

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

**DRAFT HEARING PROCEDURES  
CONSIDERATION OF ADOPTION OF CEASE AND DESIST ORDERS FOR  
MULTIPLE PROPERTY OWNERS (SEE ATTACHED LIST), SPALDING TRACT,  
EAGLE LAKE, LASSEN COUNTY**

**WATER BOARD PUBLIC HEARING SCHEDULED FOR NOVEMBER 13-14, 2013**

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**IMPORTANT**

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. You do have an opportunity to object to the deadlines and procedures discussed below. Such objections must be received by the Lahontan Water Board's Executive Officer by **no later than 4:00 p.m. on Tuesday, September 10, 2013**. The Water Board's Advisory Team will review any objections received and issue Final Hearing Procedures **no later than 4:00 p.m. on Friday, September 20, 2013**.

Below is a list of deadlines that apply to those who want to participate in the Lahontan Regional Water Quality Control Board's (Water Board) November 13-14, 2013 public hearing. The Water Board is holding the public hearing to receive oral testimony/statements from the Water Board's Prosecution Team, property owners named in the proposed Cease and Desist Orders (**Designated Parties**), and from the public, and interested agencies and organizations (**Interested Persons/Parties**). Following the public hearing, the Water Board will consider adopting Cease and Desist Orders for Spalding Tract property owners who have yet to either connect their on-site wastewater disposal system to the community sewer system or to properly abandon it.

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

- Technical and legal arguments/briefs;
- Supporting evidence and documents; and
- Non-evidentiary policy statements (statements).

The deadlines below establish the schedule for submitting this information/documentation. Following the List of Deadlines, are more detailed instructions, explanations of terms and roles for public hearing participants, and details regarding the public hearing.

**LIST OF DEADLINES FOR PUBLIC HEARING PREPARATION**

- A. The Lahontan Regional Water Quality Control Board (Water Board) must receive a witness list, summaries of witness testimony, and a list of documents to be incorporated by reference from the Prosecution Team **no later than 4:00 p.m. on Tuesday, September 10, 2013.**
- B. The Water Board must receive the following submittals **no later than 4:00 p.m. on Tuesday, September 10, 2013:**
1. Written requests from persons/agencies/organizations for Designated Party status; and
  2. Written objections to these hearing procedures.
- C. The Water Board must receive all written objections to requests for Designated Party status **no later than 4:00 p.m. on Thursday, September 19, 2013.**
- D. The Water Board must receive the following submittals **no later than 4:00 p.m. on Monday, September 30, 2013:**
1. Evidence, testimony and witness lists from Designated Parties other than the Prosecution Team (e.g., property owners named in proposed Cease and Desist Orders);
  2. Written requests for separate hearings; and
  3. Written requests from Designated Parties or Interested Parties for additional time for presentation at the hearing.
- E. The Water Board must receive written rebuttal evidence or testimony from the Prosecution Team **no later than 4:00 p.m. on Monday, October 14, 2013.**
- F. The Water Board must receive written non-evidentiary policy statements from Interested Persons/Parties **no later than 4:00 p.m. on Wednesday, October 16 2013.**
- G. The Water Board must receive any written evidentiary objections (if any) to Prosecution Team rebuttal evidence or testimony **no later than 4:00 p.m. on Wednesday, October 30, 2013.**

**Requirements for All Submittals**

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 shall 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

that document within the submittal, 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 Designated Parties, 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.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/index.shtml)

**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). The originals, electronic copies, and 15 hard copies of each submittal must be received by the Executive Officer by the deadlines specified above. An additional copy of each submittal must be sent to Kim Niemeyer, Staff Counsel and to the other Designated Parties.

**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 the Executive Officer by the deadlines specified above. An additional copy (electronic or hard copy) of each submittal must also be submitted to Kim Niemeyer, Staff Counsel, and the Prosecution Team Primary Contacts identified below. Each e-mail submittal must have the e-mail subject line, "Spalding Tract 2013 CDO Hearing."

### **Background**

On August 26, 2013, the Water Board Enforcement Unit mailed proposed Cease and Desist Orders (Orders) to multiple property owners in the Spalding Tract subdivision, Eagle Lake, Lassen County. The proposed Orders allege that the property owners are violating or threatening to violate a waste discharge prohibition contained in the Water Quality Control Plan for the Lahontan Region. The proposed Orders, if adopted, would establish a schedule for compliance with the discharge prohibition.

### **Purpose and Timing of Public Hearings**

The purpose of the public hearings is to consider relevant evidence and testimony regarding the proposed Orders. The Water Board will hold a public hearing on each proposed Order. Property owners listed in Attachment 1 may request an individual public hearing. The Water Board will hold a combined public hearing (consolidated public hearing) to consider those proposed Orders where the property owner has not requested a separate public hearing or submitted evidence. The Water Board can consider a wide range of options including, but not limited to, adopt the Orders as proposed or with changes, or rejecting the proposed Orders in their entirety.

As stated above, a property owner named in a proposed Order can request a separate public hearing. Such requests must be received by the Water Board's Advisory Team **no later than 4:00 p.m. on Monday, September 30, 2013**. Property owners named in a proposed Order submitting evidence pursuant to the schedule in these procedures will be deemed to be requesting a separate public hearing. Property owners who request a separate public hearing but do not submit evidence pursuant to the schedule in these procedures will be precluded from submitting evidence at the public hearing. However, such property owners will be able to cross-examine other parties at the public hearing.

The public hearings will be held during the regular meeting of the Water Board on **November 13-14, 2013**. The public hearings 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 October 24, 2013.

### **Objections to Hearing Procedures**

The public hearings 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, 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. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Government Code section 11500) does not apply to these public hearings.

The Water Board's Advisory Team must receive any objections to this set of hearing procedures **no later than 4:00 p.m. on Tuesday, September 10, 2013** or they will be considered waived.

### **Public Hearing Participants**

Participants in these public hearings are identified as either "Designated Parties" or "Interested Parties/Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons/Parties include all parties (e.g., **the public/citizens**, agencies organizations, interest groups), other than those identified as Designated Parties. Interested Persons/Parties may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. All parties, Designated and Interested, may be asked to respond to questions from Water Board members and the Water Board's Advisory Team.

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

1. Water Board Prosecution Team
2. Property owners listed in Attachment 1

**Note:** Each property owner listed in Attachment 1 is a separate Designated Party. These hearing procedures require that the property owners listed in Attachment 1 making submittals to the Water Board also send a copy to the other Designated Party. To comply with this requirement, copies of submittals must be sent to the Prosecution Team. It is not necessary to provide copies of all submittals to the other property owners listed in Attachment 1.

### **Requesting Designated Party Status**

Persons (other than those property owners listed in Attachment 1) who wish to participate in the public hearing as a Designated Party must submit their request for such status in writing (with copies of the request sent to the other Designated Parties). Such requests must be received by the Advisory Team **no later than 4:00 p.m. on Tuesday, September 10, 2013**. The request shall: (1) identify the hearing(s) for which you are requesting Designated Party status by Assessor's Parcel Number (APN) and property owner name; (2) include an explanation of the basis for the status as a Designated Party (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, (3) 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 the Advisory Team **no later than 4:00 p.m. on Thursday, September 19, 2013**.

### **Primary Contacts**

For the Water Board's Advisory Team

<b>Originals and specified number of copies of all documents to:</b>	<b>And one additional copy to:</b>
Patty Z. Kouyoumdjian, Executive Officer Lahontan Regional Water Quality Control Board 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150 <a href="mailto:PZKouyoumdjian@waterboards.ca.gov">PZKouyoumdjian@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:KNiemeyer@waterboards.ca.gov">KNiemeyer@waterboards.ca.gov</a> Phone: (530) 341-5549 Fax: (916) 341-5199

For the Water Board's Prosecution Team

One copy of all documents to both:	
Chuck Curtis, Supervising WRC Engineer Lahontan Regional Water Quality Control Board 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150 <a href="mailto:CCurtis@waterboards.ca.gov">CCurtis@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:VYoung@waterboards.ca.gov">VYoung@waterboards.ca.gov</a> Phone: (916) 327-8622 Fax: (916)

For Property Owners

See Attachment 1
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**Separation of Functions**

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

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 Interested Persons/Parties 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 Interested Person/Party 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 Interested Persons/Parties 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: at the beginning of each session (see meeting agenda available no later than October 24, 2013) the Prosecution Team shall have ten (10 minutes) to present an overview of its evidence. For each contested Order, the Prosecution Team shall have an additional five (5) minutes and other Designated Parties shall each have a total of ten (10 minutes) to present evidence, cross-examine witnesses, and provide a closing statement; and each Interested Person/Party shall have three (3) 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 (Designated Parties and Interested Persons/Parties) who would like additional time must submit their request in writing to the Advisory Team with copies to the Designated Parties. Such requests must be received by the Advisory Team **no later than 4:00 p.m. on Monday, September 30, 2013**. 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 California Code of Regulations, 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, 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 has indicated that the evidence it intends to submit is incorporated into each proposed Order (Attachment B), which have been transmitted to each property owner.**

The remaining Designated Parties (e.g., property owners named in the proposed Orders) shall submit their information (described in Nos. 1 – 4, above) according to the Requirements for All Submittals, above. This information must be received by the Advisory Team **no later than 4:00 p.m. on Monday, September 30, 2013**. An additional copy of the submittal must be received by Kim Niemeyer, Staff Counsel and by the Prosecution Team Primary Contacts identified above.

The Prosecution Team has the opportunity to submit rebuttal evidence or testimony in conformance with the Requirements for All Submittals. This material must be received by the Advisory Team **no later than 4:00 p.m. on Monday, October 14, 2013**. An additional copy of the submittal must be received by Kim Niemeyer, Staff Counsel and by the other Designated Party(ies) the Prosecution Team is responding to.

Interested Persons/Parties who would like to submit written non-evidentiary policy statements are encouraged to submit them as early as possible, but **no later than 4:00 p.m. on Wednesday, October 16, 2013**. Interested Persons/Parties do not need to submit written comments in order to speak at the public 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 timely 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.

### **Evidentiary Objections**

The Advisory Team must receive all written objections to the Prosecution Team's rebuttal evidence or testimony **no later than 4:00 p.m. on Wednesday, October 30, 2013**. An additional copy of the submittal must also be received by Kim Niemeyer, Staff Counsel, and the other Designated Parties (see Note on page 5, above). 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 that 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. 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 (see Note on page 5, above), as early as practicable.

**Evidentiary Documents and File**

The proposed Cease and Desist Orders 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 these public hearings. 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 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: \_\_\_\_\_

Attachment