



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

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## Office of Enforcement

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Arnold Schwarzenegger  
Governor

December 8, 2010

(Via email only)

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Dear Ms. Osborn:

**RE: CHARLES GRACE WWTP OPERATOR CERTIFICATION HEARING**

Enclosed is a request by the Prosecution Team in the above-referenced matter for a continuance and a request to submit prehearing briefs on the issue of laches.

Sincerely,

*David Boyers*

David Boyers  
Staff Counsel III Supervisor  
**Office of Enforcement**

Enclosure

cc: See next page.

cc: *(via email only)*

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6 Attorneys for State Water Board Prosecution Team

7  
8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
9  
10

11 In the Matter of: )  
12 )  
13 The Petition of Mr. Charles Grace for )  
Review of Final Division Decision )  
14 Downgrading Mr. Grace's Wastewater )  
Treatment Plant Operator Certification )  
15 from Grade V to Grade II )  
\_\_\_\_\_ )

**REQUEST FOR CONTINUANCE;  
REQUEST TO SUBMIT PRE-HEARING  
BRIEFS ON LACHES**

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17 The Prosecution Team in the above-referenced matter respectfully requests that the  
18 State Water Resources Control Board (State Water Board) Hearing Officer 1) continue  
19 the hearing currently scheduled for February 7-8, 2010, for a period of forty-five (45) days,  
20 and provide a similar extension for the January 10, 2011 deadline for submittal of witness  
21 testimony, exhibits, lists of exhibits, qualifications, and statement of service; and 2) allow  
22 the State Water Board Prosecution Team (Prosecution Team) and Mr. Charles Grace  
23 (Petitioner)(collectively the Parties) to submit prehearing briefs on the issue of laches.  
24

25 **REQUEST FOR CONTINUANCE**

26 As described in California Code of Regulations, title, 23, section 3715(b),  
27 before taking final action on a petition of a Final Division Decision, the State Water Board  
28 may, "in its discretion, hold a hearing for the purpose of oral argument or receipt of

1 additional evidence, or both...” (Emphasis added.) The Notice of Hearing that was  
2 provided to the parties on November 10, 2010 was unclear as to whether the State Water  
3 Board would allow for receipt of additional evidence. In an email dated November 21,  
4 2010, the Prosecution Team sought clarification from the State Water Board’s Advisory  
5 Team on this issue. The Advisory Team responded on November 23, noting that “To  
6 clarify the Notice of Hearing, the State Water Board will accept evidence and testimony  
7 not already in the record, including expert witness testimony that may be offered to assist  
8 the State Water Board in understanding the key issues and alleged violations identified in  
9 the Notice of Hearing.”

10 The Prosecution Team supports allowing additional evidence and testimony  
11 to be presented at the hearing, however, the timeframes set forth in the Notice of Hearing  
12 do not provide the Prosecution Team sufficient time to gather and prepare the necessary  
13 evidence and testimony. The imposition of furloughs on the staff level attorneys who are  
14 members of, or otherwise assisting, the Prosecution Team has reduced the number of  
15 work days in each month and there is no projection that the furloughs will end before this  
16 matter goes to hearing. In addition, the Office of Enforcement recently lost a Staff  
17 Counsel III, and has been unable to replace her due to the Governor’s hiring freeze,  
18 resulting in an increased workload for all of the attorneys in the Office of Enforcement.  
19 Moreover, with the upcoming holidays, we anticipate that it may become increasingly  
20 difficult to meet with our witnesses, several who are no longer in state service, in order to  
21 secure their written testimony by the January 10, 2010 deadline. Based on the  
22 considerations described above, the Prosecution Team requests that the Hearing Officer  
23 grant a forty-five (45) day continuance of the hearing scheduled for February 7-8, 2010.

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25 **REQUEST TO SUBMIT PREHEARING BRIEFS ON LACHES**

26 Additionally, the Prosecution Team requests that the State Water Board  
27 Hearing Officer allow the Parties to submit prehearing briefs and supporting declarations,  
28 if necessary, on Key Issue number 4 in the Notice of Hearing; specifically whether the

1 doctrine of laches bars the State Water Board from taking a disciplinary action against the  
2 Petitioner for any violations of the Operator Certification regulations. Because the Parties  
3 have limited time to present their cases-in-chief, the Prosecution Team requests that the  
4 Hearing Officer set a schedule for filing prehearing briefs on Key Issue number 4 after the  
5 deadline for receipt of and service of witnesses' proposed testimony, exhibits, list of  
6 exhibits, qualifications, and statement of service. The enclosure to the Notice of Hearing,  
7 "Wastewater Treatment Plant Operator Certification Enforcement Hearing Information,"  
8 states, "[a]t the close of the hearing or at other times, if appropriate, the hearing officer  
9 may allow oral closing statements or legal arguments or set a schedule for filing legal  
10 briefs or written closing statements." The submission of prehearing briefs and supporting  
11 declarations, if needed, would not preclude the Parties from addressing or summarizing  
12 their position on this issue during the hearing. However, submitting prehearing briefs  
13 would facilitate the hearing process if the Parties submit their legal arguments and  
14 supporting evidence ahead of time. In order to streamline the Parties' presentations, the  
15 Prosecution Team requests that the Hearing Officer establish a schedule for filing legal  
16 briefs on Key Issue number 4.

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18 Respectfully requested this 8th day of December, 2010, at Sacramento, California.  
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21 David Boyer  
22 David M. Boyers  
23 Attorney for the Prosecution Team  
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