



State Water Resources Control Board

December 31, 2018

(Via email)

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SUBJECT: REQUEST TO AMEND HEARING PROCEDURES FOR HEARINGS READING FAILURE TO FILE ANNUAL WATER USE REPORTS

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) Prosecution Team request the following amendments to the procedures outlined in Hearing Notices relating to Administrative Civil Liability for failure to file annual use reports.

- 1) The current hearing procedures call for each party to submit three paper copies and one electronic copy of each of its exhibits. The Prosecution Team requests that this be amended to eliminate the requirement to submit paper copies.

Paper submittal requirements are redundant and pose an undue significant administrative burden for both the Prosecution Team and participating parties. The need for physical exhibit binders is unnecessary because all parties are required to submit electronic copies of exhibits. Having paper and electronic copies of exhibits increases the potential for administrative error and could create service issues if a paper exhibit binder is not an exact copy of submitted electronic exhibits. Additionally, mailing physical exhibit binders presents an unnecessary cost to participating parties because electronic versions of exhibits are available for free. Further, mailing physical binders throughout the state creates a timeliness/service issue; by the time binders arrive at their destination, parties will already be reviewing the electronic version of exhibits thereby making the physical binders useless. Having one version of submitted exhibits, the electronic version, will reduce hearing party confusion and save Hearing Team staff time by not having to reconcile paper and electronic copies of exhibits.

There are 24 noticed hearings as of December 31, 2018, which means the Prosecution Team needs to produce 72 exhibit binders. More specifically, for the 12 hearings noticed for February 7-8, 2019, the Prosecution Team needs to produce 36 paper exhibit binders by January 29, 2019. While the number of exhibits for each hearing is likely to be less than 50, in the aggregate the high number of hearings held with such short timeframes will result in a

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significant number of paper exhibit submittals, and the associated significant administrative burden.

The State Water Board has recently demonstrated that it was amenable to dispensing with requirements for filing of paper copies of exhibits in the WaterFix change petition hearing. The Prosecution Team respectfully requests that the Hearing Team take into account the goals articulated in those hearing procedures to “expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing” and consider adopting similar procedures for filing and serving electronic exhibits.¹

- 2) The current hearing procedures call for each party to be allowed 10 minutes total to summarize or emphasize all its written testimony on direct examination for each individual hearing. The Prosecution Team requests that this be amended to allow up to 15 minutes, with generally applicable testimony provided once at the beginning of the hearing day.

The Prosecution Team requests up to a total of 15 minutes for its case in chief for each hearing. However, the Prosecution Team anticipates offering at least some identical oral testimony in each individual hearing throughout the day. In the interest of conserving time and efficiently managing these hearings, the Prosecution Team requests that oral testimony which is generally applicable to all hearings be allowed to be presented once, at the beginning of the hearing day. The Prosecution Team’s time presenting this testimony could be subtracted from its 15 minutes for each of the hearings that day. The Prosecution Team would then have the remaining time for its case in chief for each individual hearing. Witnesses that provide such testimony would remain available for cross-examination for all individual hearings.

Sincerely,



John J. Prager
Staff Counsel, Prosecution Team
Office of Enforcement

¹ The WaterFix procedural ruling, dated March 4, 2016, describes procedures for electronic service of materials on pages 7 through 10 and is available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwf_final_030416_ruling.pdf.

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