

California Regional Water Quality Control Board  
Lahontan Region

**REVISED**  
HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R6T-2008-0011  
ISSUED TO

MR. MOHAMMAD AHMAD  
AND  
THE THOMAS E. ERICKSON TRUST

TAHOE TOM'S GAS STATION  
4029 LAKE TAHOE BOULEVARD  
SOUTH LAKE TAHOE  
EL DORADO COUNTY

HEARING SCHEDULED FOR JULY 8-9, 2009

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**IMPORTANT**

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.

- A. The Water Board must receive objections to this hearing procedure no later than 5:00 p.m. on Wednesday, May 27, 2009.
  - B. The Water Board must receive submission of evidence, testimony and witness lists from designated parties other than the Prosecution Team no later than 5:00 p.m. on Wednesday, June 10, 2009.
  - C. The Water Board must receive the following submittals no later than 5:00 p.m. on Wednesday, June 17, 2009:
    - 1. Written rebuttal evidence or testimony from all designated parties.
    - 2. Written non-evidentiary policy statements from interested persons.
    - 3. Written requests from designated parties or interested persons for additional time for presentation at the hearing.
  - D. The Water Board must receive written evidentiary objections (if any) to evidence or testimony submitted from all of the designated parties no later than 5:00 p.m. on Monday, June 22, 2009.
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## **Background**

The Assistant Executive Officer issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code section 13323 against Mr. Mohammad Ahmad and the Thomas E. Erickson Trust alleging that they have violated Water Code sections 13304 and 13267 by failing to comply with provisions of Cleanup and Abatement Order No. R6T-2007-0038. The Complaint proposes that administrative civil liability in the amount of \$246,700 be imposed as authorized by Water Code sections 13350 and 13268. A hearing is currently scheduled to be held before the Water Board during its July 8-9, 2009 meeting.

The initial Hearing Procedures for this hearing were issued on April 17, 2009. The ACL Complaint was sent by certified mail to all of the designated parties. The ACL Complaint sent to Mr. Ahmad, one of the designated parties, was returned to the Lahontan Water Board by the U.S. Postal Service marked "refused." The Water Board Prosecution Team will attempt to deliver the ACL Complaint to Mr. Ahmad. Due to the delay in delivering the ACL Complaint to Mr. Ahmad, some of the deadlines in the initial Hearing Procedures are no longer valid. These revised Hearing Procedures modify the applicable deadlines.

## **Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Water Board will consider whether to adopt an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on July 8-9, 2009 will commence 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 <http://www.waterboards.ca.gov/lahontan/> no later than June 19, 2009.

## **Hearing Procedures**

The hearing will be conducted in accordance with this hearing procedure or as it may be amended. A copy of the general procedures governing adjudicatory hearings before the Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to this hearing.

The Water Board's Advisory Team must receive any objections to this hearing procedure **no later than 5:00 p.m. on Wednesday, May 27, 2009** or they will be considered waived.

**Hearing Participants**

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Water Board, staff or others, at the discretion of the Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Water Board Prosecution Team
- (2) Mr. Mohammad Ahmad
- (3) The Thomas E. Erickson Trust

**Requesting Designated Party Status**

Pursuant to the initial Hearing Procedures, persons who wished to participate in the hearing as a designated party had to request party status by submitting a request in writing (with copies to the existing designated parties) **no later than 5:00 p.m. on Friday, May 1, 2009**. No requests were received by this date.

**Primary Contacts**

**For the Water Board (Advisory Team):**

<b>Originals</b> and specified number of copies of all documents to:	And one copy to:
Harold J. Singer Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 <a href="mailto:hsinger@waterboards.ca.gov">hsinger@waterboards.ca.gov</a> Phone (530) 542-5412 Fax (530) 544-2271	David Coupe Staff Counsel State Water Resources Control Board, Office of Chief Counsel 1001 I Street Sacramento, CA 95814 <a href="mailto:dcoupe@waterboards.ca.gov">dcoupe@waterboards.ca.gov</a> Phone (916) 327-4439 Fax (916) 341-5199

**For Water Board Staff (Prosecution Team):**

One copy of all documents to both:	
Robert S. Dodds Assistant Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 <a href="mailto:rdodds@waterboards.ca.gov">rdodds@waterboards.ca.gov</a> Phone (530) 542-5410 Fax (530) 544-2271	David Boyers Senior Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 <a href="mailto:DBoyers@waterboards.ca.gov">DBoyers@waterboards.ca.gov</a> Phone (916) 341-5276 Fax (916) 341-5284

**For: Mr. Mohammad Ahmad**

One copy of all documents to:
Mr. Mohammad Ahmad Tahoe Tom Gas Station 4029 Lake Tahoe Boulevard South Lake Tahoe, CA 96150

**For: The Thomas E. Erickson Trust**

Thomas E. Erickson Trust c/o Mr. Thomas E. Erickson 1468 Ashbrook Circle Medford, OR 97501
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**Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team). Members of the Advisory Team are: Harold Singer, Executive Officer and David Coupe, Staff Counsel. Members of the Prosecution Team are: Robert Dodds, Assistant Executive Officer, David Boyers, Senior Staff Counsel, Chuck Curtis, Supervising Engineer, Lisa Dernbach, Senior Engineering Geologist, and Scott Ferguson, Senior Engineer. 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 the members of the Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Water Board member or an 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 interested persons themselves are not ex parte contacts.

### **Hearing Time Limits**

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 evidence, cross-examine witnesses, and provide a closing statement; and each interested person shall have five (5) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team **no later than 5:00 p.m. on Wednesday, June 17, 2009**. 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 hearing:

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

The Prosecution Team shall submit an original, 15 hard copies and one electronic copy of the information to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as

listed in the section above specifying primary contacts **no later than 5:00 p.m. on Friday, April 24, 2009**. The Prosecution Team submitted this information by the deadline. However, given that this information was returned by the U.S. Postal Service to the Lahontan Water Board marked "refused" from Mr. Ahmad, the Prosecution Team must deliver this information to Mr. Ahmad **no later than 5:00 p.m. on Wednesday, May 20, 2009**.

The remaining designated parties shall submit an original, 15 hard copies and one electronic copy of the information to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as listed in the section above specifying primary contacts **no later than 5:00 p.m. on Wednesday, June 10, 2009**.

All designated parties have the opportunity to submit rebuttal evidence or testimony. This material shall be submitted **no later than 5:00 p.m. on Wednesday, June 17, 2009**. The original, 15 hard copies and one electronic copy of the material must be submitted to Harold Singer, Water Board Executive Officer, one copy to David Coupe, Staff Counsel, and hard copies to the other designated parties as listed in the section above specifying primary contacts

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but **no later than 5:00 p.m. on Wednesday, June 17, 2009**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, 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 this hearing procedure. 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 submitted written material. A written and electronic copy of such material that Designated Parties or Interested Persons intend to present at the hearing must be submitted to the Advisory Team 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.

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

A designated party may request that a pre-hearing conference be held before the 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. Requests must contain a description of the issues proposed to be

discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

**Evidentiary Objections**

The Water Board Advisory Team (original to Harold Singer, Executive Officer, and one copy to David Coupe, Staff Counsel) must receive all written objections to the evidence or testimony submitted by any of the Designated Parties **no later than 5:00 p.m. on Monday, June 22, 2009**. Any objections must also be sent to the other designated parties. 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.

**Evidentiary Documents and File**

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

**Questions**

Questions concerning these proceedings may be addressed to Harold Singer, Executive Officer, at (530) 542-5412 or David Coupe, Staff Counsel, at (916) 327-4439 or at the addresses shown above.



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Harold J. Singer  
Executive Officer

DATE: May 18, 2009