

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
**FINAL HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2020-0006
ISSUED TO
BALDWIN & SONS, INC., ET. AL.**

HEARING DATES: JANUARY 10, 12, AND 13
REMOTE HEARING ONLY - GOVERNMENT CODE SECTION 11133

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

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (Water Code) sections 13323 and 13385 against Baldwin & Sons, Inc.; Sunranch Capital Partners, LLC; Sunrise Pacific Construction, Inc; SRC-PH Investments, LLC; ASSR Pacific Investments, LLC; USA Portola Properties, LLC; USA Portola West, LLC; USA Portola East, LLC; Portola Project, LLC; Rancho Portola Investments, LLC; Baldwin & Sons, LLC; and Sunrise Company (Baldwin Entities); William G. Bone, individually, and dba Sunrise Company; and James P. Baldwin; Alfred E. Baldwin; Shawn M. Baldwin; Randall G. Bone; Jose Capati, and; Gary Berger (collectively, "Dischargers")¹ alleging they have violated State Water Board Order No. 2009-009-DWQ, as amended (Construction Storm Water Permit); Water Code section 13376; the Water Quality Control Plan for the San Diego Basin; and Clean Water Act Section 301. The ACL Complaint proposes that administrative civil liability in the amount of **\$9,115,932** be imposed as authorized by Water Code section 13385. Unless the Dischargers waive their right to a hearing and pay the proposed liability, a hearing will be held before the San Diego Water Board on the dates and locations set forth in this document.

¹ Pursuant to stipulations executed by the Parties, the San Diego Water Board Executive Officer ordered the following parties dismissed from the Complaint: James Baldwin; Rancho Portola Investments, LLC; William G. Bone (individually and dba the Sunrise Company); ASSR Pacific Investments, LLC; USA Portola Properties, LLC; USA Portola West, LLC; USA Portola East, LLC; Portola Project, LLC; Alfred Baldwin; and Gary Berger.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment. An agenda with the exact hearing location and instructions for registering for the remote meeting will be issued at least ten (10) days before the hearing and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedure

The hearing will be conducted in accordance with this hearing procedure. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board can be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at

https://www.waterboards.ca.gov/laws_regulations/docs/waterboards_meeting_regs.pdf

or upon request from the San Diego Water Board by contacting Catherine Hagan at (619) 521-3012. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations, section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND PROSPECTIVE DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are either "designated parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff, or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated parties in this proceeding:

1. San Diego Water Board Prosecution Team;
2. Baldwin & Sons, Inc.;
3. Sunranch Capital Partners, LLC;
4. Sunrise Pacific Construction, Inc;

5. SRC-PH Investments, LLC;
6. Baldwin & Sons, LLC;
7. Shawn M. Baldwin;
8. Randall G. Bone; and
9. Jose Capati.

Additional entities must consent to being designated parties. Parties who may be impacted by a potential order of the San Diego Water Board but who can protect their rights through another forum, such as civil litigation, are not obligated to be designated parties. If any of the parties listed above wish for additional parties to participate in the hearing, it will be at the discretion of the Advisory Team, which may consider other available forums for resolution of indemnity and contribution claims.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Team) have been separated from those who will provide advice to the San Diego Water Board (Advisory Team). Members of the Advisory Team include David Gibson, Executive Officer, Lori T. Okun, Senior Attorney, Catherine George Hagan, Senior Staff Counsel, Vincent Vu, Staff Counsel, Mike Porter, Engineering Geologist, Ben Neill, Water Resource Control Engineer (WRCE) and Wayne Chiu, Senior WRCE Specialist. The Designated Parties will be notified if any additional staff are added to the Advisory Team. Members of the Prosecution Team are Kelly Dorsey, Assistant Executive Officer; David Boyers, Assistant Chief Counsel; Julie Macedo, Senior Staff Counsel, Naomi Rubin, Senior Staff Counsel, Jeremy Haas, Environmental Program Manager; Chiara Clemente, Senior Environmental Scientist; Frank Melbourn, Water Resources Control Engineer; Laurie Walsh, Senior Water Resources Control Engineer; and Erica Ryan, Water Resources Control Engineer.

Contacts

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² Additional staff may be designated as Advisory Team members at a later date.

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People identified for the Prosecution Team may not all participate to the same degree, but are unable to serve on the Advisory Team or engage in ex parte communications with Advisory Team members, or Board Members, as described herein. If any changes are made, they will be noticed to all parties and the Advisory Team.

Dischargers:³

For Dischargers Baldwin & Sons, Inc.; Sunranch Capital Partners, LLC; Sunrise Pacific Construction; SRC-PH Investments, LLC; Baldwin & Sons, LLC; Shawn M. Baldwin; Randall G. Bone; and Jose Capati:

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Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the San Diego Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among the designated and interested parties themselves are not ex parte contacts.

³ The Chair's Ruling transmitting the original Final Hearing Procedure refers to the "Dischargers" as "Represented Parties" but both terms are used interchangeably in this Revised Final Hearing Procedure and in related correspondence.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: the designated parties represented by shared counsel Stephen Tee, Kendall Teal, Wayne Rosenbaum and Geri Bone collectively shall have a combined six hours to present evidence, cross-examine witnesses (if warranted), and provide opening and closing statements; the Prosecution Team shall have a combined six hours to present evidence, cross-examine witnesses (if warranted), and provide opening and closing statements. Each interested person shall have three (3) minutes to present a non-evidentiary policy statement. Interested persons are requested to avoid redundant comments. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board (at the hearing) upon a showing that additional time is necessary. Breaks during the hearing for rest or meals or for other reasons will be made at the discretion of the San Diego Water Board and the Chair.

Order of Proceedings

Prosecution Team opening statement

Dischargers' opening statement (Dischargers may reserve their opening statement until after the Prosecution Team concludes its case)

Prosecution Team witness testimony

Cross examination by Dischargers of Prosecution Team's witnesses

Re-direct, if appropriate

Dischargers' opening statement, if reserved

Dischargers' witness testimony

Cross examination by Prosecution Team of Dischargers' witnesses

Re-direct, if appropriate

Comments by Interested Persons

Closing comments by Prosecution Team

Closing comments by Dischargers

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, California Code of Regulations, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated 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. This information (Items 3 and 4) will be provided by the Prosecution Team on or before **January 31, 2020**. The calculation of time will be refined and rebuttal witnesses, if any, identified in the evidentiary submittal on **March 26, 2021**, consistent with final Hearing Procedures as approved by the Advisory Team.
5. The Dischargers have waived any right to raise an ability to pay defense in response to the ACL Complaint.

The Prosecution Team shall submit one (1) electronic copy of the information to Catherine George Hagan and Vincent Vu, Advisory Counsel, so that it is received no later than 5:00 p.m. on **January 10, 2020**. The Advisory Team can request modification to the method of delivery (hard copy, electronic, number of copies) at any time.

The remaining designated parties shall submit two (2) hard copies and one (1) electronic copy of the information to Lori T. Okun, Catherine George Hagan, and Vincent Vu, Advisory Counsel, so that they are received no later than 5:00 p.m. on **January 22, 2021**.⁴ The Advisory Team can request modification to the method of delivery (hard copy, electronic, number of copies) at any time.

In addition to the foregoing, each designated party (or each party represented by different counsel, in the case of the 16 parties identified above represented by Mr. Tee) shall send one (1) copy of the above information to each of the other designated parties by 5:00 p.m. on the deadline specified above. Counsel can negotiate electronic exchange, or copies for jointly-represented parties.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Lori T. Okun, Catherine George Hagan, and Vincent Vu, Advisory Counsel, as early as possible, but they must be received by **January 8**,

⁴ In the September 30, 2020 Revised Final Hearing Procedure, deadlines that would otherwise fall on December 25, 2020, under the intervals established in the Final Hearing Procedures were extended by two weeks to January 8, 2021, due to the intervening holidays.

2021. Interested persons do not need to submit written comments in order to speak at the hearing.

Electronic submission. This paragraph applies to all Designated Parties' submittals on or after May 6, 2021. Electronic submittals are required. Paper copies are not necessary. All documents must be received by 5:00 p.m. on the applicable due date. Documents sent by email will be considered timely if the email is received by the deadline. The Water Boards' email system currently limits incoming or outgoing emails to 50 megabytes. Unless the Chair or Advisory Team agrees otherwise, emails will not be considered timely if rejected by the board's email system due to size constraints or for any other reason. Submittals via an ftp or similar sharing site will be considered received when they are posted to the site and the Advisory Team and other Designated Parties receive an email with a link and any necessary password. Any Designated Party submitting documents at one time that collectively exceed one gigabyte must also provide a copy of the documents on a thumb drive sent to the Executive Officer at the San Diego Water Board's street address.

In accordance with Title 23, California Code of Regulations, section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Updated Requests for Pre-hearing Conference and Updated Witness Lists

Any designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. All Designated Parties must submit updated requests that contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5:00 p.m. on **May 24, 2021**. The updated requests must be stand-alone documents and may not incorporate prior correspondence by reference.

All Designated Parties must also update their witness lists by **May 24, 2021**.

Motion to Bifurcate Hearing

Any designated party may submit a motion to bifurcate the hearing to request that the Board hear evidence and issue a decision on responsible person issues before the Board hears evidence and issues a decision on violations and penalties. Motions to bifurcate, if any, shall be submitted to the Advisory Team with copies to all other designated parties no later than 5 p.m. on **April 2, 2021**. Responses to motions to bifurcate may be submitted to the Advisory Team with a copy to all other designated parties no later than 5 p.m. on **April 16, 2021**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5:00 p.m. on **April 2, 2021**, to the Advisory Team with a copy to all other designated parties. Any responses to objections must be submitted to the Advisory Team with a copy to all other designated parties no later than 5 p.m. on **April 16, 2021**.

Evidentiary Documents and File

The Complaint and related evidentiary documents are publicly available and may be inspected or copied at the San Diego Water Board office at 2375 Northside Drive, Suite 100, San Diego, California 92108. Other submittals received for this proceeding will be added to this case file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board. In addition, documents have been made electronically available for download through an ftp site. FTP login information has been provided to all parties. Interested parties may contact Vincent Vu, Staff Counsel for access.

Hearing Package

The Prosecution Team will prepare and submit a Hearing Package **by September 7, 2021**. The Hearing Package will consist of an Enforcement Summary Report (Enforcement Report) for the Board and a Proposed ACL Order. The Enforcement Report shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and summarize the positions taken by each of the Designated Parties. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued. The Designated Parties may submit a proposed order. The Chair retains the discretion to require or allow the parties to submit modified proposed orders after the hearing.

Questions

Questions concerning this proceeding may be addressed to Lori T. Okun, Catherine George Hagan, and Vincent Vu, Advisory Counsel.

IMPORTANT DEADLINES

January 10, 2020	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
January 10, 2020	Prosecution Team's submission of all information required under "Evidence and Policy Statements," above, except for identification of witnesses, which will be provided on or before January 31, 2020.
January 24, 2020	Objections due on proposed Hearing Procedure.
January 24, 2020	Deadline for submission of request for designated party status.
January 24, 2020	Deadline for waiver of 90-day hearing deadline (must be provided by all parties to have schedule beyond 90 days be considered by Prosecution Team and Advisory Team).
January 31, 2020	Deadline for opposition to request for designated party status.
January 31, 2020	Prosecution Team's deadline for reply to objections to Hearing Procedure, if any and to provide witness disclosures consistent with these Hearing Procedures.
February 24, 2020 ⁵	Advisory Team issues Hearing Procedure, and issues decision on requests for designated party status, if any.
December 18, 2020	Discovery Cutoff for All Designated Parties except for Prosecution Team.
January 8, 2021	Interested Persons' deadline for submission of non-evidentiary policy statements.
January 22, 2021	All Designated Parties' deadline for submission of request for pre-hearing conference.

⁵ On March 13, 2020, April 2, 2020, May 11, 2020, July 2, 2020, and September 18, 2020, the Advisory Team granted various extension requests due to the ongoing COVID-19 emergency and related restrictions. Revised Final Hearing Procedures issued on September 30, 2020, adjusted prospective prehearing dates only. Final Hearing Procedures issued on November 24, 2020 and other interim rulings also adjusted prospective prehearing dates.

January 22, 2021	All Designated Parties' deadline to request additional time at hearing.
January 22, 2021	All Designated Parties except for the Prosecution Team Deadline for submission of all information required under "Evidence and Policy Statements," above.
March 5, 2021	Discovery Cutoff for Prosecution Team.
March 26, 2021	All Designated Parties' deadline for submission of rebuttal evidence (if any), other than evidence related to alter ego and responsible corporate officer liability or the dischargers' ability to pay.
April 2, 2021	All Designated Parties' deadline for evidentiary objections and motions to bifurcate the hearing.
April 16, 2021	All Designated Parties' deadline for responses to evidentiary objections and motions to bifurcate the hearing.
May 24, 2021	All Designated Parties' deadline to submit revised prehearing conference requests and updated witness lists.
June 1, 2021	Prosecution Team's deadline for submission of rebuttal evidence (if any) regarding responsible corporate officer liability.
June 15, 2021	All Designated Parties' deadline for evidentiary objections to responsible corporate officer evidence.
June 22, 2021	Prosecution Team's deadline for responses to evidentiary objections regarding responsible corporate officer evidence.
September 7, 2021	Prosecution Team submits a "Hearing Package," consistent with these procedures.

November 30, 2021 **Dischargers' deadline to submit (i) written response to Prosecution Team's Request for Official Notice and (ii) brief regarding whether Baldwin & Sons, Inc.; Baldwin & Sons, LLC; Sunrise Pacific Construction, Inc; Jose Capati; Shawn Baldwin; and Randall Bone were dischargers based on their activities at the site.**

January 10, 12 and 13 **Hearing.**

Representative/Counsel for the Advisory Team