NOTICE OF PUBLIC HEARING

The State Water Resources Control Board
will hold a Public Hearing to determine whether to adopt an Order imposing

Administrative Civil Liability for Failure to File
Annual Water Use Reports and/or Supplemental Statements
upon

Richard Jennings

The **Public Hearing** will commence on
March 29, 2019
at 9:00 a.m.

in the
Coastal Hearing Room
Joe Serna, Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, California

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board): 1) to receive evidence relevant to determining whether Richard Jennings (Respondent) violated regulations or the terms or conditions of any permit or license requiring the filing of a Progress Report by Permittee or Report of Licensee (collectively, Annual Water Use Report) and/or violated any regulations requiring the filing of Supplemental Statement of Water Diversion and Use (Supplemental Statement); and 2) if a violation occurred, to determine the amount of administrative civil liability and adopt an order imposing administrative civil liability upon the Respondent. Specific allegations related to the alleged violation are set forth in the administrative civil liability complaints (ACL Complaints).

BACKGROUND

For the 2016 and 2017 calendar years, California Code of Regulations, title 23, sections 925 and 929 require permittees and licensees, respectively, to submit Annual Water Use Reports no later than April 1 of the following year. (Cal. Code Regs., tit. 23, §§ 925, subd. (b); 929, subd. (b); see also Wat. Code, §§ 1840–1841.) These reports must be filed electronically using the Report Management System—a component of the Electronic Water Right Information Management System. The failure to file an Annual Water Use Report is a violation of the terms of a permit or license and of the regulations that set forth the filing requirements.

California Water Code sections 5100-5107 and California Code of Regulations title 23, section 920 establish a program requiring persons or organizations who, after December 31, 1965, divert surface water or pump groundwater from a known subterranean stream to file with the State Water Board an Initial Statement of Water Diversion and Use and thereafter annually file Supplemental Statements prior to July 1 of the following year. Water Code section 5101 details several statutory exceptions to the requirement to file. State Water Board regulations provide that Supplemental Statements must be filed electronically using the Report Management System (a component of the Electronic Water Right Information Management System). (Cal. Code Regs., tit. 23, § 920, subd. (a).)

Water Code section 1846 provides that the State Water Board may administratively impose civil liability pursuant to Water Code section 1055 of up to $500 per day of violation of a regulation or order adopted by the Board, or of a term or condition of a water right permit, license, registration, or certificate. (Wat. Code, § 1846, subd. (a), (c).) In addition, Water Code section 5107 provides that the State Water Board may administratively impose civil liability (penalty) pursuant to Water Code section 1055 of up to one thousand dollars ($1,000) for the failure to file a supplemental statement, plus five hundred dollars ($500) per day for each additional day on which the violation continues beyond 30 days after notice of the violation.

On October 19, 2018, the State Water Board, Division of Water Rights (Division) issued ACL Complaints alleging that the Respondent failed to file annual water use reports (A000135, A000486, and A010835) and supplemental statements (S014780, S014781, S014782, S014783, S014784, S014785, S014786, S014787, S014788, S014789, S014790, S014791, S014792, S014793, S023091, and S023092) by their respective April 1, 2018 and July 1, 2018 deadlines. The ACL Complaints allege that the Respondent violated California Code of Regulations, title 23, section 920 and 929, and recommends the imposition of administrative civil liability in the total amount of $28,500 pursuant to Water Code section 1846. The total maximum potential liability under section 1846 for the violation(s) alleged is $1,181,500.

Material related to this hearing can be found on the Division's website at:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/acl_2016/index.html

KEY ISSUES

The State Water Board's decision will be based upon evidence in the record developed at the hearing. Parties should submit exhibits and testimony responsive to the following issues:

1) Was the Respondent required to file (an) Annual Water Use Report(s) for 2017? This includes, but is not limited to consideration of any of the following issues:

    a) Did any regulation adopted by the Board require the Respondent to file (an) Annual Water Use Report(s) for 2017?
    b) Did any order adopted by the Board require the Respondent to file (an) Annual Water Use Report(s) for 2017?
    c) Did any term or condition of any permit or license require the Respondent to file (an) Annual Water Use Report(s) for 2017?

2) Did the Respondent file (an) Annual Water Use Report(s) for 2017?

3) If a violation of any State Water Board regulation or order or a violation of the terms or conditions of any permit or license occurred, should the Board impose administrative

civil liability and, if so, in what amount and on what basis? Pursuant to sections 1055.3 and 1848 of the Water Code, in determining the amount of civil liability, the Board must take into consideration all relevant circumstances, including, but not limited to:

a) What is the extent of harm caused by the alleged violation?
b) What is the nature and persistence of the alleged violation?
c) What is the length of time over which the alleged violation occurred?
d) What corrective actions, if any, have been taken?
e) What other relevant circumstances should be considered by the Board in determining the amount of any civil liability?

4) Was the Respondent required to file (a) Supplemental Statement(s) of Water Diversion and Use for 2017?

5) Did the Respondent file (a) Supplemental Statement(s) of Water Diversion and Use for 2017 prior to July 1 of the following year?

6) If the Respondent was required to file (a) Supplemental Statement(s) of Water Diversion and Use for 2017 and failed to do so prior to the deadline(s), should the Board impose administrative civil liability and, if so, in what amount and on what basis? Pursuant to sections 1055.3 and 1848 of the Water Code, in determining the amount of civil liability, the Board must take into consideration all relevant circumstances, including, but not limited to:

a) What is the extent of harm caused by the alleged violation?
b) What is the nature and persistence of the alleged violation?
c) What is the length of time over which the alleged violation occurred?
d) What corrective actions, if any, have been taken?
e) What other relevant circumstances should be considered by the Board in determining the amount of any civil liability?

HEARING OFFICER AND HEARING TEAM

State Water Board Member E. Joaquin Esquivel will preside as the hearing officer for this proceeding. Other members of the Board may be present during the hearing.

A hearing team will assist the hearing officer by providing legal and technical advice. The hearing team members will be Lily Weaver, Attorney, and Lisa Hong, Water Resource Control Engineer. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

PROSECUTION TEAM AND SEPARATION OF FUNCTIONS

A State Water Board staff prosecution team will be a party to this hearing and is composed of: John Prager, Attorney; Brian Coats, Senior Water Resource Control Engineer; Kyle Ochenduszko, Supervising Water Resource Control Engineer; and Julé Rizzardo, Assistant Deputy Director.

The prosecution team is separated from the hearing team and, like all parties, is prohibited from having *ex parte* communications with any members of the State Water Board and any members of the hearing team regarding substantive issues and controversial procedural issues within the

scope of this proceeding. This separation of functions also applies to the supervisors of each team. (Gov. Code, §§ 11430.10-11430.80.)

HEARING PARTICIPATION PROCEDURES

THE RESPONDENT HAS REQUESTED A HEARING and it is scheduled for **March 29, 2019**, at **9:00 a.m.**[1]

IF YOU WANT TO TAKE PART IN THIS EVIDENTIARY HEARING, you should carefully read the enclosure titled "Information Concerning Appearance at Water Right Hearings." **As stated in that enclosure, anyone wishing to participate in this hearing (beyond presenting a policy statement) must submit a Notice of Intent to Appear (NOI), which must be received by the Board no later than the deadline listed below. Parties desiring only to present policy statements at the hearing need not submit an NOI.**

If the State Water Board does not receive a NOI from the Respondent indicating the Respondent's intent to participate in the hearing as a party by the deadline specified below, the Board may deem the Respondent's request for a hearing regarding the administrative civil liability complaints to be withdrawn and may impose the administrative civil liability without further notice. Similarly, if the Respondent withdraws their request for a hearing, the Board may impose the administrative civil liability without further notice.

Within one week after the deadline to submit NOIs, the State Water Board will mail out a list of those who wish to participate in this hearing and a copy of all NOIs that the Board timely received. The list is provided to facilitate the exchange of correspondence and **exhibits, such as written testimony, witness qualifications, and other relevant evidence**. **Copies of all parties' exhibits, exhibit identification indices, and statements of service must be received by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.**

Deadlines for Hearing Participation

Deadline for the Board to receive all parties' NOI forms.	**February 28, 2019, 12:00 noon**
Deadline for service of all parties' exhibits, exhibit identification indices, and statements of service to all other parties and for the Board to receive these documents.	**March 20, 2019, 12:00 noon**

[1] The State Water Board may also hold hearings on other matters on the same day. You must be present at the time indicated above to participate in your hearing.

SUBMITTALS TO THE STATE WATER BOARD AND THE PROSECUTION TEAM

All documents submitted to the State Water Board, including NOIs, exhibits, exhibit identification indices, and statements of service, should be addressed as follows:

How to Submit Documents to the Board

By Email:	wrhearing@waterboards.ca.gov With Subject of **"Richard Jennings Failure to File Reports Hearing"**
By Fax:	(916) 341-5400
By Mail:	State Water Resources Control Board Division of Water Rights Attention: Michael Buckman, Hearings Unit Supervisor PO Box 2000 Sacramento, CA 95812-2000
By Hand Delivery (see note below):	Joe Serna Jr. CalEPA Building Water Rights Records Room 1001 I Street, 2nd Floor Sacramento, CA 95814

Copies of all documents submitted to the State Water Board must also be provided to the prosecution team and should be addressed as follows:

How to Submit Documents to the Prosecution Team

By Email:	john.prager@waterboards.ca.gov With Subject of **"Richard Jennings Failure to File Reports Hearing"**
By Fax:	(916) 341-5896
By Mail:	State Water Resources Control Board Office of Enforcement Attention: John Prager, Attorney PO Box 2000 Sacramento, CA 95812-2000
By Hand Delivery (see note below):	Joe Serna Jr. CalEPA Building Water Rights Records Room 1001 I Street, 2nd Floor Sacramento, CA 95814

Note: All hand delivered submittals must be date and time stamped by the Division of Water Rights' Records Unit on the second floor of the Joe Serna Jr. CalEPA Building (CalEPA Building) at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely date and time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officer.

OPPORTUNITY FOR SETTLEMENT

Please read the discussion of settlements in the enclosure entitled "Information Concerning Appearance at Water Right Hearings." In this water rights enforcement hearing, the prosecution team is prosecuting the Respondent for an alleged violation. The prosecution team and the Respondent may, at their discretion, engage in private settlement discussions and may include other persons in those discussions. **Due to the separation of functions discussed previously, the hearing team cannot participate in settlement discussions.** Should the prosecution team and the Respondent reach settlement, they must notify the hearing team as soon as possible.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the prosecution team. (Gov. Code, §§ 11430.10-11430.80.) Questions concerning non-controversial procedural matters should be directed to Lisa Hong at (916) 323-5175, or by e-mail at lisa.hong@waterboards.ca.gov; or Lily Weaver at (916) 341-5184, or by e-mail at lily.weaver@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

If you have any legal or technical questions concerning the allegations in the ACL Complaints, or if you wish to discuss settlement of the ACL Complaints prior to hearing, you may contact prosecution team member John Prager, at (916) 341-5542, or by email at john.prager@waterboards.ca.gov.

TRAVEL TO AND ACCESSIBILITY AND SECURITY AT THE CALEPA BUILDING

A map to the Joe Serna Jr.-CalEPA Building (CalEPA Building) and parking information are available at http://www.calepa.ca.gov/headquarters-sacramento/location/. The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Moises Moreno-Rivera at (916) 341-5261 or by e-mail at moises.moreno-rivera@waterboards.ca.gov.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To register, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, sign in and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in.

WEBCAST OF HEARING

Broadcasts of the water rights hearings will be available via the internet and can be accessed at: https://video.calepa.ca.gov/

February 5, 2019
Date

Jeanine Townsend
Jeanine Townsend
Clerk to the Board

Enclosures

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board or Board) is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations

   Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

   Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval, unless all parties are signatories to the settlement agreement.

   In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement

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discussions, or may include other persons. If the original parties resolve the dispute, the hearing officer will determine whether or not to continue the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. **PARTIES:** The current parties to the hearing are **Richard Jennings and the prosecution team for the State Water Board**.

   Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officer, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officer may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

   Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence.

4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the Notice of Public Hearing (Hearing Notice).

   Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

   a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.

   b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.

5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of the Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice.** Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. **If the State Water Board does not receive a Notice of Intent to Appear from Richard Jennings indicating Richard Jennings's intent to participate in the hearing as a party by the deadline specified in the Hearing Notice, the State Water Board may deem Richard**

Jennings's request for a hearing regarding the administrative civil liability complaints to be withdrawn and may impose the administrative civil liability without further notice. Similarly, if Richard Jennings withdraws the request, the Board may impose the administrative civil liability without further notice.

Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered paper copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.[1] Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, notice will be sent to those parties on the service list and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only.

6. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.[2] Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

   Each party shall submit to the State Water Board <u>1 electronic copy</u> of each of its exhibits. With its exhibits, each party must submit a completed <u>Exhibit Identification Index</u>. Each party shall also serve a copy of each exhibit and the exhibit index on every

[1] A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.

[2] The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

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party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the Hearing Notice.

The following requirements apply to exhibits:

a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.

b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.

d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.

e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. **ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Documents submitted or served electronically must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft Office-supported

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format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indexes. Electronic submittals to the State Water Board of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of **"Richard Jennings Failure to File Reports Hearing"**. Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD), digital versatile disc (DVD), or universal serial bus (USB) flash drive. **Each electronically submitted exhibit must be saved as a separate PDF file, with the filename in lower case lettering.**

8. **PRE-HEARING CONFERENCE:** At the hearing officer's discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.

9. **ORDER OF PROCEEDING:** Hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, for good cause.

   a. **Policy Statements within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. **Oral summaries of the policy statements will be limited to 5 minutes** or such other time as established by the hearing officer.

   b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.

      i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements will be limited to 5 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.

      ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. **Each party**

will be allowed up to 15 minutes total to summarize or emphasize all of its written testimony on direct examination.[3]

iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined as a panel. **Cross-examiners initially will be limited to 15 minutes per witness or panel of witnesses.** The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to examine a witness.

iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officer. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officer may establish time limits for any permitted redirect and recross examination.

v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.

c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing unless the hearing officer requires otherwise. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officer may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. **If the hearing officer authorizes the parties to file briefs, 3 copies of each brief shall be submitted to the State Water Board, and 1 copy shall be served on each of the other participants on the service list.** A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

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[3] The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. For example, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

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10. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

11. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

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NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding the (Name of Respondent and Enforcement Action) ____ _____ ,

Scheduled to commence on:
March 29, 2019

1) Check only one of the following boxes:

☐ **Option 1:** I/we intend to present a policy statement only and, therefore, to not participate as a party.

☐ **Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination, and/or rebuttal.

2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to instruction #3 below.

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		

(If more space is required, please add additional pages.)

3) Fill in the following information of the participant, party, attorney, or other representative:

Name (type or print): _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

E-mail Address: _____

Optional:

☐ I/we decline electronic service of hearing-related materials.

Signature: _____ Date: _____

EXHIBIT IDENTIFICATION INDEX

Administrative Civil Liability Complaints
Against
Richard Jennings

The Public Hearing will commence on
March 29, 2019 at 9 a.m.

PARTICIPANT: _____

Exhibit Identification Number	Exhibit Description	Status of Evidence (for Hearing Team use only)		
		Introduced	*Accepted*	*By Official Notice*