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## State Water Resources Control Board

### NOTICE OF PUBLIC HEARING AND TENTATIVE HEARING PROCEDURE

The State Water Resources Control Board  
will hold a Public Hearing on the Proposed Disciplinary Action  
Regarding Alex M. Cuadra-Erazo

on

**January 7, 2022**

Commencing at 9:00 a.m.

Remote Meeting Only - No Physical Meeting Location

(Authorized by and in furtherance of

Executive Order [N-08-21](#).)

(see *instructions below*)

### Purpose of Hearing

The State Water Resources Control Board (State Water Board) will hold a hearing to consider the allegations made by the Prosecution Team (Prosecution Team, defined further below) in the instant matter. On May 10, 2021, the Prosecution Team issued to Alex M. Cuadra-Erazo (Respondent) a Proposed Disciplinary Action, proposing that Mr. Cuadra-Erazo's Grade 3 water treatment operator certificate (Certificate No. 41163) be revoked. The Proposed Disciplinary Action is based upon the Prosecution Team's determination that Respondent failed to obtain the experience hours required by California Code of Regulations, title 22, division 4, chapter 13, section 63800, subdivision (c)(1) to be eligible for certification as a Grade 3 water treatment operator (commonly referred to as a T3 operator certificate), and the Prosecution Team's determination that Respondent submitted false or misleading information relating to his experience hours in his application for a Grade 3 water treatment operator certificate. The Prosecution Team proposes revocation of Respondent's Grade 3 water treatment operator certificate, and notification of Respondent's current and former employers. On June 21, 2021, the Respondent requested a hearing before the State Water Board regarding the Proposed Disciplinary Action.

The State Water Board has the authority to suspend, revoke, or refuse to grant or renew any water treatment operator certificate to operate a water treatment plant or may place on probation or reprimand the certificate holder upon any reasonable grounds, including, but not limited to, the submission of false or misleading information on an application for a water treatment operator certificate or an examination for a water

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treatment operator certificate. (Health and Saf. Code, § 106877, subd. (a).) Prior to suspension or revocation of an operator certificate, the State Water Board shall provide the certificate holder with the opportunity for a hearing in accordance with the rules adopted pursuant to Water Code section 185. (Health and Saf. Code, § 106877, subd. (c).) The rules adopted pursuant to Water Code section 185 are located at California Code of Regulations, title 23, division 3, chapter 1.5, article 2, section 648 et seq.

The State Water Board has scheduled a hearing to consider the matter. At the hearing, the State Water Board will receive evidence regarding the alleged submission of false or misleading information, and the imposition of the proposed certificate revocation and employer notification, as well as evidence regarding any legal theories relevant to the prosecution or defense of the allegations. After weighing and considering the evidence, the State Water Board has the option to approve the proposed revocation and notification, disapprove the proposed revocation and notification, or take any other action it deems necessary.

### **Key Issues**

The State Water Board's decision will be based upon evidence in the record developed at the hearing. Parties should submit exhibits and testimony responsive to the following issues:

1. The legal and factual basis for the allegations that Respondent failed to obtain the experience required to obtain a Grade 3 water treatment operator certificate, and that Respondent provided false and misleading information in his application for the Grade 3 water treatment operator certificate.
2. The legal and factual basis for assessing the penalties proposed, i.e., the revocation of the water treatment operator certificate and the notification of employers.
3. Any other issues relevant to the prosecution or defense of the allegations.

### **Hearing Officer and Advisory Team**

State Water Board Member Laurel Firestone will preside as the Hearing Officer for this proceeding. Other members of the State Water Board may be present during the hearing.

State Water Board staff and attorneys (the Advisory Team) will assist the Hearing Officer and other members of the State Water Board throughout this proceeding, providing legal and technical advice.

Advisory Team members from the Office of Chief Counsel are Julie M. Osborn, Merswind Reyer, and Anne Hartridge.

The Advisory Team member from the Division of Financial Assistance is Jon Strutzel.

### **Prosecution Team and Separation of Functions**

The State Water Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. State Water Board Office of Enforcement staff and attorneys that have developed and issued the Proposed Disciplinary Action (the

Prosecution Team) have been separated from the Advisory Team. The State Water Board's Office of Enforcement is not advising the Hearing Officer or the State Water Board in this proceeding.

Prosecution Team members from the State Water Board's Office of Enforcement are Nickolaus Knight, Vaneeta Chintamaneni, Mayumi Okamoto, and Bryan Elder.

### **Ex Parte Communications**

To maintain the State 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 Hearing Officer, other State Water Board members, or the Advisory Team members, regarding the pending matter, and which are not communicated in a manner open to all other parties. Communications regarding non-controversial procedural matters issues are not considered ex parte contacts, and are therefore, not restricted.

Members of the Prosecution Team have not communicated and will not communicate with the Hearing Officer, other members of the State Water Board, or the Advisory Team regarding any substantive matter at issue in the proceeding.

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

### **Approval of Hearing Procedure**

Attached to this Notice is a Tentative Hearing Procedure that, once final, will govern the conduct of proceedings related to consideration of the Proposed Disciplinary Action. The Prosecution Team and Respondent shall have the opportunity to: (1) comment on the Tentative Hearing Procedure; (2) propose changes to deadlines and other substantive provisions; (3) provide alternative preferred contact information; and (4) object to service of hearing documents via email to the identified primary point(s) of contact, which otherwise will be the default method of service. To be considered by the Advisory Team, all comments and proposed revisions shall be submitted via email to [Julie.Osborn@waterboards.ca.gov](mailto:Julie.Osborn@waterboards.ca.gov), with a copy to [Merswind.Reyer@waterboards.ca.gov](mailto:Merswind.Reyer@waterboards.ca.gov), no later than 12:00 p.m. on September 24, 2021, and shall be provided to the other parties via email. The parties will be provided a copy of the Hearing Procedure via email and/or certified mail. The Hearing Procedure also will be posted to the State Water Board's website. ([https://www.waterboards.ca.gov/public\\_notices/operator\\_certification\\_proceedings/.](https://www.waterboards.ca.gov/public_notices/operator_certification_proceedings/))

For the purposes of California Code of Regulations, title 23, section 648 et seq., the Hearing Procedure (including any subsequent revisions thereto) shall be incorporated as part of this Notice. Once the Hearing Procedure is finalized, this Notice may be reissued.

## **Opportunity for Public Participation**

The State 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 written comments from Interested Persons. To allow for this, all written comments shall be submitted to the Advisory Team, and to the parties, as early as possible, and in no case later than 12:00 p.m. on October 22, 2021.

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

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

## **Requests for “Designated Party” Status**

The Hearing Procedure will govern the process by which Interested Persons apply for “Designated Party” status. The deadline to apply for this status shall be no earlier than October 12, 2021, and may be extended at the discretion of the Hearing Officer.

## **Instructions for Access to Remote Meeting**

The hearing on the Proposed Disciplinary Action will be conducted remotely via the ZOOM video conferencing platform and also may be broadcasted via livestream. Named parties and any Designated Parties intending to appear at the hearing will automatically be provided ZOOM information.

If you are an Interested Person and do not intend to speak at the hearing, you can watch the meeting via livestream if available. The livestream URL will be posted to the State Water Board website approximately two weeks before the first day of the hearing. If livestream is not available, or If you are an Interested Person and intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. The Meeting ID and phone numbers will be on the State Water Board’s website approximately two weeks before the first day of the hearing. To obtain the Passcode, you will need to follow directions to be provided on the State Water Board’s website, and State Water Board staff will send you the Passcode.

## Opportunity for Settlement

The Prosecution Team and the Respondent may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. Due to the separation of functions discussed previously, the Advisory Team cannot participate in settlement discussions. Should the Prosecution Team and the Respondent reach settlement, they must notify the Advisory Team as soon as possible.

## Questions

Questions concerning non-controversial procedural matters should be directed to Advisory Team member Julie M. Osborn at [Julie.Osborn@waterboards.ca.gov](mailto:Julie.Osborn@waterboards.ca.gov).

If you have any legal or technical questions concerning the Proposed Disciplinary Action, or if you wish to discuss settlement prior to hearing, you may contact Prosecution Team member Nickolaus Knight, at [Nickolaus.Knight@waterboards.ca.gov](mailto:Nickolaus.Knight@waterboards.ca.gov).

September 10, 2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

Attachment:  
Tentative Hearing Procedure

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## State Water Resources Control Board

### [TENTATIVE] HEARING PROCEDURE

This document contains a proposed Hearing Procedure for consideration by the Respondent and Prosecution Team, and shall have no effect until approved by the Hearing Officer for this proceeding. Notably, substantive requirements, time allotments, and deadlines are subject to change based on input from the Parties. Once approved, the final Hearing Procedure will be posted to the State Water Board's ([https://www.waterboards.ca.gov/public\\_notices/operator\\_certification\\_proceedings/](https://www.waterboards.ca.gov/public_notices/operator_certification_proceedings/))

**Effective Date:** Upon approval by the Hearing Officer

**Proposed Action:** Proposed Disciplinary Action  
Regarding Alex M. Cuadra-Erazo

**Hearing Date:** January 7, 2022

**Location:** Zoom Videoconferencing Platform

**Respondent:** Alex M. Cuadra-Erazo

#### A. Applicable Laws and Regulations

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

- (1) Article 3 of chapter 4 of part 1 of division 104 of the Health and Safety Code;
- (2) Article 1 of chapter 4 of part 12 of division 104 of the Health and Safety Code;
- (3) Chapter 13 of division 4 of title 22 of the California Code of Regulations;
- (4) Title 23 of the California Code of Regulations, sections 648 – 648.8, available for review on the State Water Board's laws and regulations webpage ([https://www.waterboards.ca.gov/laws\\_regulations/](https://www.waterboards.ca.gov/laws_regulations/));
- (5) 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*);

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(6) Evidence Code sections 801 – 805; and

(7) Government Code section 11513.

Except for Government Code section 11513 (see above), chapter 5 of the Administrative Procedure Act (commencing with section 11500 of the Government Code) does not apply to this hearing.

Any procedures not provided by this Hearing Procedure are not applicable to this hearing.

## **B. Remote Hearing Location Only**

The Administrative Procedures Act allows all or part of a hearing to be conducted by telephone, television, or other electronic means. (Gov. Code, § 11440.30). Although a party may ordinarily object to conduct of the hearing by electronic means, this provision has been suspended per Executive Order N-63-20 (<https://www.gov.ca.gov/wp-content/uploads/2020/05/5.7.20-EO-N-63-20-text.pdf>), which was issued by California Governor Gavin Newsom on May 7, 2020, and extended in relevant part by Executive Order N-08-21 on June 11, 2021. (Information and citations to be updated as appropriate.)

The hearing on the Proposed Disciplinary Action will be conducted remotely via the ZOOM video conferencing platform and also may be broadcasted via livestream. Named parties and any Designated Parties intending to appear at the hearing will automatically be provided ZOOM information.

If you are an Interested Person and do not intend to speak at the hearing, you can watch the meeting via livestream if available. The livestream URL will be posted to the State Water Board website approximately two weeks before the first day of the hearing. If livestream is not available, or if you are an Interested Person and intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. The Meeting ID and phone numbers will be on the State Water Board's website approximately two weeks before the first day of the hearing. To obtain the Passcode, you will need to follow directions to be provided on the State Water Board's website, and State Water Board staff will send you the Passcode.

## **C. Parties and Separation of Functions**

To ensure that Respondent receives a fair hearing, State Water Board staff and counsel have undertaken a separation of functions. State Water Board staff and counsel that have issued the Proposed Disciplinary Action (Prosecution Team) have been separated from the State Water Board staff and attorneys that will advise the State Water Board on the Proposed Disciplinary Action (Advisory Team). (Gov. Code, § 11425.10, subd. (a)(4).) This separation of functions also applies to the supervisors of each team. The Prosecution Team will present evidence for consideration by the State Water Board. The Advisory Team will provide legal and technical advice to the State Water Board.

The Advisory Team, Prosecution Team, Respondent, and Designated Parties (if any) are listed below:

## **Hearing Officer and Advisory Team**

Laurel Firestone, Hearing Officer, Board Member, State Water Board  
Julie M. Osborn, Attorney IV, State Water Board, Office of Chief Counsel  
Merswind Reyer, Attorney III, State Water Board, Office of Chief Counsel  
Jon Strutzel, Senior Environmental Scientist, State Water Board, Division of Financial Assistance  
Anne Hartridge, Assistant Chief Counsel, State Water Board, Office of Chief Counsel

## **Prosecution Team**

Nickolaus Knight, Attorney IV, State Water Board, Office of Enforcement  
Vaneeta Chintamaneni, Attorney, State Water Board, Office of Enforcement  
Bryan Elder, Senior WRC Engineer, State Water Board, Office of Enforcement  
Mayumi Okamoto, Assistant Chief Counsel, State Water Board, Office of Enforcement

## **Respondent**

Alex M. Cuadra-Erazo

## **Designated Parties**

Parties to be designated in accordance with Section F.

## **D. Ex Parte Contacts Prohibited**

Any communication regarding the Proposed Disciplinary Action that is directed at the Hearing Officer, other State Water Board members, or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other parties is considered an “ex parte” contact. All “ex parte” contacts are prohibited. (Gov. Code, § 11430.10.) Communications regarding non-controversial procedural matters are not considered ex parte contacts and are permitted.

## **E. Interested Persons (Non-Parties)**

The Hearing Officer 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. To allow for such responses, all written comments shall be submitted via email to the Advisory Team, and to the parties, as early as possible, and in no case later than 12:00 p.m. on October 22, 2021.

Interested Persons also will be provided the opportunity to orally present general policy statements to the Hearing Officer at the hearing. Such statements will be limited to 3 minutes per Interested Person for this hearing, though the Hearing Officer 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 also are not subject to cross-examination, but may be asked to respond to clarifying questions from the Hearing Officer or the Advisory Team. Although the State Water Board will consider comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

## **F. Applications for “Designated Party” Status**

By default, the only parties to an adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Respondent named in the Proposed Disciplinary Action. (See Gov. Code, § 11405.60; Cal. Code of Regs, tit. 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; Cal. Code of Regs, tit. 23, § 648.1, subd. (a).) Such determinations shall be made discretionarily on a case-by-case basis by the Hearing Officer.

To request “Designated Party” status, Interested Persons must submit a written request to the Advisory Team, by email to [Julie.Osborn@waterboards.ca.gov](mailto:Julie.Osborn@waterboards.ca.gov), and serve the request on all parties to the proceeding via email and/or certified mail, no later than 12:00 p.m. on October 12, 2021. The written request must include the following information:

- (1) An explanation of how the issues to be addressed at the hearing substantially affect the person requesting Designated Party status (Applicant);
- (2) Why the Applicant believes that the Prosecution Team and Respondent will not adequately represent their interests;
- (3) A summary of the evidence that the Applicant seeks to present at the hearing, including whether they seek to present their own witness testimony; and
- (4) Whether the Applicant seeks to cross-examine the other parties’ witnesses.

The Advisory Team will promptly respond to all timely written requests for Designated Party status. The Advisory Team may request further information before the determination is made. A request for Designated Party status shall not be granted if, in the totality of circumstances, it appears that such designation will impair the interests of justice and the orderly and prompt conduct of the proceeding. The Hearing Officer 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. (Gov. Code, § 11440.50, subd. (c).)

In the event that “Designated Party” status is granted, this Hearing Procedure may be revised as appropriate.

## **G. Pre-Hearing Submittals**

To avoid the introduction of surprise testimony and exhibits, and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the parties to submit all documentary evidence, witness information, and legal/technical memoranda to the Advisory Team prior to the hearing. (Cal. Code of Regs, tit. § 648.4, subds. (a), (b), & (c).) Absent a showing of good cause and lack of prejudice to the parties, the Hearing Officer may exclude materials that are not submitted in accordance with this Hearing Procedure. (Cal. Code of Regs, tit. 23, § 648.4, subd. (d).) Excluded materials will not be considered by the State Water Board. (Cal. Code of Regs, tit. § 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 (FTP) (<https://ftp.waterboards.ca.gov/>), except as otherwise provided below. Submittals to the FTP site must not contain confidential information. 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 all other parties via email, and identify each of the files that have been uploaded.

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:            **pt\_exh\_###\_xxxx.pdf**  
Respondent:                    **resp\_exh\_###\_xxxx.pdf**

Any party needing assistance with uploading its materials to the FTP site should contact MaryAnne Rosario at [MaryAnne.Rosario@waterboards.ca.gov](mailto:MaryAnne.Rosario@waterboards.ca.gov) or (916) 319-7998.

In the event that there are additional Designated Parties participating in the proceeding, the Advisory Team will provide additional instructions regarding file naming.

### **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*; *PT/Respondent Exhibit Number*; *Exhibit Date* (i.e., when the document was generated); and *File Name*.

### **3. Prosecution Team Submittals**

No later than 12:00 pm on October 29, 2021, the Prosecution Team shall submit the following materials to the Advisory Team, via the process described above:

- (1) All documentary evidence supporting the Proposed Disciplinary Action, with each document separately designated as a sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). Each allegation in the Proposed Disciplinary Action shall be supported by an exhibit and/or witness testimony to be offered at the hearing.
- (2) [OPTIONAL] A memorandum articulating the Prosecution Team's legal arguments and technical analyses in support of the Proposed Disciplinary Action.
- (3) 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 also shall include the witnesses' qualifications as an expert.

#### **4. Respondent and Designated Party Submittals**

No later than 12:00 p.m. on November 19, 2021, the Respondent and any Designated Parties shall submit the following materials to the Advisory Team, via the process described above:

- (1) Any additional documentary evidence that supports the submitting party's position with respect to the Proposed Disciplinary Action. These materials shall be separately designated as sequentially-numbered exhibits, starting with "Exhibit 1."
- (2) [OPTIONAL] A memorandum articulating the submitting party's legal arguments and technical analyses in support of their position(s) with respect to the Proposed Disciplinary Action.
- (3) 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 each witnesses' 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 also shall include the witnesses' qualifications as an expert.

#### **5. Rebuttal Evidence [All Parties; Upon Parties' Agreement]**

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, California Code of Regulations, title 23, section 648.4, subdivision (f) 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. (Cal. Code Regs., tit. 23, § 648, subd. (d).)

To maintain fairness, ensure orderly conduct of the proceeding, and avoid "surprise evidence" (see Cal. Code Regs., tit. 23, § 648.4, subd. (a)), this Hearing Procedure requires that Rebuttal Evidence be submitted to the Advisory Team and other parties, via the process described above, no later than 12:00 p.m. on December 10, 2021. 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.

## **6. Responses to Interested Party Written Comments [All Parties; Optional]**

The parties may elect to submit written responses to written comments from Interested Persons. All such responses must be submitted to the Advisory Team, and to the other parties, no later than 12:00 p.m. on December 10, 2021. This submittal may occur via email and need not be accompanied by an updated index table. In lieu of a written response, the parties also may address such comments at the hearing.

## **7. Proposed Order [All Parties; Optional]**

Pursuant to Government Code section 11425.10, subdivision (a)(6), the State Water Board's decision shall be in writing, based on the record, and include a statement of the factual and legal basis of the decision.

No later than 12:00 p.m. on February 4, 2022, the Prosecution Team and the Respondent may submit a proposed order (Proposed Order) for review by the Advisory Team and transmittal to the State Water Board for consideration.

These submittals shall occur via email with email service to the other parties and need not be accompanied by an updated index table. The Proposed Order shall be submitted both as a Microsoft Word file and as a PDF.

## **8. Presentation Slides [All Parties; Mandatory if Slides Are Used]**

No later than 12:00 p.m. on December 17, 2021, the parties shall provide the Advisory Team with their presentation slides for use at the hearing, as a PowerPoint file and PDF (for inclusion in the administrative record). This submittal shall 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 PowerPoint submittals are required from the party.

## **H. 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 without unnecessary delay and expense to the parties and to the [State Water] Board." (Cal. Code Regs., tit. 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:            | 60 Minutes |
| Respondent:                  | 60 Minutes |
| Designated Parties [if any]: | 60 Minutes |

The above time limits have been proposed by the Advisory Team. The parties may propose alternative time limits for the operative Hearing Procedure.

The above time limits are based on the Advisory Team's review of the allegations within the Proposed Disciplinary Action, 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 Hearing Officer and Advisory Team questions and party responses to those questions. Additional time may be provided at the discretion of the Hearing Officer (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 Hearing Officer 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. (Cal. Code Regs., tit. 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 already in the State 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.)

## **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, and provided the presentations have timely been provided to the Advisory Team as specified above. State Water Board administrative staff will be running the presentation at the party's direction.

## **I. 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 Hearing Officer.

## **J. Modifications to Hearing Procedure**

This Hearing Procedure may be revised by the Hearing Officer 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.

## **K. Communication via Email**

To the extent practicable, all communications between the parties prior to the hearing shall occur via email, per the email addresses listed under the **Contact Information** section below. Unless a Party has indicated that it is not willing to accept electronic service of hearing documents, email shall be the default method for such service.

At a minimum, all emails to the Prosecution Team shall include the attorneys for the Prosecution Team listed below, who shall serve as the primary points of contact for the Prosecution 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.

At a minimum, all emails to the Advisory Team shall be directed to the attorneys for the Advisory Team listed below, 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.

Except as directed otherwise in writing by the Respondent, the Respondent shall serve as his own primary point of contact.

## **L. Settlements**

The Prosecution Team and Respondent may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. Respecting separation of functions, the Advisory Team cannot participate in settlement discussions. Should the Prosecution Team and Respondent reach settlement, they must notify the Advisory Team as soon as possible

**[TENTATIVE] SUMMARY OF DEADLINES**

**Table 1—Deadlines**

| <b>DATE</b>                                       | <b>REQUIRED ACTIONS / DEADLINES</b>   |
|---|---|
| <b>~ September 10, 2021</b>                       | Advisory Team issues Notice and Tentative Hearing Procedure   |
| <b>September 10-October 12, 2021</b>              | Requests for Designated Party status accepted   |
| <b>September 24, 2021</b>                         | Parties provide comments on Tentative Hearing Procedure   |
| <b>September 29, 2021<br/>(4:00 to 5:00 p.m.)</b> | Pre-hearing conference  |
| <b>October 8, 2021</b>                            | Advisory Team reissues Notice and final Hearing Procedure   |
| <b>October 22, 2021</b>                           | Interested Person comments due  |
| <b>October 29, 2021</b>                           | Prosecution Team submittals due   |
| <b>November 19, 2021</b>                          | Respondent, Designated Parties submittals due   |
| <b>December 10, 2021</b>                          | All Parties submit rebuttal evidence (if Parties agree)<br>All Parties respond to Interest Person comments (optional) |
| <b>December 17, 2021</b>                          | All Parties submit presentations to be used at hearing<br>[All Parties attend ZOOM test meeting - date TBD]           |
| <b>January 7, 2022</b>                            | Hearing   |
| <b>February 4, 2022</b>                           | All Parties submit Proposed Order (optional)  |

## **CONTACT INFORMATION**

### **Advisory Team**

#### **Julie M. Osborn**

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