



State Water Resources Control Board

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The State Water Resources Control Board's Administrative Hearings Office will hold a Public Hearing on the Suspension of Environmental Laboratory Accreditation Program (ELAP) Certificate 3092 of the laboratory currently located at 3440 El Cajon Boulevard, San Diego, California, of the

Environmental Laboratory Network, Inc.

The Pre-Hearing Conference will begin on **October 1, 2024 at 9 a.m.**

The Public Hearing will begin on **October 29, 2024 from 9 a.m. to 1:00 p.m.** and continue if needed to **October 30, 2024 from 9 a.m. to 1:00p.m.**

The hearing will be held by Zoom teleconference.

Please access Zoom by using the link:
<https://waterboards.zoom.us/j/97388639773?pwd=Zf41WBbyydSBuaQVLTmV9BVeqIuiat.1>

Call-in number: 1-699-900-9128
Meeting ID: 973 8863 9773 (Passcode: 817123)

Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel at:

bit.ly/aho-youtube

LANGUAGE SERVICES

This hearing will be offered in English. To request translation of a written document, interpretation services for the hearing or sign language services, please use one of the following options by **October 15, 2024**:

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

- Submit a [Language Services Request online](#)
- Call (916) 341-5254
- E-mail languageservices@waterboards.ca.gov

ACCESSIBILITY

Users of a Telecommunications Device for the Deaf (TDD) may contact the California Relay Service at (800) 735-2929 or the teletype (TTY) voice line at (800) 735-2922.

FACTUAL BACKGROUND

On January 18, 2023, ELAP staff issued a Certificate of Environmental Laboratory Accreditation, Certificate 3092, to ELN, then located at 9590 Chesapeake Drive, Suite 300, San Diego.¹ The certificate states that the “[s]cope of the certificate is limited to the ‘Fields of Accreditation’ which accompany this Certificate” and that it expires January 17, 2025. The certificate also states that “[c]ontinued accredited status depends on compliance with applicable laws and regulations, proficiency testing studies, and payment of applicable fees.” (2024-02-20 Notice of Immediate Suspension of ELAP Certification, App’x 1, p. 2.)

On February 9, 2024, ELAP staff conducted an inspection of ELN’s facility, which ELAP staff learned had relocated to 3440 El Cajon Boulevard, San Diego. During this investigation, staff noted “multiple failures” by ELN in complying with the Environmental Laboratory Accreditation Act (ELAA) (Health & Saf. Code, § 100825 et seq.) requirements related to ELN’s operational decisions. (*Id.* at p. 1.) Specifically, staff noted failures related to the relocation of ELN’s laboratory from 9590 Chesapeake Drive, Suite 300, San Diego and failures related to continued testing of samples for regulatory purposes at the new laboratory location at 3440 El Cajon Boulevard, San Diego.

Temporary Suspension Proceeding

On February 20, 2024, ELAP Program Manager Christine Sotelo issued a Notice of Immediate Suspension of ELAP Certification (Notice) to Jenny Douglas, addressed to ELN at 3440 El Cajon Boulevard. The Notice included a description of “ELN’s violations of the ELAA” upon which Ms. Sotelo based her decision to issue a temporary suspension under Health and Safety Code section 100915. (*Id.* at pp.1-3.)

The Notice stated that “ELN shall immediately discontinue the analysis of samples for all Fields of Accreditation” and stated that ELN’s actions to test samples for regulatory

¹ Although the February 20, 2024 Notice of Immediate Suspension of ELAP Certificate 3092 identifies the former address of the lab as 9560 Chesapeake Drive, Suite 300, San Diego, ELAP Certificate 3092 identifies the address of the lab as 9590 Chesapeake Drive, Suite 300, San Diego (2024-02-20 Notice of Immediate Suspension of ELAP Certification, App’x 1).

purposes for at least six months “without obtaining accreditation or meeting accreditation standards at its new location...constitutes a significant threat to the public.” (*Id.* at p. 1.) The Notice also stated that ELN could request a hearing not later than 20 days from the date on which the Notice was received. On February 29, 2024, Ms. Douglas requested a hearing on the temporary suspension in this matter.

On March 4, 2024, the Executive Director of the State Water Resources Control Board (State Water Board or Board) assigned to the Administrative Hearings Office (AHO) a hearing on ELAP staff’s February 20, 2024 temporary suspension of ELAP Certificate 3092 under California Health and Safety Code section 100915.

On March 8, 2024, the AHO issued its notice of public hearing and set the temporary suspension hearing date for March 18, 2024. The AHO held a pre-hearing conference on March 14, 2024. At the repeated requests of the parties as they discussed settlement, the AHO continued the temporary suspension hearing date to March 20, 2024, April 11, 2024 and June 11, 2024. Following a second pre-hearing conference on June 6, 2024, the parties agreed to proceed to the hearing set for June 11, 2024.

On June 7, 2024, ELN’s counsel e-mailed the AHO and the service list to state that ELN was “prepared to forego the June 11-12 hearing on the temporary suspension reserving all rights relative to a merits[-]based hearing based on applicable timelines in Health & Safety Code § 100910.” (2024-06-07 S. Scheper e-mail to M. Knize.)

On June 10, 2024, the AHO issued its Notice of Status Conference and Cancellation of Public Hearing on the temporary suspension hearing originally scheduled to begin on June 11, 2024. The AHO stated it would accept the June 7 communication as ELN’s withdrawal of its request for hearing on the temporary suspension of ELAP Certificate 3092.

The hearing officer held a status conference on June 11, 2024. During this conference, counsel for the State Water Board’s Office of Enforcement Prosecution Team and ELN stated that they agreed that they intended to proceed to a hearing on the merits under Health and Safety Code section 100910. On June 19, 2024, the AHO circulated for comment a draft procedural ruling to ensure that it captured the parties’ agreement. The parties each stated that they had no further comments.

On June 27, 2024, the AHO issued its final procedural ruling, which stated that the AHO had completed its assigned proceeding and that if “ELAP staff prepare a notice under Health and Safety Code section 100910, subdivision (a), that notice shall contain a statement of facts and information that show the basis for the suspension or revocation and shall inform the laboratory owner that the owner may request a hearing not later

than 20 days from the date on which the notice under Health and Safety Code section 100910, subdivision (a) is received.”²

Initiation of Suspension Proceeding under Health and Safety Code section 100910

On July 1, 2024, ELAP staff notified ELN of its certificate suspension (dated February 20, 2024) and that ELN had a right to request a hearing on the suspension under Health and Safety Code section 100910.

On July 16, 2024, the Water Board’s Executive Director assigned this matter to the AHO, contingent upon receiving a request for hearing. On July 18, 2024, the AHO received ELN’s request for a hearing.

On August 1, 2024, the AHO issued its Notice of Assignment and Request for Briefing. In this request, the hearing officer presented five questions to the parties. The parties answered these questions, and the hearing officer has incorporated the AHO’s responses to the parties’ answers in this notice.

LEGAL BACKGROUND

Relevant Hearing Statutes

The State Water Board may suspend an ELAP certification after providing notice to the owner of the laboratory and an opportunity for a hearing. (Health & Saf. Code, § 100825, subd. (c)(12) [defining “state board”] & § 100910, subd. (a).) Health and Safety Code section 100910, subdivision (a), unlike subdivision (b), does not contain a 60-day timeframe for holding a hearing on a suspension.

Under Health and Safety Code section 100895, upon suspension of “[a]n ELAP certified laboratory,” the laboratory shall (1) discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, or their materials that contain reference to their past certification or accreditation status; (2) return its ELAP certificate to the State Water Board; and (3) cease all testing of samples for regulatory purposes. (Health & Saf. Code, § 100895, subd. (c).)

Relevant Suspension Statutes and Regulations

Health and Safety Code section 100905 sets out reasons for which ELAP staff may suspend or revoke any accreditation certificate, including “violation by the owner of the laboratory of any of the provisions of this article or any regulation adopted under this article,” “aiding, abetting, or permitting the violation of any provision of this article or the

² This final procedural ruling is available on the AHO’s FTP site. The AHO has moved all documents in the administrative record for the temporary suspension proceeding into a folder entitled “Temporary Suspension Proceeding” on the FTP site.

regulations adopted under this article,” or “proof that the certificate holder or owner has made false statements in any material regard on the application for certification.” (Health & Saf. Code, § 100905, subds. (a)-(c); see also Cal. Code Regs., tit. 22, § 64816.10, subd. (a)(10) (allowing suspension or revocation if laboratory fails to notify ELAP staff of changes in key accreditation criteria, including change of location).)

Relevant Accreditation Statutes and Regulations

Health and Safety Code section 100825, subdivision (b) requires “[l]aboratories that perform analyses on any combination of environmental samples, or raw or processed agricultural products for regulatory purposes” to obtain accreditation.

When a laboratory changes location, the laboratory shall timely submit an amendment application package. (Cal. Code Regs., tit. 22, § 64808.15, subd. (c)(2).) The amendment application package includes written submissions, such as a copy of the laboratory quality manual with updates necessitated by the change of location, revised standard operating procedures, proficiency testing reports with acceptable scores for the fields of accreditation for which the laboratory is requesting accreditation, and a completed on-site assessment report from ELAP or a third-party assessment agency. (*Id.* at subd. (f).)

A laboratory must have a qualified technical manager, and the laboratory must also notify ELAP when there is a change of director or other person in charge of a laboratory certified under this article. (Cal. Code Regs., tit. 22, § 64812.00, subds. (a) & (d); Health & Saf. Code, § 100845, subd. (d); Cal. Code Regs., tit. 22, § 64814.05, subd. (a).)

A laboratory that holds itself out to the public and its clients as an ELAP-accredited facility without having a valid and current certificate of accreditation may be subject to civil penalties. (Health & Saf. Code, § 100890, subd. (c).)

PURPOSE OF HEARING AND HEARING ISSUES

The purpose of this hearing is for the State Water Board to consider whether ELAP Certificate 3092, issued by ELAP staff to ELN (which is now located at 3440 El Cajon Boulevard, San Diego) should be suspended under California Health and Safety Code section 100910.

During the hearing, a hearing officer from the AHO will receive evidence and argument relevant to the following hearing issues and sub-issues (the list of sub-issues is not exhaustive):

1. As of February 9, 2024, the date of verbal notice of the substance of the violations identified in the February 20, 2024 Notice, did ELN violate any applicable provision of the ELAA (Health & Saf. Code, § 100825 et seq.) or implementing regulations (Cal. Code Regs., tit. 22, § 64801.00 et seq.)?

- a. Did ELN fail to timely submit an amendment application package to ELAP as required under Code of Regulations, title 22, section 64808.15?
 - b. Did ELN violate Health and Safety Code section 100825 by failing to obtain accreditation prior to analyzing regulatory samples at its new laboratory location at 3440 El Cajon Boulevard?
 - c. Did ELN violate Code of Regulations, title 22, section 64812.00 by failing to designate a technical manager who meets the regulatory requirements for its laboratory at 3440 El Cajon Boulevard?
 - d. Did ELN violate Health and Safety Code section 100845 by failing to notify ELAP in writing within 30 calendar days whenever there was a change of director or other person in charge of ELN certified under ELAA?
 - e. Did ELN violate Code of Regulations, title 22, section 64814.05, subdivision (a), by failing to timely provide to ELAP staff supporting documents concerning a change in technical manager?
 - f. Did ELN's representations to the public, including representations about its accreditation status on its website, violate Health and Safety Code section 100890, subdivision (c)?
2. If ELN violated any of the regulations or Health and Safety Code sections listed in Question 1, was the suspension of Certificate 3092 under Health and Safety Code section 100910 proper?
- a. What evidence, if any, is there of ELN's prior violations of ELAA and its supporting regulations?
 - b. What corrective actions, if any, has ELN taken to address the allegations of wrongdoing outlined in the February 20, 2024 Notice?
 - c. At what point, if any, did ELN cease all testing of samples for regulatory purposes after February 20, 2024?

SCOPE OF HEARING

In the responses to the AHO's August 1, 2024 request for briefing, the parties generally agreed that the hearing issues and sub-issues listed in question 2 were appropriate. However, the parties seemed to disagree about the scope of evidence to be presented during this hearing. In response to question 2, the Prosecution Team stated that the "hearing is to address whether ELN violated the ELAA and implementing regulations...and to review ELAP's decision to suspend Certificate 3092 in response to those violations." (2024-08-08 L. Mooney email to AHO). Further, the Prosecution Team stated in response to question 4 that "the scope of the hearing is limited to the matters set forth in section 100910, which does not encompass ELN requesting extra-statutory relief to alter its accreditation status at the El Cajon Boulevard facility." (*Ibid.*) Also in response to question 4, which asked in part whether ELN might seek "additional forms of relief regarding the status of its accreditation," ELN responded that it "reserves the right to seek additional (likely declaratory) relief if the prosecution seeks to introduce evidence of ELN's operations at El Cajon Boulevard before ELAP communicated instruction to cease certain regulated testing activities." (2024-08-16 ELN Response to Request for Briefing 8.16.24-FINAL.)

The hearing officer intends to accept evidence related to whether ELAP staff's February 20, 2024 suspension was proper. Under Health and Safety Code section 100905, the Board has discretion to suspend any certificate issued under article 3 of the ELAA. For purposes of this hearing, the hearing officer will consider evidence related to the severity of the alleged violations and any corrective actions taken.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the 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. On July 16, 2024, the Board's Executive Director assigned the ELN suspension hearing under Health and Safety Code section 100910 to the AHO, contingent upon receiving a request for hearing.

ADMINISTRATIVE RECORD

The AHO hearing officer's recommended decision in this matter will be based upon evidence and arguments in the administrative record for this proceeding. The AHO may add additional documents, in addition to any exhibits the parties submit to the administrative record. The following documents currently are in the initial AHO administrative record for this matter: (1) July 1, 2024 Notice of Right to Request a Hearing Pursuant to Health & Safety Code Section 100910 Suspension of ELAP Certification, ELAP Certificate 3092, attaching the February 20, 2024 Notice; (2) the State Water Board's Executive Director's July 16, 2024 assignment of this proceeding to the AHO; and (3) ELN's July 18, 2024 request for hearing. The parties may submit additional evidence and make arguments based on the evidence during the hearing concerning the hearing issues outlined above.³

The AHO has posted files of these documents on the FTP site in the folder for this hearing. Instructions on how to access the FTP site are listed in Section 8 below.

HEARING OFFICER AND HEARING TEAM

Hearing Officer Megan Knize will be the hearing officer for this proceeding and will prepare a written recommended decision. She may be assisted in an advisory capacity by other AHO staff, by Emily Roberts and Kim Niemeyer from the Board's Office of Chief Counsel, and by Christopher Hand from the State Water Board's Environmental

³ If parties wish to rely upon evidence submitted as exhibits in the Temporary Suspension Proceeding, they should submit new copies of this evidence following the timelines and submittal procedures described in this hearing notice.

Laboratory Accreditation Program. These Board staff, and Hearing Officer Knize, 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 from the State Water Board's Office of Enforcement and Office of Chief Counsel, and staff from the State Water Board's Environmental Laboratory Accreditation Program, excluding Mr. Hand. The Prosecution Team attorneys include Laura Mooney with the Office of Enforcement, and Nicole DiCamillo with the Office of Chief Counsel. The hearing officer requests that the Prosecution Team identify any other members of the Prosecution Team, including ELAP staff, by submitting an e-mail to the AHO with a copy to the service list by **September 6, 2024**.

PROHIBITION ON EX PARTE COMMUNICATIONS; 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, a member of the hearing team or any State Water Board member without notice and an opportunity for all parties to participate.

Please do not attempt to communicate by telephone with any AHO hearing officer, staff member or Board member 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 adminhrgoffice@waterboards.ca.gov or by letter to the AHO and serve all other parties with copies of the communication.⁴ The party shall include a proof of service through a formal proof of service or by other verification.⁵

The Prosecution Team is separated from the AHO hearing team. Like all other parties, the Prosecution Team is prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.)⁶ These rules regarding *ex parte* communications apply to all members of the hearing team.

⁴ The AHO's mailing addresses are provided in Item 6, below.

⁵ All references to "proof of service" in this document refer to either a formal proof of service or a list of the parties and the addresses of them or their representatives in an e-mail "cc" (carbon copy) list or the cc portion of a letter.

⁶ 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 bit.ly/aho-faq. (See response to FAQ 16).

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 notices and other documents regarding these proceedings on the AHO's Internet webpage: bit.ly/AHO-ELN.

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

For general information about AHO proceedings, an AHO Procedures and Frequently Asked Questions (FAQs) page is available, with links to an Attorney List for Pro Bono Representation, and a guide to Preparing for Your Hearing at bit.ly/aho-procedures.

DEADLINES FOR HEARING PARTICIPATION

Deadline to identify members of the Prosecution Team	September 6, 2024 at 1:00 p.m.
Deadline to file joint statement of undisputed material facts Deadline to file joint exhibits	September 20, 2024 at 1:00 p.m.
Deadline to file pre-hearing conference statement (optional)	September 27, 2024 at 1:00 p.m.
Pre-Hearing Conference	October 1, 2024, at 9:00 a.m.
Deadline for filing and service of any submittals of proposed testimony or exhibits before the hearing (optional)	October 18, 2024, at 1:00 p.m.
Deadline for filing and service of any rebuttal testimony (optional)	October 25, 2024, at 1:00 p.m.
Hearing Begins	October 29, 2024 from 9:00 a.m. to 1:00 p.m., continuing to October 30, 2024 from 9:00 a.m. to 1:00 p.m.

JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS

To facilitate an efficient presentation of evidence during the hearing, the parties are directed to prepare a joint statement of undisputed material facts. For example, the parties may submit as a fact for the statement of undisputed material facts that ELAP staff conducted an inspection of ELN's laboratory on February 9, 2024. To the extent parties cannot agree to certain facts relevant to this hearing, the parties may supplement their cases-in-chief and rebuttal presentations with additional evidence and testimony submitted according to the deadlines specified above.

JOINT EXHIBITS

The parties are also directed, where possible, to file joint exhibits by the relevant deadline. Some joint exhibits may support the undisputed material facts. Other joint exhibits may serve to reduce the number of duplicative exhibits in this proceeding. For example, the parties may submit as a joint exhibit a copy of Certificate 3092. Joint exhibits should be numbered “JE-1, JE-2, etc.” and should be uploaded to the AHO’s FTP site using the instructions below.

PRE-HEARING CONFERENCE

The AHO will hold a pre-hearing conference on **October 1, 2024 at 9:00 a.m.** The parties may file optional pre-hearing conference statements **by September 27, 2024** to address the following issues:

1. The status of ELN’s accreditation efforts to perform regulatory testing at its new address at 3440 El Cajon Boulevard. (2024-08-16 ELN Response to Request for Briefing 8.16.24-FINAL);
2. The status of ELAP staff’s formal denial of ELN’s application to amend Certificate 3092. (2024-08-08 L. Mooney email to AHO);
3. Whether the schedule and deadlines for hearing participation set forth above should be adjusted in any way;
4. Whether the AHO should adjust the time limits in the order of proceeding (Section 7, below);
5. Any other topics the parties wish to address.

LIVE-STREAM AND RECORDINGS

The hearing will be live streamed through the AHO’s YouTube channel, accessible by clicking on the link provided below. These recordings will include automatic captions for accessibility. The live-stream and recordings may be accessed at the following link: bit.ly/aho-youtube.

PROCEDURES FOR THE SUSPENSION HEARING

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during or after the hearing as she deems appropriate.

1. HEARING PROCEDURES: The AHO will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648 to 648.8, and 649.6. If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this proceeding.

2. SETTLEMENTS: The Prosecution Team and ELN may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO will participate in such settlement discussions.

3. POLICY STATEMENTS BY INTERESTED PERSONS: As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present non-evidentiary policy statements during the hearing.

4. TESTIMONY AND OTHER EXHIBITS: Exhibits include all written testimony and other documents to be submitted as evidence. There is no requirement for any party to submit any proposed testimony or exhibits before the hearing, but a party may do so. Any party that wants to submit proposed testimony or exhibits before the exhibit filing deadline listed above may do so by following the procedures described in Item 6. Any party submitting written proposed testimony before the hearing still must produce the actual witness or witnesses to verify the written proposed testimony, provide a summary of it, and be available for cross-examination, during the hearing.

5. EXHIBIT FORMATTING AND ORGANIZATION: A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Word or Excel format. A sample is attached to the end of this document.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, the Prosecution Team's exhibits should be numbered PT-1, PT-2, etc., and ELN's exhibits should be numbered ELN-1, ELN-2, etc.

As noted above, parties are directed to prepare Joint Exhibits, which should be numbered JE-1, JE-2, etc.

6. SUBMISSIONS OF DOCUMENTS: If a party chooses to submit exhibits before the hearing, that party shall upload those exhibits to the State Water Board's FTP site in electronic form unless the hearing officer authorizes submission of exhibits in different formats.

The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP Download Folders". The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the "Parties' Upload Folders".

a. AHO-FTP Download Folders:

The AHO will create a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain all administrative record documents related to this proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. This folder is referred to in this notice as the "AHO-FTP folder for this proceeding." Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and closing briefs to this folder promptly after each filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings, correspondence, and the AHO's proposed order). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the AHO-FTP Download Folder for any proceeding, including this proceeding, at any time.

If any party believes that the AHO should add documents to, or remove any documents from, this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the AHO e-mail inbox) and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

b. Parties' Upload Folders:

The AHO will create a separate upload account for each party that files an NOI as a party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed.

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and exhibit identification indices and closing briefs) using the party's upload account. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder. After the applicable filing deadline, AHO staff will move documents uploaded by each party to the administrative record in the AHO-FTP Download Folder for the proceeding, so all other parties may view and download the documents.

Each party shall upload its exhibits and Exhibit Identification Index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the Board's FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO. When a party has uploaded all of the party's exhibits to the Board's FTP site, the party or party's representative shall send an email to the AHO at AdminHrgOffice@Waterboards.ca.gov, with copies to the other parties on the service list, notifying the AHO and the other parties that the party has uploaded the documents.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' Upload Folders to the administrative record folder and advise the parties that these documents are available for downloading from that folder. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the administrative record folder.

If a party cannot upload exhibits to the FTP site, then the party may mail two paper copies of all its exhibits to the AHO at:

State Water Resources Control Board
Administrative Hearings Office
P. O. Box 100
Sacramento, CA 95812-0100

Alternatively, a party may send paper copies of its exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office
1001 I Street
Sacramento, CA 95814

If a party uses either of these alternative means of filing paper copies of its exhibits with the AHO in lieu of electronically filing the exhibits, then the party shall complete the filing of the paper copies by the exhibit filing deadline specified in this notice.

7. ORDER OF PROCEEDING: The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing.

- a. **Policy Statements:** The hearing officer will allow interested persons to present policy statements at the start of the hearing before the presentations of cases-in-chief. **Oral policy statements and oral summaries of written policy statements will be limited to 5 minutes.**

- b. **Presentation of Cases-In-Chief:** Each party may present a case-in-chief addressing the issues in the hearing notice. The hearing will proceed in the following order:
 - Party's opening statement (**5 minutes per party**)
 - Summaries of the party's witnesses' written proposed testimony or presentation of the party's oral testimony (**no more than 30 minutes total for all witnesses for each party**).
 - Cross-examination of the party's witnesses (**30 minutes total for all of the other party's witnesses**).
 - Re-direct examination and re-cross examination of the party's witnesses, if allowed by the hearing officer.
 - Questions from the hearing officer. (These questions may occur at any time, but normally will be after all other parties have completed their cross-examinations of a party's witnesses.)
 - Submitting exhibits into evidence, with opportunities for objections by other parties.

- c. **Presentations of Parties' Rebuttal Evidence:** After all parties have presented their cases-in-chief, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

The hearing officer has set a schedule for submittal of written proposed rebuttal testimony and rebuttal exhibits after the parties have filed their written proposed direct testimony and exhibits. Each party will be allowed a maximum of 15 minutes total for its witnesses to summarize all of their written proposed rebuttal testimony. The hearing officer normally will limit cross-examination of witnesses offering rebuttal evidence to the scope of rebuttal evidence.

- d. **Closing Statements (5 minutes per party)**

8. HEARING LOGISTICS: The hearing officer prefers that parties participate in the hearing by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations. New users of Zoom may want to review Zoom's support guide: <https://support.zoom.us/hc/en-us/categories/200101697>.

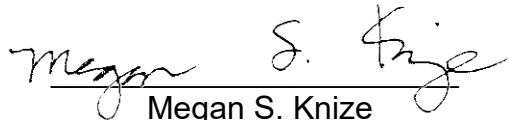
The AHO will not order a court reporter for the hearing. Any interested party may order a court reporter at the party's own expense. The AHO will record the hearing and post audio-plus-video files of the hearing on the AHO-FTP site as part of the administrative record for this matter. Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference.

Parties should plan to call into the hearing at least 10 minutes before the scheduled hearing time to ensure the party can resolve any technical issues before the hearing begins. Parties will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When speaking, please turn the video on and unmute the microphone by clicking on the symbols in the lower left-hand side of the Zoom window.

During the hearing, please be respectful and patient. Parties should raise a hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain muted unless speaking. If other devices are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see each party's name, depending on the party's Zoom account settings. Other participants may also see the last three digits of a party's phone number unless the party has called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If a party's device freezes, please notify staff at adminhrгоffice@waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message, and then restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the hearing using the phone number provided with the Zoom meeting information on the first page.

August 30, 2024
Date


Megan S. Knize
Hearing Officer

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