



State Water Resources Control Board

January 7, 2018

(Via email)

Hearing Officer E. Joaquin Esquivel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
wrhearing@waterboards.ca.gov

SUBJECT: REQUEST FOR CLARIFICATION OF HEARING NOTICE KEY ISSUE 3 AND REQUEST TO MODIFY DEADLINES FOR HEARING SCHEDULED FOR MARCH 11 AND 12, 2019

The State Water Resources Control Board (“State Water Board” or “Board”), Division of Water Rights (“Division”) Prosecution Team respectfully requests (1) clarifications of the background discussions for the Notice of Public Hearing (“Hearing Notice) sent to each statement holder and of Key Issue 3 for each Hearing Notice sent to each respondent and (2) modification of the deadline to submit exhibits for the hearings scheduled for March 11 and 12, 2019.

Each Hearing Notice includes a “Background” section. In the Hearing Notice for each respondent who allegedly failed to file one or more Supplemental Statements before the applicable deadline, the Background section discusses statutory authority in California Water Code sections 5100-5107 to require an Initial Statement of Water Diversion and Use and an annual Supplemental Statement.¹ The discussion continues, citing Water Code section 5107 as a basis for administrative civil liability (“ACL”). Finally, each Hearing Notice acknowledges that the ACL Complaint alleges that the respondent violated California Code of Regulations, section 920. Although the Background discussion’s statements of law are correct, their relationship to the noticed hearing is not exactly clear. The ACL complaints did not allege liability based on Water Code section 5107. As acknowledged in each Hearing Notice, each ACL Complaint alleged liability based on Water Code section 1846, subdivision (a)(2). Nonetheless, the key issues in each Hearing Notice for each respondent who allegedly failed to file one or more Supplemental Statements before the applicable deadline reflect a consideration of potential liability under Water Code section 5107, rather than Water Code section 1846.

¹ The statement holders who have received a Hearing Notice are Brad Erikson (scheduled February 7, 2019), the Walker Land Company (scheduled February 7, 2019), Phyllis Brooks (scheduled March 11, 2019), Lake Canyon Mutual Water Co. (scheduled March 11, 2019), Scheid Vineyards (scheduled March 12, 2019), and Sandra Jean Varozza (scheduled March 12, 2019).

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In addition, each Hearing Notice for all respondents, irrespective of whether the respondent is alleged to have failed to file a Supplemental Statement, Progress Report of Permittee, or Report of Licensee, all state in Key Issue 3 "Pursuant to section 1055.3 of the Water Code, in determining the amount of civil liability, the Board must take into consideration all relevant circumstances." Again, this is confusing. Each Administrative Civil Liability ("ACL") Complaint alleges the violation of a regulation and cites Water Code section 1846, subdivision (a)(2) as the basis for liability. The ACL Complaints further recommend liability based on a consideration of factors in Water Code section 1848, subdivision (d), rather than Water Code section 1055.3. The Prosecution Team therefore requests clarification as to whether the State Water Board, in determining liability, must consider all relevant circumstances pursuant to Water Code section 1055.3, Water Code section 1848, subdivision (d), or Water Code section 5107, subdivision (e)

In addition, each Hearing Notice issued for the hearings scheduled for March 11 and 12, 2019 has a deadline of January 29, 2019 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. Hearings scheduled for February 7 and 8, 2019 have the same deadline. Due to the number and volume of hearings (twelve in February and ten in March), the Prosecution Team requests and extension of the deadline to submit exhibits for the March 11 and 12, 2019 hearings to March 1, 2019. This would be ten days before the March 11, 2019, like the deadline for the February 7, 2019 hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Prager", followed by a long horizontal line extending to the right.

John J. Prager
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