

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

SECOND REVISED HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2020-0505

ISSUED TO
HANOVER PROPERTIES, LLC
BUTTE COUNTY

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

The Advisory Team issued this Second Revised Hearing Procedure on 18 August 2020. Significant changes from the previous procedure have been highlighted in red.

The Central Valley Regional Water Quality Control Board or (Central Valley Water Board or Board) has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Hanover Properties, LLC for the violations charged in the ACL Complaint. The Board has scheduled a hearing to consider the matter on the following date:

15/16 October 2020

Meeting to be conducted remotely (e.g., via the Zoom videoconference platform)

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may assess the proposed civil liability, assess a higher or lower amount, decline to assess any liability, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The [Meeting Agenda](http://www.waterboards.ca.gov/centralvalley/board_info/meetings) (http://www.waterboards.ca.gov/centralvalley/board_info/meetings) will be posted at least ten days before the meeting on the Board's website.

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

The Board Chair has approved this Hearing Procedure for the adjudication of ACL matters. Objections to this Hearing Procedure must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Board's Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Board Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

I. Hearing Participants

Participants in the ACL hearing are considered either “Designated Parties” or “Interested Persons.”

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Hanover Properties, LLC

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the “Important Deadlines” page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person’s interest. The Board’s Advisory Team will promptly respond to all timely requests for Designated Party status.

II. Hearing Time Limits

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **35 minutes**
2. Hanover Properties, LLC: **30 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the “Important Deadlines” page of this Hearing

Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

III. Documents in Evidence and Availability of Board Files

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 364 Knollcrest Drive, Suite 205, in Redding, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. **Due to restrictions related to COVID-19, it may not be possible to review the file at the Board's office. Persons interested in reviewing the file should contact the Prosecution Team to discuss such request.**

[Documents will also be posted online](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

(http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml).

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties' (including the Discharger's) Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

120-Page Designation: For each Designated Party, including the Board's Prosecution Team, the Board has set a 120 page limit (60 pages printed on both sides) for printed materials. Although the Board Members will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Board Members. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The Draft ACL Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120-page limit.

Due to circumstances surrounding COVID-19, these pages will no longer be printed out for the Board Members but will instead be provided electronically.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

V. Miscellaneous Matters

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. 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.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. **These presentations must be provided to the Advisory Team before the hearing in electronic format so that they may be included in the administrative record. For hearings conducted remotely (e.g., via the Zoom videoconference platform), anyone wishing to display material during their portion of the presentation should contact the Advisory Team to discuss logistics.**

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay. **Due to restrictions related to COVID-19, it is anticipated that witnesses will need to be available to appear remotely (e.g., via the Zoom videoconference platform). Log in details will be provided prior to the hearing.**

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available [online](http://www.waterboards.ca.gov) (<http://www.waterboards.ca.gov>). Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing. **Due to impacts from COVID-19, orders by the Governor may impact how the hearing is conducted.**

VI. Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

CONTACT INFORMATION: PRIMARY CONTACTS

BOARD ADVISORY TEAM

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Chico, CA 95928

IMPORTANT DEADLINES

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the “Primary Contacts” table on the previous page. It is not necessary to submit documents to Interested Persons.

All of the submitted documents will be placed online. Please provide both **unredacted** and **redacted** versions of any documents that contain personal information that you do not want posted online.

March 9, 2020	<ul style="list-style-type: none"> Prosecution Team issues ACL Complaint and Hearing Procedure to Discharger and Advisory Team.
March 19, 2020	<ul style="list-style-type: none"> Deadline to request “Designated Party” status.
April 7, 2020	<ul style="list-style-type: none"> Discharger’s deadline to submit 90-Day Hearing Waiver Form. If the Prosecution Team accepts the waiver, all the following deadlines may be revised.
April 9, 2020	<ul style="list-style-type: none"> Prosecution Team’s deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”
April 29, 2020	<ul style="list-style-type: none"> Remaining Designated Parties’ (including the Discharger’s) deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.” Interested Persons’ written statements are due.
May 11, 2020	<ul style="list-style-type: none"> All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections. If a Designated Party’s submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Board Members by this date. Please note these pages will no longer be printed out for the Board Members but will instead be provided electronically. Deadline to submit requests for additional time.
May 14, 2020	<ul style="list-style-type: none"> All Designated Parties may submit responses to written statements submitted by Interested Persons. Prosecution Team submits Summary Sheet.
September 4, 2020	<ul style="list-style-type: none"> Objections due on Second Revised Hearing Procedure.
October 12, 2020	<ul style="list-style-type: none"> Designated Parties submit PowerPoint or other visual presentation to Advisory Team and all Designated Parties.
October 15-16, 2020	Board Hearing