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## Colorado River Basin Regional Water Quality Control Board

Public Notice No. 7- 24-42-2  
Issued October 22, 2024  
Reissued October 31, 2024

### **REISSUED NOTICE OF PUBLIC HEARING AND ADOPTED HEARING PROCEDURE**

TENTATIVE CEASE AND DESIST ORDER R7-2024-XXXX

NANCY ANN KENNEDY  
RESIDENTIAL ONSITE WASTEWATER TREATMENT SYSTEM  
57478 ENCELIA DRIVE, YUCCA VALLEY  
SAN BERNARDINO COUNTY

### **NOTICE OF PUBLIC HEARING**

December 10, 2024  
Palm Desert City Hall, Council Chambers  
73-510 Fred Waring Drive  
Palm Desert, California 92260

Remote Participation Option Available  
(see *instructions below*)

Deadline for Written Comments:  
November 26, 2024

### **Tentative Order Proposed for Adoption**

Pursuant to Water Code section 13301, the California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board or Board) may issue an order directing parties to cease and desist certain existing or threatened violations of a Water Quality Control Plan prohibition against discharges of waste. Such orders are referred to as Cease and Desist Orders (CDOs).

On May 15, 2024, the Executive Officer was notified that Colorado River Basin Water Board staff had issued a Tentative Cease and Desist Order (Tentative Order or Tentative CDO) to Nancy Ann Kennedy (Discharger) regarding their residential onsite wastewater treatment system (OWTS) located at 57478 Encelia Drive, Yucca Valley,

TENTATIVE CEASE AND DESIST ORDER R7-2024-XXXX  
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California 92284; Assessor Parcel Number 059521215. The Tentative Order alleges the Discharger is operating an OWTS (i.e., discharging waste) in violation of a prohibition in the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan), specifically the prohibition outlined in [Chapter 4, Section H.2.iii](#) (pp. 4.6–4.11). ([https://www.waterboards.ca.gov/coloradoriver/water\\_issues/programs/basin\\_planning/docs/2023/rb7-basin-plan-e032023.pdf#page=64](https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/basin_planning/docs/2023/rb7-basin-plan-e032023.pdf#page=64)).

The Colorado River Basin Water Board has scheduled a hearing to consider issuance of the Tentative Order at its upcoming public meeting on **December 10, 2024**. The hearing will be conducted in-person at Palm Desert City Hall, Council Chambers in Palm Desert, California, with an option for remote participation via the Zoom videoconferencing platform. In accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the [Board's website](#) ([https://www.waterboards.ca.gov/coloradoriver/board\\_info/agenda/](https://www.waterboards.ca.gov/coloradoriver/board_info/agenda/)) at least 10 days in advance of the meeting.

At the hearing, the Colorado River Basin Water Board members will receive testimony regarding the alleged violations. At the hearing, the Board may: (a) issue the Tentative Order as a CDO,<sup>1</sup> with or without modifications; (b) decline to issue the Tentative Order; or (c) continue the hearing to a later date.

### **Adoption of Hearing Procedure**

Attached to this Notice is the adopted Hearing Procedure dated October 31, 2024, which governs the conduct of proceedings related to consideration of the Tentative Order. For the purposes of California Code of Regulations, title 23, section 648 et seq., the adopted Hearing Procedure (including any subsequent revisions thereto) shall be incorporated as part of this Notice.

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<sup>1</sup> Adoption, rescission or modification of a CDO requires “[a] majority vote of the entire membership of a regional board.” (Wat. Code, § 13306.)

Hearing Date:  
December 10, 2024

### **Opportunity for Public Participation**

The Colorado River Basin Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments. To allow for this, all written comments shall be submitted as early as possible, and not later than **5:00 pm on November 26, 2024**.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Colorado River Basin Water Board members at the hearing. Such statements will generally be limited to **3 minutes** per Interested Person, though the Board may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless they are formally recognized as a “Designated Party” per the Hearing Procedure, Interested Persons are not parties entitled to directly participate in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to cross-examination. Although the Board will consider oral and written comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

### **Requests for “Designated Party” Status**

Once adopted, the Hearing Procedure shall govern the process by which Interested Persons apply for “Designated Party” status. In any event, the deadline for such applications shall be no earlier than **November 5, 2024**, and may be extended based on delays in establishment of Hearing Procedure or changes to application requirements.

### **Public File Available for Review**

The Colorado River Basin Water Board maintains a public file containing the Tentative CDO and related documents (including party submittals per the attached Hearing Procedure) at its office located at **73-720 Fred Waring Drive, Suite 100, Palm Desert, California 92260**. Persons interested in reviewing the file should contact **Michael Perez** via email at [Michael.Perez@WaterBoards.ca.gov](mailto:Michael.Perez@WaterBoards.ca.gov). Please also copy **Cassandra Owens** ([Cassandra.Owens@WaterBoards.ca.gov](mailto:Cassandra.Owens@WaterBoards.ca.gov)) on your email to Michael Perez.

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### **Instructions for Access to Remote Meeting**

Although the hearing on the Tentative Order will be conducted in-person, it will be remotely accessible for participation via the ZOOM video conferencing platform. It will also be broadcasted via [Cal-Span](https://cal-span.org) (<https://cal-span.org>).

If you do not intend to speak at the hearing, you can watch the meeting via Cal-Span livestream. However, if you intend to speak at the hearing, you will need access to the ZOOM virtual meeting using the Meeting ID and Passcode. To obtain the ZOOM Meeting ID and Passcode, send an email with the following information to [Mary.Castaneda@WaterBoards.ca.gov](mailto:Mary.Castaneda@WaterBoards.ca.gov).

- Subject Line: December 10, 2024 – Speaker Comment
- Body of Email:
- (1) Your name;
  - (2) Any individuals and/or organizations you will be representing at the hearing;
  - (3) The agenda item name and agenda item number of the agenda item on which you will be speaking;
  - (4) Whether you definitely intend to speak, or alternatively, whether you are unsure and will decide at the meeting (i.e., prior to hearing itself);
  - (5) Whether you intend to participate via videoconference or telephone; and
  - (6) If calling in, the last three digits of the phone number you will be calling from.

The Clerk will promptly respond to your email with the Meeting ID and Password. However, if you do not send your email by 5:00 pm on the day before the meeting, there is a possibility you will not receive a response prior to the start of the meeting. This means that you may need to begin watching the meeting via the livestream until the Meeting ID and Passcode are provided. In any event, please send your email request as soon as possible once the agenda has been posted online.

For general questions on meeting access, to request a special accommodation, or to request interpreter services, please send an e-mail to [Mary.Castaneda@waterboards.ca.gov](mailto:Mary.Castaneda@waterboards.ca.gov) or call (916) 464-3291. Please request special

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accommodations or interpreter services at least 10 business days in advance of the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

**Questions**

All questions regarding this proceeding should be addressed via email to the Advisory Team attorney at [David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov).

**Attachments**

Adopted Hearing Procedure (Oct. 31, 2024)

Hearing Date:  
December 10, 2024

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## Colorado River Basin Regional Water Quality Control Board

### HEARING PROCEDURE

**Effective Date:** October 31, 2024

**Proposed Action:** Adoption of Tentative Cease and Desist Order R7-2024-XXXX for Residential Onsite Wastewater Treatment System at 57478 Encelia Drive, Yucca Valley, San Bernardino County

**Hearing Date:** December 10, 2024

**Location:** Palm Desert City Hall, Council Chambers  
73-510 Fred Waring Drive  
Palm Desert, California 92260

**Discharger:** Nancy Ann Kennedy

**Facility:** Residential Onsite Wastewater Treatment System  
57478 Encelia Drive, Yucca Valley, 92284

**County:** San Bernardino County

#### A. Applicable Laws & Regulations

For purposes of California Code of Regulations, title 23 (Title 23), section 648 et seq., this hearing constitutes an “adjudicative proceeding.” This proceeding is governed by the following statutes, regulations and policies:

- (1) California Water Code section 13301 et seq.;
- (2) Title 23, sections 648 through 648.8, available review on the [State Water Board's laws and regulations page](https://www.waterboards.ca.gov/laws_regulations) ([https://www.waterboards.ca.gov/laws\\_regulations](https://www.waterboards.ca.gov/laws_regulations));
- (3) Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.), *excluding* Article 8 (*Language Assistance*), Article 13 (*Emergency Decision*), Article 14 (*Declaratory Decision*) and Article 16 (*Administrative Adjudication Code of Ethics*);
- (4) Evidence Code sections 801 through 805;
- (5) Government Code section 11513; and

- (6) State Water Board's [Water Quality Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf), effective October 5, 2017 ([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)).

Apart from Government Code section 11513 (see above), Chapter 5 of the Administrative Procedure Act (Gov. Code, § 11500 et seq.) shall not apply to this hearing.

Any procedures not provided by the Hearing Procedure prescribed herein are inapplicable to this hearing.

## **B. Parties and Separation of Functions**

To ensure that the Discharger receives a fair hearing, Colorado River Basin Water Board staff and counsel have undertaken a separation of functions wherein Board members will be advised by an "Advisory Team" comprised of staff and counsel that have not participated in development of the Tentative Order. (See Gov. Code, § 11425.10, subd. (a)(4).) The Advisory Team, Prosecution Team, Discharger and Designated Parties (if any) in this proceeding are listed below:

### ***Advisory Team***

Michael Placencia  
Executive Officer  
Colorado River Basin Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 776-8961  
[Michael.Placencia@WaterBoards.ca.gov](mailto:Michael.Placencia@WaterBoards.ca.gov)

David Lancaster  
Attorney III  
State Water Board, Office of Chief  
Counsel  
1001 I Street, 22nd Floor  
Sacramento, CA 95814  
(916) 341-5195  
[David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)

### ***Prosecution Team***

Cassandra Owens  
Assistant Executive Officer  
Colorado River Basin Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 346-2612  
[Cassandra.Owens@WaterBoards.ca.gov](mailto:Cassandra.Owens@WaterBoards.ca.gov)

Emma McCorkle  
Senior Environmental Scientist  
Colorado River Basin Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 340-4521  
[Emma.McCorkle@Waterboards.ca.gov](mailto:Emma.McCorkle@Waterboards.ca.gov)

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SYSTEM, 57478 ENCELIA DRIVE, YUCCA VALLEY, SAN BERNARDINO COUNTY  
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Michael Perez  
Water Resources Control Engineer  
Colorado River Basin Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 776-8946  
[Michael.Perez@WaterBoards.ca.gov](mailto:Michael.Perez@WaterBoards.ca.gov)

David Boyers  
Assistant Chief Counsel  
State Water Board, Office of Enforcement  
P.O. Box 100, Sacramento, CA 95812  
(916) 341-5276  
[David.Boyers@WaterBoards.ca.gov](mailto:David.Boyers@WaterBoards.ca.gov)

***Discharger and Representatives***

Nancy Ann Kennedy  
57478 Encelia Drive, Yucca Valley, California 92284

**C. Ex Parte Contacts Prohibited**

To maintain the Colorado River Basin Water Board's impartiality, ex parte contacts are prohibited. (See, e.g., Gov. Code, § 11430.10 et seq.) Ex parte contacts are those communications that are directed at the Colorado River Basin Water Board members or the Advisory Team members, regarding the pending matter, and which are not communicated in a manner open to all other persons. Communications regarding non-controversial procedural matters are not considered ex parte contacts, and are therefore not restricted under this Hearing Procedure.

To avoid ex parte contacts in pre-hearing communications, the Discharger' and their representatives should ensure that the Prosecution Team is copied on all written and email correspondence directed to the Advisory Team, and *vice-versa* (to the extent possible). However, if the Discharger's email address is not known, it will not be possible to copy the Discharger on email correspondence between the Prosecution Team and the Advisory Team. To address this issue, the Advisory Team will direct the Prosecution Team to mail copies of certain email communications to the Discharger (as necessary), along with an explanatory cover letter.

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#### **D. Interested Persons (Non-Parties)**

The Colorado River Basin Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments. To allow for such responses, all written comments shall be submitted as early as possible, and not later than 5:00 pm on **November 26, 2024**.

Interested Persons will also be provided the opportunity to orally present general policy statements to the Colorado River Basin Water Board at the hearing. Such statements will be limited to **3 minutes** per Interested Person for this hearing, though the Board Chair may grant additional time on a case-by-case basis. Interested Persons do not need to submit written statements in order to speak at the hearing.

Unless they are formally recognized as a “Designated Party” per the Hearing Procedure, Interested Persons are not parties entitled to directly participate in the proceeding, except as provided above. Interested Persons will not be permitted to present evidence (e.g., photos, eyewitness testimony, etc.). They are also not subject to cross-examination, but may be asked to respond to clarifying questions from the Colorado River Basin Water Board or the Advisory Team. Although the Board will consider oral and written comments from Interested Persons on matters of general policy, such comments are not admissible as evidence.

#### **E. Applications for “Designated Party” Status**

By default, the only parties to an adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Dischargers named in the proposed order. (See Gov. Code, § 11405.60; Title 23, § 648.1, subd. (a).) In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a “Designated Party.” (Gov. Code, § 11440.50, Title 23, § 648.1, subd. (a).) Such determinations shall be made discretionarily on a case-by-case basis by the Executive Officer, at the direction of the Board Chair.

To request “Designated Party” status, Interested Persons must submit a written request to the Advisory Team no later than 5:00 pm on **November 5, 2024**. The written request must include the following information:

- (1) An explanation of how the issues to be addressed at the hearing substantially affect the person requesting Designated Party status (Applicant);

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- (2) Why the Applicant believes that the Prosecution Team and Discharger(s) will not adequately represent their interests;
- (3) A summary of the evidence that the Applicant seeks to present at the hearing, including whether they seek to present their own witness testimony; and
- (4) Whether the Applicant seeks to cross-examine the other parties' witnesses.

The Advisory Team will promptly respond to all timely written requests for Designated Party status. The Advisory Team may request further information before the determination is made. A request for Designated Party status shall not be granted if, in the totality of circumstances, it appears that such designation will impair the interests of justice and the orderly and prompt conduct of the proceeding. The Executive Officer, at the direction of the Board Chair, may impose restrictions on the requestor's hearing participation, including limiting or excluding the use of cross-examination and other procedures to promote the orderly and prompt conduct of the proceeding. (Gov. Code, § 11440.50, subd. (c).)

In the event that "Designated Party" status is granted, this Hearing Procedure may be revised as appropriate.

## **F. Pre-Hearing Submittals**

To avoid the introduction of surprise testimony and exhibits (Title 23, § 648.4, subd. (a)), and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the parties to submit documentary evidence (§ 648.4, subd. (c)), witness information (§ 648.4, subd. (b)), and legal/technical memoranda to the Advisory Team prior to the hearing. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude materials that are not submitted in accordance with this Hearing Procedure. Excluded materials will not be considered by the Board. (§ 648.4, subd. (e).)

### **1. Prosecution Team Pre-Hearing Submittals**

#### **a. Required Materials**

The Prosecution Team shall submit the following materials to the Advisory Team and the Discharger:

- (1) All documentary evidence supporting adoption of the proposed order, with each document separately designated as sequentially numbered exhibit (i.e., Exhibit 1,

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Exhibit 2, Exhibit 3, etc.). Each finding in the proposed order shall be supported by exhibits and/or witness testimony to be offered at the hearing.

- (2) [Optional] A memorandum articulating the Prosecution Team’s legal arguments and technical analyses in support of the proposed order.
- (3) A Witness Information Sheet containing the name of each witness the Prosecution Team intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses’ qualifications as an expert.
- (4) A table listing each document included as part of the submittal. The table shall include the following columns: *Document Title*; *Exhibit Number*; *Exhibit Date* (i.e., when the document was generated); and *File Name*.

The Prosecution Team need not include excerpts from the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) as an “exhibit.” The Advisory Team will provide Board Members with copies of [Chapter 4, Section H.2.iii](https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/basin_planning/docs/2023/rb7-basin-plan-e032023.pdf#page=64) of the Basin Plan ([https://www.waterboards.ca.gov/coloradoriver/water\\_issues/programs/basin\\_planning/docs/2023/rb7-basin-plan-e032023.pdf#page=64](https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/basin_planning/docs/2023/rb7-basin-plan-e032023.pdf#page=64)) prior to the hearing.

**b. Submittal to Discharger**

No later than **November 12, 2024**, the Prosecution Team shall mail the Pre-Hearing Submittals (§ F.1.a) to the Discharger via mail—preferably with a tracking number. Alternatively, these materials may be served on the Discharger via a process server.

**c. Submittal to Advisory Team**

In addition to the materials listed in Section F.1.a, the Prosecution Team shall also submit a signed statement evidencing compliance with Section F.1.b.

No later than **November 12, 2024** (and after compliance with § F.1.b), the Prosecution Team shall provide the Advisory Team with the Pre-Hearing Submittals (§ F.1.a) via [File Transfer Protocol](https://ftp.waterboards.ca.gov/WebInterface/login.html) (FTP) (<https://ftp.waterboards.ca.gov/WebInterface/login.html>). The Advisory Team will provide the Parties with FTP log-in information upon request. Once it has uploaded its materials to the FTP site, the Prosecution Team shall notify the Advisory Team and identify each of the files that have been uploaded.

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Exhibits shall be uploaded as sequentially numbered pdf files with file names in all lower case, and following the naming conventions set forth below:

**yucca\_septic\_kennedy\_cdo\_pt\_exh\_###.pdf**

To the extent possible, all materials shall be submitted as a printable PDF. Additionally, the parties shall add a header to each page that clearly indicates: (1) the submitting party; and (2) the document title.<sup>2</sup>

## **2. Discharger Submittals**

### **a. Required Materials**

No later than **November 19, 2024**, the Discharger shall submit the following materials to the Advisory Team:

- (1) Any additional documentary evidence that supports the Discharger's position with respect to the proposed order. These materials shall be separately designated as sequentially-numbered exhibits, starting with "Exhibit 1."
- (2) [OPTIONAL] A memorandum articulating the Discharger's legal arguments and technical analyses in support of their position(s) with respect to the proposed order.
- (3) A Witness Information Sheet containing the name of each witness the Discharger intends to call to testify at the hearing; the subject matter of their testimony and the estimated time required for each witness. If any of the proposed witnesses will be testifying as an expert (see Evid. Code, § 800 et seq.), the memorandum shall also include the witnesses' qualifications as an expert.
- (4) A table listing each document included as part of the Discharger's submittal. The table shall include the following columns: *Document Title*; *Exhibit Number*; *Exhibit Date* (i.e., when the document was generated); and *File Name* (if submitted electronically).

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<sup>2</sup> Compliance will not be required if the submitting party lacks the necessary PDF software to add new header content, or if it would otherwise be impracticable to do so. For users of Adobe Acrobat software, refer to these instructions: <https://helpx.adobe.com/acrobat/using/add-headers-footers-pdfs.html>

- (5) The Discharger's contact information, including any and all telephone numbers and email addresses at which the Discharger may be reached.

**b. Submittal Methods**

The Discharger shall submit the above materials via one of the following methods:

- (a) Dropping off physical copies at the Colorado River Basin Water Board's office (73-720 Fred Waring Dr. Ste. 100, Palm Desert, CA 92260) during business hours (8:00 am to 5:00 pm), with attention to Paula Rasmussen.
- (b) Physical mailing to the address below:
- Colorado River Basin Water Board  
Attention: Executive Officer  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260
- (c) Email to [David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov) and [David.Boyers@WaterBoards.ca.gov](mailto:David.Boyers@WaterBoards.ca.gov).
- (d) Upload via the Water Boards' FTP Site per Advisory Team instructions, as discussed above in section F.1.c.

If materials are dropped off or mailed to the Colorado River Basin Water Board office, the papers should be accompanied by a cover page clearly indicating the Discharger's name (Nancy Ann Kennedy) and the address of the subject property (57478 Encelia Drive, Yucca Valley).

The Advisory Team will promptly provide the Prosecution Team with copies of any physical materials submitted via mail or drop-off (i.e., only one copy is needed).

If materials are submitted via email, exhibits shall be uploaded as sequentially numbered pdf files (i.e., "Exhibit 1," "Exhibit 2," etc.) with file names in all lower case, and following the naming convention set forth below:

**yucca\_septic\_kennedy\_cdo\_discharger\_exh\_###.pdf**

### **3. Rebuttal Evidence [All Parties; Optional]**

Notwithstanding the pre-hearing evidence submission deadlines specified above, the parties will be permitted to introduce additional evidence necessary to disprove or contradict evidence submitted by another party (Rebuttal Evidence).

By default, subdivision (f) of Title 23, section 648.4 permits parties to introduce Rebuttal Evidence for the first time during the hearing. However, the Hearing Procedure may waive this provision and require pre-submission of Rebuttal Evidence (Title 23, § 648, subd. (d).)

To maintain fairness, ensure orderly conduct of the proceeding, and avoid “surprise evidence” (see Title 23, § 648.4, subd. (a)), this Hearing Procedure requires that Rebuttal Evidence be submitted by **December 3, 2024**. The requirement to submit rebuttal evidence in advance of the hearing applies only to rebut timely-submitted written evidence; the Parties will have the opportunity to rebut oral testimony submitted at the hearing.

The Prosecution Team shall submit its Rebuttal Evidence via email to the Advisory Team ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)), and via mail to the Discharger.<sup>3</sup>

The Discharger shall submit its Rebuttal Evidence via one of the methods described in Section F.2.b (i.e., physical drop-off, mailing or email). If materials are dropped off or mailed to the Colorado River Basin Water Board office, the papers shall be accompanied by a cover page clearly indicating the Discharger’s name (Nancy Ann Kennedy) and the address of the subject property (57478 Encelia Drive, Yucca Valley). The Advisory Team will promptly provide the Prosecution Team with copies of any physical materials submitted via mail or drop-off (i.e., only one copy is needed).

### **6. Responses to Interested Party Written Comments [All Parties; Optional]**

The parties may elect to submit written responses to written comments from Interested Persons. All such responses must be submitted to the Advisory Team by **December 3, 2024**. This need not be accompanied by an updated index table. In lieu of a written response, the parties may also address such comments at the hearing.

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<sup>3</sup> The Prosecution Team may submit its Rebuttal Evidence to the Discharger via email, if the Discharger’s email address is known.

The Prosecution Team shall submit its responses via email to the Advisory Team ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)), and via mail to the Discharger.<sup>4</sup>

The Discharger shall submit its responses via one of the methods described in Section F.2.b (physical drop-off, mailing or email). If materials are dropped off or mailed to the Colorado River Basin Water Board office, the papers shall be accompanied by a cover page clearly indicating the Discharger's name (Nancy Ann Kennedy) and the address of the subject property (57478 Encelia Drive, Yucca Valley). The Advisory Team will promptly provide the Prosecution Team with copies of any physical materials submitted via mail or drop-off (i.e., only one copy is needed).

### **7. Summary Agenda Sheet [Advisory Team]**

Prior to the hearing, the Advisory Team shall prepare a Summary Agenda Sheet summarizing the ongoing controversies involved in the proceeding, and the positions taken by each of the other parties.

### **8. Revised Tentative Order [All Parties, Optional]**

No later than **December 3, 2024**, the parties may submit, for Advisory Team review, a Revised Tentative Order incorporating any evidence that was submitted following issuance of the original. This submittal need not be accompanied by an updated index table. The Revised Tentative Order shall be submitted both as a Microsoft Word file and as a PDF.

The Prosecution Team shall submit its Revised Tentative Order via email to the Advisory Team ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)), and via mail to the Discharger.<sup>5</sup>

The Discharger shall submit its Revised Tentative Order via email to the Advisory Team ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)) and the Prosecution Team ([David.Boyers@WaterBoards.ca.gov](mailto:David.Boyers@WaterBoards.ca.gov)). Hard copies and mailings will not be accepted by the Advisory Team.

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<sup>4</sup> The Prosecution Team may submit its responses to the Discharger via email, if the Discharger's address is known.

<sup>5</sup> The Prosecution Team may submit its Revised Tentative Order to the Discharger via email, if the Discharger's email address is known.

**9. Presentation Slides [All Parties; Mandatory If Slides Are Used]**

No later than **December 3, 2024**, the parties shall provide the Advisory Team with their presentation slides for use at the hearing. The Prosecution Team shall submit a PowerPoint file (or similar format) and PDF printout to the Advisory Team via email ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)), and a physical printout of the presentation via mail to the Discharger.<sup>6</sup>

The Discharger shall submit its slides via email to the Advisory Team ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)) and the Prosecution Team ([David.Boyers@WaterBoards.ca.gov](mailto:David.Boyers@WaterBoards.ca.gov)). Hard copies and mailings will not be accepted by the Advisory Team.

**G. Conduct of Hearing**

**1. Hearing Time Limits**

“Adjudicative proceedings shall be conducted in a manner ... deem[ed] most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board.” (Title 23, § 648.5, subd. (a).) To that end, it has been determined that the following time limits shall apply to the Parties at the hearing.

Prosecution Team: **20 Minutes**

Discharger: **20 Minutes**

The above time limits are based on the Advisory Team’s review of the allegations within the Tentative Order, and based on experience in similar enforcement proceedings, and any input from the parties.

The parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Discussions on procedural issues will not count against the parties’ allotments. A timer will be used to track how much time has elapsed. This timer will be paused during Board questions and party responses to Board questions. Additional time may be

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<sup>6</sup> The Prosecution Team may submit its Presentation Slides to the Discharger via email, if the Discharger’s email address is known.



provided at the discretion of the Board Chair (at the hearing), upon a showing that additional time is necessary.

## **2. Witness Testimony**

At the hearing, witness testimony shall be limited to those subjects previously specified in the Witness Information Sheet (see above). Upon request, the Board may permit testimony on additional subjects, provided that it will not result in undue prejudice to the other parties.

All witnesses who have submitted written testimony shall be available to appear during the hearing (to affirm that the testimony is true and correct), and shall be subject for cross-examination. The failure of a witness to be available during the hearing may result in the submitted testimony being treated as hearsay. (Title 23, § 648.4, subds. (d)-(e).)

All persons intending to testify at the hearing shall take the oath administered by the presiding officer. (Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648.5, subd. (a)(3).)

## **3. Rules of Evidence**

The proceeding shall be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay shall be admissible as evidence, subject to the provisions of Government Code section 11513. Evidence already in the Colorado River Basin Water Board's files may be submitted by reference if the location of the evidence is clearly identified. (Cal. Code Regs., tit. 23, § 648.3.)

## **4. Presentations**

Slide presentations (e.g., PowerPoint) may be used at the hearing, provided their contents do not exceed the scope of previously submitted material. Colorado River Basin Water Board administrative staff will be running the presentation at the party's direction.

## **H. Requests for Extensions**

Parties may request the extension of any deadline specified in this Hearing Procedure. Such requests shall be made via email to the Advisory Team, with the other parties copied on the email. The granting or denial of a request shall be exclusively within the discretion of the Executive Officer, at the direction of the Board Chair.

Hearing Date:  
December 10, 2024

### **I. Modifications to Hearing Procedure**

This Hearing Procedure may be revised by the Board Chair after appropriate notice and opportunity to be heard. For the purposes of this section, the extension of a deadline shall not be construed as a revision to the Hearing Procedure.

### **J. Communications**

To the extent practicable, all communications between the parties prior to the hearing shall occur via email, per the email addresses listed in **Section B** (provided that the Discharger's email address is known). If the Discharger's email address is not known, communications to the Discharger shall occur by mail or telephone. Regardless, the Parties are encouraged to communicate in whatever manner they determine to be most conducive to the expeditious resolution of this matter.

At a minimum, all emails to the Prosecution Team shall include **Prosecution Team attorney**, who shall serve as the primary point of contact for the Prosecution Team (i.e., in lieu of including all members on the email). Alternatively, the parties may elect to include each Prosecution Team member on each email.

All emails to the Advisory Team shall be directed to the Advisory Team attorney ([David.Lancaster@WaterBoards.ca.gov](mailto:David.Lancaster@WaterBoards.ca.gov)), who shall serve as the primary point of contact for the Advisory Team. The parties may elect to include other members of the Advisory Team as well. See **Section C** for prohibition on ex parte contacts.

The Discharger, Nancy Ann Kennedy, shall serve as the principal point of contact on her own behalf.

**SUMMARY OF DEADLINES**

**Table 1—Deadliness**

<b>DATE</b>	<b>REQUIRED ACTIONS / DEADLINES</b>
<b>Tuesday, November 5, 2024</b> (5 weeks before Meeting)	Requests for Designated Party Status
<b>Tuesday, November 12, 2024</b> (4 weeks before Meeting)	Pre-Hearing Submittals from Prosecution Team
<b>Tuesday, November 19, 2024</b> (3 weeks before Meeting)	Pre-Hearing Submittals from Dischargers and Designated Parties (if any)
<b>Tuesday, November 26, 2024</b> (2 weeks before Meeting)	Written Comments from Interested Parties Prosecution Team Evidentiary Objections
<b>Tuesday, December 3, 2024</b> (1 week before Meeting)	Responses to Written Comments from Interested Parties Rebuttal Evidence Revised Tentative Order Presentation Slides for Hearing
<b>Tuesday, December 10, 2024</b>	Public Meeting / Hearing

Hearing Date:  
 December 10, 2024