Rebuttal Evidence (Title 23, § 648, subd. (d).)

To maintain fairness, ensure orderly conduct of the proceeding, and avoid "surprise evidence" (see Title 23, § 648.4, subd. (a)), this Hearing Procedure requires that Rebuttal Evidence be submitted to the Advisory Team and other parties no later than 5:00 pm on **September 5, 2023**. The requirement to submit rebuttal evidence in

advance of the hearing applies only to rebut timely-submitted written evidence; the Parties will have the opportunity to rebut oral testimony submitted at the hearing.

7. Responses to Interested Party Written Comments [Not Applicable]

No written comments were submitted from Interested Parties.

8. Summary Agenda Sheet [Advisory Team]

Prior to the hearing, the Advisory Team shall prepare a Summary Agenda Sheet summarizing the ongoing controversies involved in the proceeding, and the positions taken by each of the other parties. Once finalized, the Summary Agenda Sheet will be sent to the parties via email.

9. Revised Tentative Order [All Parties, Optional]

Prior to the hearing, the parties may submit, for Advisory Team review, a Revised Tentative Order incorporating any evidence that was submitted following issuance of the original. This submittal may occur via email and need not be accompanied by an updated index table. The Revised Tentative Order shall be submitted both as a Microsoft Word file and as a PDF.

10. Presentation Slides [All Parties; Mandatory If Slides Are Used]

No later than 5:00 pm on **October 6, 2023**, the parties shall provide the Advisory Team with their presentation slides for use at the hearing, as a PowerPoint file (or similar format) and PDF printout (for inclusion in the administrative record). This submittal may occur via email and need not be accompanied by an updated index table. If the party does not intend to present slides at the hearing, no submittals are required from the party.

G. Conduct of Hearing

1. Hearing Time Limits

“Adjudicative proceedings shall be conducted in a manner ... deem[ed] most suitable to the particular case with a view toward securing relevant information expeditiously

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without unnecessary delay and expense to the parties and to the Board.” (Title 23, § 648.5, subd. (a).) To that end, it has been determined that the following time limits shall apply to the Parties at the hearing.

Prosecution Team: **20 Minutes**

Dischargers: **20 Minutes**

The above time limits are based on the Advisory Team’s review of the allegations within the Tentative Order, and based on experience in similar enforcement proceedings, and any input from the parties.

The parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Discussions on procedural issues will not count against the parties’ allotments. A timer will be used to track how much time has elapsed. This timer will be paused during Board questions and party responses to Board questions. Additional time may be provided at the discretion of the Board Chair (at the hearing), upon a showing that additional time is necessary.

2. Witness Testimony

At the hearing, witness testimony shall be limited to those subjects previously specified in the party’s Witness Information Sheet (see above). Upon request, the Board may permit testimony on additional subjects, provided that it will not result in undue prejudice to the other parties.

All witnesses who have submitted written testimony shall be available to appear during the hearing (to affirm that the testimony is true and correct), and shall be subject for cross-examination. The failure of a witness to be available during the hearing may result in the submitted testimony being treated as hearsay. (Title 23, § 648.4, subds. (d)-(e).)

All persons intending to testify at the hearing shall take the oath administered by the presiding officer. (Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648.5, subd. (a)(3).)

3. Rules of Evidence

The proceeding shall be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay shall be admissible as evidence, subject to the provisions of Government Code section 11513. Evidence

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already in the Colorado River Basin Water Board's files may be submitted by reference if the location of the evidence is clearly identified. (Cal. Code Regs., tit. 23, § 648.3.)

Absent a finding of good cause by the Board Chair, untimely objections to evidence in the parties' prehearing submittals shall be deemed waived. (See Hearing Procedure, §§ F.4.d, F.5.) Objections to the admissibility of Rebuttal Evidence must be made as soon as possible after the objecting party is aware of the submittal. (See Hearing Procedure, § F.6.)

4. Presentations

Slide presentations (e.g., PowerPoint) may be used at the hearing, provided their contents do not exceed the scope of previously submitted material. Colorado River Basin Water Board administrative staff will be running the presentation at the party's direction.

H. Requests for Extensions

Parties may request the extension of any deadline specified in this Hearing Procedure. Such requests shall be made via email to the Advisory Team, with the other parties copied on the email. The granting or denial of a request shall be exclusively within the discretion of the Executive Officer, in consultation with the Board Chair.

I. Modifications to Hearing Procedure

This Hearing Procedure may be revised by the Board Chair after appropriate notice and opportunity to be heard. For the purposes of this section, the extension of a deadline shall not be construed as a revision to the Hearing Procedure.

J. Communication via Email

To the extent practicable, all communications between the parties and the Advisory Team prior to the hearing shall occur via email, per the email addresses listed in **Section B**. The Dischargers and the Prosecution Team are encouraged to communicate in whatever manner they determine to be most conducive to the expeditious resolution of this matter.

At a minimum, all emails to the Prosecution Team shall include the attorney(s) for the Prosecution Team, who shall serve as the primary points of contact for the Prosecution

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Team (i.e., in lieu of including all members on the email). Alternatively, the parties may elect to include each Prosecution Team member on each email.

All emails to the Advisory Team shall be directed to the attorney for the Advisory Team, who shall serve as the primary point of contact for the Advisory Team; the parties may elect to include other members of the Advisory Team as well. See **Section C** for prohibition on ex parte contacts.

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SUMMARY OF DEADLINES

Table 1—Deadline

DATE	REQUIRED ACTIONS / DEADLINES
Tuesday, June 6, 2023	Deadline for All Comments/Proposed Revisions on Tentative Hearing Procedure [PASSED]
Tuesday, June 27, 2023	Requests for Designated Party Status [PASSED] Pre-Hearing Submittals from Prosecution Team [PASSED]
Tuesday, July 11, 2023	Written Comments from Interested Parties [PASSED]
Tuesday, August 22, 2023	Pre-Hearing Submittals from Discharger
Tuesday, August 29, 2023	Prosecution Team Evidentiary Objections
Tuesday, September 5, 2023	Rebuttal Evidence
Friday, October 6, 2023	Presentation Slides for Hearing
Tuesday, October 10, 2023	Public Meeting / Hearing