

## Lahontan Regional Water Quality Control Board

November 20, 2013

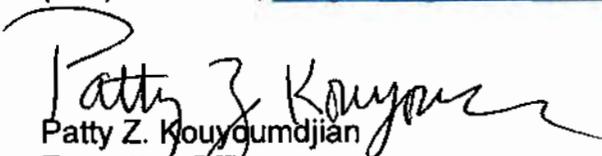
MARK JOHNSON  
368 GREEN VALLEY ROAD  
SCOTTS VALLEY, CA 95066-3022

### **PUBLIC HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2013-0093 FOR MARK JOHNSON, SPALDING TRACT SUBDIVISION, LASSEN COUNTY APN 077-351-27-11**

Enclosed please find public hearing procedures for Administrative Civil Liability Complaint No. R6T-2013-0093 issued pursuant to California Water code section 13323, alleging violations by Mark Johnson, (Discharger) of Cease and Desist Order No. R6T-2011-0069.

The enclosed public hearing procedures identify the type of information that must be submitted in preparation for the public hearing, identify the hearing participants, and explain how the public hearing will proceed.

If you have any *questions regarding this matter*, please contact Lisa Scorable (530) 542-5452 or via email at [lsorable@waterboards.ca.gov](mailto:lsorable@waterboards.ca.gov), or Scott C. Ferguson at (530) 542-5432, [sferguson@waterboards.ca.gov](mailto:sferguson@waterboards.ca.gov).



Patty Z. Kouyoumdjian  
Executive Officer

Enclosures: Public hearing procedures for Administrative Civil Liability Complaint No. R6T-2013-0093

cc (w/enc): Regional Board Members  
Lauri Kemper, Assistant Executive Officer, Lahontan Regional Water Quality Control Board  
Kim Niemeyer, Staff Counsel, SWRCB, Office of Chief Counsel  
Vanessa Young, Staff Counsel, SWRCB, Office of Enforcement  
David Boyers, Assistant Chief Counsel, SWRCB, Office of Enforcement  
Chris Gallagher, General Manager, Spalding Community Services District  
Virginia Bruce, Spalding Community Services District  
Alan Jones, Director, Lassen County Environmental Health Department  
Kenneth Bunch, Assessor, Lassen County Assessor  
Maurice Anderson, Director, Lassen County Building Department

File Under: Spalding Tract-Mark Johnson, APN 077-351-27-11

PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**HEARING PROCEDURES**

**CONSIDERATION OF ADOPTION OF AN ADMINISTRATIVE CIVIL LIABILITY  
ORDER FOR MARK JOHNSON, LASSEN COUNTY**

**WATER BOARD PUBLIC HEARING SCHEDULED FOR FEBRUARY 12-13, 2014**

Please read these hearing procedures carefully. Failure to comply with the deadlines and other requirements contained herein may result in the exclusion of your documents and/or testimony.

**Background**

On November 19, 2013, the Lahontan Water Board (Water Board) Prosecution Team mailed an Administrative Civil Liability Complaint (Complaint) to Mark Johnson regarding his Spalding Tract property, Assessor Parcel No. 077-351-27-11, in Lassen County. The Complaint alleges that Mark Johnson violated Cease and Desist Order (CDO) No. R6T-2011-0069. The Complaint recommends imposing a \$3,050 liability against Mark Johnson. For more information, see:

[http://www.waterboards.ca.gov/rwqcb6/water\\_issues/programs/enforcement/](http://www.waterboards.ca.gov/rwqcb6/water_issues/programs/enforcement/)

**Purpose and Timing of Public Hearing**

The purpose of the public hearing is to consider relevant evidence and testimony regarding the Complaint. Following the hearing, the Water Board will consider adopting the liability (as proposed in the Complaint or for a different amount, either higher or lower than proposed, but not to exceed the maximum liability provided for by law), rejecting it, or referring the matter to the California Attorney General.

The public hearing will be held during the regular meeting of the Water Board on **February 12-13, 2014**. The public hearing will begin at a time and location as announced in the Water Board meeting agenda. An agenda for the meeting will be available on the Water Board's web page at [www.waterboards.ca.gov/lahontan](http://www.waterboards.ca.gov/lahontan) no later than **10 days before the meeting**.

**Public Hearing Deadlines**

<b>Deadline</b>	<b>Who Submits?</b>	<b>Written Item</b>
December 2, 2013 4pm	Designated Parties and The Public	Objections to the Hearing Procedures
December 2, 2013 4pm	The Public	Requests for Designated Party status
December 2, 2013 4pm	Prosecution Team	Witness list, summaries of witness testimony, and referenced documents
December 9, 2013 4pm	Designated Parties	Objections to requests for Designated Party status
January 2, 2014 4pm	Designated Parties, except the Prosecution Team	Technical and legal arguments/briefs, supporting evidence and documents, and witness lists
January 6, 2014 4pm	Designated Parties and The Public	Requests for additional time at the hearing
January 9, 2014 4pm	The Public	Statements pertaining to the allegations
January 16, 2014 4pm	Prosecution Team	Rebuttal evidence or testimony
January 23, 2014 4pm	Mark Johnson	Objections to Prosecution Team rebuttal evidence or testimony
As Received	Advisory Team	Proposed Orders, objections and comments received to be posted on Lahontan Water Board's website and sent to parties

The above-listed deadlines apply to those who want to participate in the Water Board's **February 12-13, 2014** public hearing. The Water Board's Prosecution Team and Mark Johnson (**Designated Parties**) will have an opportunity to submit evidence, written testimony, technical briefs, and/or legal briefs prior to the public hearing. **The Public**, which includes, but is not limited to, any interested agency, organization, public official, or private citizen, will also have an opportunity to submit written comments or statements prior to the public hearing. The table, above, identifies when the Designated Parties and the Public are required to submit their written materials in preparation for the public hearing.

### **Instructions for All Submittals**

To facilitate the public hearing process, the following types of information/documentation must be submitted prior to the public hearing for Water Board review:

- Technical and legal arguments/briefs
- Supporting evidence and documents
- Statements pertaining to the allegations

All submittals must be on 8½" x 11" size paper (including attachments and figures), must be in a legible font no smaller than 11-point size, and should be submitted electronically in a searchable pdf format. In an effort to save paper and electronic file space, you may reference documents that have been previously submitted or are part of the public record for this case, and there is no need or requirement to include full copies of those documents. For each document included by reference, identify the name of the document, the location of where the document resides, a copy of the relevant pages from the document, and a statement explaining why those excerpts of the document are relevant to your case. Examples of such documents that need not be submitted in full include, but are not limited to, previously submitted monitoring reports, documents that have been shared between the Prosecution Team and Mark Johnson, and documents that can be downloaded from the Water Board's website regarding this case:

[http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/enforcement/index](http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/index)

### **Party-Specific Instructions**

**For the Public** – Please submit your information to the Water Board's Executive Assistant, Sue Genera. Ms. Genera works at the Water Board's South Lake Tahoe office and she can be reached at [Sue.Genera@waterboards.ca.gov](mailto:Sue.Genera@waterboards.ca.gov) or (530) 542-5414. Please contact Ms. Genera directly if you have any questions. Each email or hard copy submittal sent to Ms. Genera must have in the subject line, "Spalding Tract-Johnson ACL Hearing." Ms. Genera will distribute your information to the Water Board members, the Water Board's Advisory Team, and to the Designated Parties.

**For the Prosecution Team** – In addition to a hard copy original, the Prosecution Team shall submit an electronic copy of each submittal, in addition to 15 hard copies (double-sided, three-hole punched) to Ms. Genera. The originals, electronic copies, and 15 hard copies of each submittal must be received by Ms. Genera by the deadlines specified above. An additional copy (electronic or hard copy) of each submittal must also be sent to the Advisory Team's Staff Counsel and to the other Designated Parties. These copies must also be received by the Advisory Team's Staff Counsel and the other Designated Parties by the deadlines specified above. Each email or hard copy submittal sent to

Ms. Genera must have in the subject line, "Spalding Tract-Johnson ACL Hearing." Ms. Genera will distribute Prosecution Team submittals to the Water Board members and the Water Board's Advisory Team.

**For Designated Parties Other than the Prosecution Team** – If the submittals include more than 20 pages, follow the directions for the Prosecution Team specified above. Otherwise, an original and one electronic copy must be received by Ms. Genera by the deadlines specified above. An additional copy (electronic or hard copy) of each submittal must also be submitted to the Advisory Team's Staff Counsel and the Prosecution Team Primary Representatives identified below. These copies must also be received by the Advisory Team's Staff Counsel and the Prosecution Team Primary Representatives by the deadlines specified above. Each email or hard copy submittal sent to Ms. Genera must have in the subject line, "Spalding Tract-Johnson ACL Hearing." Ms. Genera will distribute your submittals to the Water Board members and the Water Board's Advisory Team.

### **Objections to Hearing Procedures**

The public hearing will be conducted in accordance with this set of hearing procedures or as it may be amended. A copy of the general procedures governing adjudicatory hearings before the Water Board may be found at California Code of Regulations (CCR), title 23, section 648 et seq., and is available at [www.waterboards.ca.gov](http://www.waterboards.ca.gov) or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this set of hearing procedures is deemed waived.

Ms. Genera must receive any objections to this set of hearing procedures **no later than 4:00 p.m. on December 2, 2013** or they will be considered waived.

### **Public Hearing Participants**

Participants in these public hearings are identified as either "Designated Parties" or "Public" or "Advisory Team." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. The Public includes all parties (e.g., private citizens, public officials, agencies, organizations, interest groups), other than those identified as Designated Parties or Advisory Team. The Public may present non-evidentiary policy statements (statements or comments), but may not cross-examine witnesses and are not subject to cross-examination. The Advisory Team provides impartial technical and legal advice to the Water Board members following the public hearing. Designated Parties and the Public may be asked to respond to questions from Water Board members and the Advisory Team.

The following participants are hereby identified as Designated Parties in this proceeding:

1. Water Board Prosecution Team
2. Mark Johnson

**Requesting Designated Party Status**

Persons who wish to participate in the public hearing as a Designated Party must submit their request for Designated Party status in writing (with copies of the request sent to the other Designated Parties). Such requests must be received by Ms. Genera **no later than 4:00 p.m. on December 2, 2013**. The request shall: (1) include an explanation of the basis for the request (e.g., how the issues to be addressed in the hearing and the potential actions by the Water Board affect the person requesting the status change); and, (2) include a statement explaining why the currently identified Designated Parties do not adequately represent the interests of the person requesting the status change. Objections to such request must be received by Ms. Genera **no later than 4:00 p.m. on December 9, 2013**.

**Primary Representatives**

**For the Lahontan Water Board's Advisory Team**

Patty Z. Kouyoumdjian, Executive Officer Lahontan Regional Water Quality Control Board 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150 <a href="mailto:Patty.Kouyoumdjian@waterboards.ca.gov">Patty.Kouyoumdjian@waterboards.ca.gov</a> Phone: (530) 542-5412 Fax: (530) 544-2271	Kim Niemeyer, Staff Counsel State Water Resources Control Board, Office of Chief Counsel 1001 I Street Sacramento, CA 95814 <a href="mailto:Kim.Niemeyer@waterboards.ca.gov">Kim.Niemeyer@waterboards.ca.gov</a> Phone: (530) 341-5549 Fax: (916) 341-5199
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**For the Water Board's Prosecution Team**

Chuck Curtis, Supervising WRC Engineer Lahontan Regional Water Quality Control Board 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150 <a href="mailto:Chuck.Curtis@waterboards.ca.gov">Chuck.Curtis@waterboards.ca.gov</a> Phone: (530) 542-5460 Fax: (530) 542-5470	Vanessa Young, Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 <a href="mailto:Vanessa.Young@waterboards.ca.gov">Vanessa.Young@waterboards.ca.gov</a> Phone: (916) 327-8622 Fax: (916)
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**For Mark Johnson**

Mark Johnson 368 Green Valley Road Scotts Valley, CA 95066-3022
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### **Separation of Functions**

As indicated above, Water Board staff participating in this proceeding has been separated into two teams to help ensure the fairness and impartiality of this proceeding. The Water Board's Prosecution Team includes staff who will act in a prosecutorial role by presenting evidence for consideration by the Water Board. The Water Board's Advisory Team includes staff who will provide the Water Board with technical and legal advice.

Advisory Team members are: Patty Z. Kouyoumdjian, Executive Officer; Kim Niemeyer, Staff Counsel; Doug Smith, Supervising Engineering Geologist; and Richard Booth, Senior Engineering Geologist.

Prosecution Team members are: Lauri Kemper, Assistant Executive Officer; Vanessa Young, Staff Counsel; Chuck Curtis, Supervising WRC Engineer; Scott Ferguson, Senior WRC Engineer; and Lisa Scorable, Engineering Geologist.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Water Board in other, unrelated matters, but they are not advising the Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with Water Board members or Advisory Team members regarding this proceeding.

### **Ex Parte Communication**

The Designated Parties and Public are forbidden from engaging in ex parte communications regarding this matter with Water Board members or Advisory Team members. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the proposed Orders between a Designated Party or the Public on one hand, and a Water Board member or Advisory Team member on the other hand, unless the communication is copied to all other Designated Parties (if written) or made in a manner open to all other Designated Parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more Designated Parties and the Public themselves are not ex parte contacts.

### **Hearing Time Limits**

Please note that the scheduled public hearing is designed for the Designated Parties to simply summarize the previously submitted evidence/technical and legal arguments. This means that all evidence or argument must be submitted by the deadlines specified in these Hearing Procedures, so the Designated Parties do not need to reintroduce any evidence. At the hearing, the Designated Parties should focus their limited time to highlight important points from the previously submitted evidence or testimony.

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined **45 minutes** to present an overview of its evidence, cross-examine witnesses, and provide a closing statement; and each Public participant shall have **5 minutes** to present non-evidentiary statements. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants (Designated Parties and the Public) who would like additional time must submit their request in writing to Ms. Genera with copies to the Designated Parties. Such requests must be received by Ms. Genera **no later than 4:00 p.m. on January 6, 2014**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Evidence, Exhibits and Policy Statements**

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

1. All written evidence and exhibits that a Designated Party would like the Water Board to consider. Evidence and exhibits already in the Water Board's public files may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with CCR, title 23, section 648.3.
2. All legal briefs and technical arguments or analysis.
3. The name of each witness, if any, whom a Designated Party intends to call at the hearing, and the subject of each witness' proposed testimony.
4. The qualifications of each expert witness, if any.

The Prosecution Team has indicated that it has submitted its evidence as part of the Complaint, which has been transmitted to Mark Johnson. The Prosecution Team has yet to submit its Witness List, Summaries of Witness Testimony, and List of Documents to be Incorporated by Reference. The Prosecution Team shall submit this information according to the Instructions for All Submittals, above. This information must be received by Ms. Genera **no later than 4:00 p.m. on December 2, 2013**.

Mark Johnson shall submit his information (described in Nos. 1 - 4, above) according to the Instructions for All Submittals, above. This information must be received by Ms. Genera **no later than 4:00 p.m. on January 2, 2014**.

The Prosecution Team has the opportunity to submit rebuttal evidence or testimony in conformance with the Instructions for All Submittals. This material must be received by the Ms. Genera **no later than 4:00 p.m. on January 16, 2014**.

The Public who would like to submit written non-evidentiary statements pertaining to the allegations are encouraged to submit them as early as possible, but **no later than 4:00 p.m. on January 9, 2014**. Public members do not need to submit written comments in order to speak at the public hearing.

In accordance with CCR, title 23, section 648.4, the Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Water Board may exclude evidence and testimony that is not submitted in accordance with these hearing procedures. Excluded evidence and testimony will not be considered by the Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other timely submitted written material. A written and electronic copy of such material that Designated Parties or the Public intend to present at the hearing must be submitted to Ms. Genera at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Objections**

The Designated Parties other than the Prosecution Team shall submit all written objections to Prosecution Team's evidence and testimony as part of the Designated Parties' information due **January 2, 2014**. The Prosecution Team shall submit all written objections to the other Designated Parties' evidence and testimony as part of the Prosecution Team's rebuttal due **January 16, 2014**. The Designated Parties other than the Prosecution Team shall submit all written objections to the Prosecution Team's rebuttal evidence and testimony by **January 23, 2014**. The Advisory Team will notify the parties about further action to be taken on such objections (if any) and when that action will be taken.

### **Request for Pre-hearing Conference**

A Designated Party may request a pre-hearing conference be held before the public hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5:

1. Exploration of settlement possibilities.
2. Preparation of stipulations.
3. Clarification of issues.
4. Rulings on identity and limitation of the number of witnesses.
5. Objections to proffers of evidence.
6. Order of presentation of evidence and cross-examination.
7. Rulings regarding issuance of subpoenas and protective orders.

8. Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
9. Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.
10. Motions for intervention.
11. Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).
12. Any other matters as shall promote the orderly and prompt conduct of the hearing.

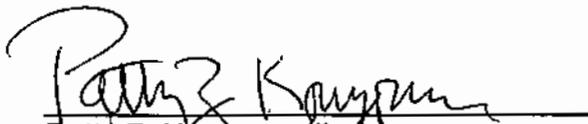
Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to Ms. Genera, with a copy to all other Designated Parties, as early as practicable.

#### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Water Board's office at 2501 Lake Tahoe Blvd, South Lake Tahoe, CA. These files shall be considered part of the official administrative record for the public hearing. Other submittals received for this proceeding will be added to these files and will become part of the administrative record absent a contrary ruling by the Water Board Chair.

#### **Questions**

Questions concerning this proceeding may be addressed to Patty Z. Kouyoumdjian, Executive Officer at (530) 542-5412, or Kim Niemeyer, Staff Counsel, at (916) 341-5549.

  
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Patty Z. Kouyoumdjian  
Executive Officer

DATE: November 25, 2013