



## State Water Resources Control Board

### **NOTICE OF PRE-HEARING CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Pre-Hearing Conference  
on the Proposed Disciplinary Action regarding

**Benjamin B. Magana, Jr.**

(Drinking Water Distribution Operator Grade 3 Certificate No. 34232)

The Pre-Hearing Conference will commence on  
**May 25, 2023, at 1:00 p.m.**

The Pre-Hearing Conference will be held by Zoom teleconference.

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/94234671959?pwd=VnV2bHQyeDJaWkpYWm0rWUZveENwUT09>

with Meeting ID: 942 3467 1959 and Passcode: 546251

Or by calling in at:

+16699009128,,94234671959# US (San Jose)

Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel:  
<https://www.youtube.com/@swrcbadministrativehearing728/streams>

### **BACKGROUND**

On November 2, 2022, the Executive Director of the State Water Resources Control Board (State Water Board or Board) sent notice to Benjamin B. Magana, Jr. (Respondent) of a Proposed Disciplinary Action by the Board's Office of Enforcement to revoke Mr. Magana's Grade D3 water distribution operator certificate (Certificate No. 34232). The Proposed Disciplinary Action was based upon the Office of Enforcement's determination that Respondent violated Health and Safety Code sections 106877 (subdivisions (b)(2), (b)(3), (b)(4) and (b)(6)) and 106878 (subdivisions (b)(2) and (c)) by providing false or misleading information to the state, failing to ensure proper treatment of the distribution system, and employing a water distribution operator who does not hold a valid, unexpired water distribution operator certificate. The Office of Enforcement

proposes revocation of Respondent's Grade D3 drinking water distribution operator certificate, and notification of Respondent's current and former employers.

On December 16, 2022, the Respondent requested a hearing before the State Water Board regarding the Proposed Disciplinary Action. On May 1, 2023, the Clerk of the Board issued a Notice of Public Hearing and Tentative Hearing Procedure (Initial Hearing Notice) in this matter. The Initial Hearing Notice contains additional information about the basis and background for this proceeding.

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the State Water Board may assign adjudicative hearings to the AHO. Subdivision (c)(3) of this section provides that an AHO hearing officer may perform additional work requested by the Board. On May 11, 2023, the State Water Board's Executive Director issued a memorandum assigning the proposed revocation of Benjamin B. Magana, Jr.'s Drinking Water Distribution Operator Grade 3 Certificate 34232 to the AHO for a hearing and preparation of a proposed order.

### **HEARING OFFICER AND HEARING TEAM**

Nicole Kuenzi, the Presiding Hearing Officer of the State Water Board's Administrative Hearings Office, will be the hearing officer for this proceeding and will prepare a written order, according to the requirements outlined in Water Code section 1114, subdivision (b)(1), within 90 days after the matter is submitted for decision. She may be assisted in an advisory capacity by other AHO staff, Merswind Reyer and Anne Hartridge from the Board's Office of Chief Counsel, and Sahand Rastegarpour from the Division of Financial Assistance. These Board staff, Hearing Officer Kuenzi, and members of the executive management of the State Water Board, with the exception of Executive Director Eileen Sobeck, may advise the State Water Board members about a final decision in this matter. All of these individuals, including the State Water Board members (and excluding Executive Director Sobeck), are part of the Hearing Team in this proceeding.

### **PROSECUTION TEAM**

A State Water Board staff Prosecution Team will be a party to this hearing. The Prosecution Team will be comprised of attorneys and staff from the State Water Board's Office of Enforcement and Julie M. Osborn from the Office of Chief Counsel.

### **PROHIBITION ON EX PARTE COMMUNICATIONS AND SEPARATION OF FUNCTIONS**

While this proceeding is pending, ex parte communications between parties and members of the Hearing Team are prohibited. Ex parte communications are any type of communication that occurs between a party or interested person and the hearing officer or a member of the Hearing Team without notice and an opportunity for all parties to participate.

Please do not attempt to communicate by telephone with any AHO hearing officer or member of the Hearing Team regarding this hearing, because other parties would not be able to participate in such communications. If any party wishes to communicate with the AHO at any time regarding any issue related to this proceeding, including any issue regarding hearing procedures or filing of documents, please communicate by e-mail to [adminhr@waterboards.ca.gov](mailto:adminhr@waterboards.ca.gov) and serve all other parties with copies of the communication.

Staff of the State Water Board on the Prosecution Team will maintain a separation from other staff of the State Water Board who are on the Hearing Team while this proceeding is pending. The Prosecution Team is prohibited from having any ex parte communications with any member of the Hearing Team. (See Wat. Code, § 11110, subd. (c); Gov. Code, §§ 11430.10-11430.80.)<sup>1</sup> In addition, Executive Director Sobeck will not engage in any ex parte communications about this proceeding with any member of the Hearing Team.

### **PRE-HEARING CONFERENCE**

The AHO hearing officer will hold a pre-hearing conference on the date and at the time specified on the first page of this notice by Zoom teleconference. No in-person appearances will be allowed. The pre-hearing conference will be held and electronically recorded by Zoom teleconference. The AHO will not retain a court reporter for the pre-hearing conference. Any party may arrange for a court reporter at the party's own expense.

Unless modified by the hearing officer, the hearing dates, procedures, and deadlines identified in the Initial Hearing Notice shall apply to the hearing and pre-hearing proceedings in this matter. During the pre-hearing conference, the AHO hearing officer will discuss with the parties whether she should modify any of the procedures or key hearing issues identified in the Initial Hearing Notice. The procedural issues that the hearing officer intends to discuss during the pre-hearing conference include the following:

1. Should the public hearing be conducted remotely by Zoom, in-person, or in a hybrid format to allow both in-person and remote participation by Zoom?
2. Should the parties be required to submit testimony in writing in advance of the hearing? Should the parties be required to submit other types of evidence in advance of the hearing? If so, what deadlines should apply to each party?

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<sup>1</sup> For a discussion of ex parte communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at: [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

3. Should the parties be required to submit rebuttal testimony in writing in advance of the hearing? Should the parties be required to submit other types of rebuttal evidence in advance of the hearing? If so, what deadlines should apply to each party?
4. Should the hearing officer modify the time limits in the Initial Hearing Notice applicable to presentation of testimony and cross-examination of witnesses?
5. Should the hearing officer revise any of the Key Issues identified in the Initial Hearing Notice?
6. Are there any other procedural issues that any of the participants would like to discuss? If so, what are these issues?

### **AHO WEBPAGE AND NOTICES**

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all of its notices and other AHO documents regarding these proceedings on the AHO's Internet webpage:

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/).

More information about this proceeding may be accessed on the AHO's Internet webpage by clicking on "Drinking Water Permitting Matters."

The AHO webpage has information about accessing the AHO's YouTube channel to watch live broadcasts or past recordings of hearings and pre-hearing conferences.

For general information about AHO proceedings, an AHO Frequently Asked Questions (FAQs) page is posted at [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/procedures.html](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/procedures.html).

### **PRE-HEARING CONFERENCE LIVE-STREAM AND RECORDING**

The pre-hearing conference will be live streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the conference, a recording of the YouTube live-stream of the conference will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live stream and recordings may be accessed at the following link:  
<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57m>

May 19, 2023  
Date

/s/ Nicole L. Kuenzi  
Nicole L. Kuenzi  
Presiding Hearing Officer

Enclosures:

- Service List

## SERVICE LIST

By e-mail only

**Nickolaus Knight**

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**Benjamin B. Magana, Jr.**

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