



State Water Resources Control Board

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FROM: Megan Knize, Hearing Officer
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DATE: April 1, 2021

SUBJECT: Procedures for Disposition of Administrative Civil Liability Complaints in Annual Water-Right Report Matters

This memorandum describes the three types of actions the Administrative Hearings Office (AHO) may take on Administrative Civil Liability Complaints (ACL Complaints) in matters involving annual water diversion and use reports.

A. Background

Water Code section 1846 authorizes the Board to impose administrative civil liability, pursuant to Water Code section 1055, on any person or entity that violates a regulation adopted by the Board. Water Code section 1055 provides that the State Water Board's Executive Director may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to certain statutes, including Water Code section 1846.

The Executive Director of the Board and the Deputy Director for the Division of Water Rights (Division) have delegated this authority for water-right enforcement matters to the Assistant Deputy Director for the Division's Water Rights Permit and Enforcement Branch. Under these statutes and delegations, the Division's Water Rights Enforcement Section may issue an ACL Complaint, which is signed by this Assistant Deputy Director, when the holder of a water-right permit or license or the person or entity that has filed an initial

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statement of water diversion and use (collectively referred to in this memorandum as the “Respondent”) has not filed an annual permittee progress report, licensee report or supplemental statement of water diversion and use by the applicable deadline.

Water Code section 1112, subdivision (a)(1), provides that an AHO hearing officer shall preside over a hearing on a complaint issued under Water Code section 1055.

When the AHO receives a request from a Respondent for a hearing on an ACL Complaint involving an alleged failure to file an annual report by the applicable deadline, the AHO sends the Respondent an acknowledgement of receipt of the request (with copies to the assigned Office of Enforcement attorney and the assigned Division Enforcement Section staff). The AHO then issues a Notice of Hearing, which specifies the hearing date and provides information about the hearing procedures.

B. AHO’s Disposition of Annual Report Matters by Memo, Cancellation, or Hearing

The AHO normally will take one of the following three types of actions on each ACL Complaint involving an annual reporting matter for which the Respondent has requested a hearing:

1. **Division Withdraws ACL Complaint.** If the Division withdraws the Complaint after the Respondent has requested a hearing but before the hearing date, then the Division should notify the AHO of this withdrawal in writing by e-mail to the AHO inbox (adminhrgoffice@waterboards.ca.gov) and send a copy (noted on the e-mail’s “cc” line) of the e-mail to the Respondent. The AHO will then issue a notice of cancellation of the hearing and a memorandum to the parties advising them that the AHO is closing its file for the matter. The AHO will post copies of this notice and this memorandum on the AHO’s webpages.
2. **Prosecution Team and Respondent Settle.** If the Prosecution Team and the Respondent sign a written settlement agreement that resolves the issues raised by the ACL Complaint before the hearing date, then the Prosecution Team should notify the AHO of the settlement in writing by e-mail to the AHO inbox and send a copy of the e-mail to the Respondent. The Prosecution Team and the Respondent also should prepare a proposed order approving the settlement agreement and send it to the AHO. The AHO hearing officer will review the proposed order, make any edits that the hearing officer believes are appropriate, and transmit the proposed order and the signed settlement agreement to the Executive Director (with copies to the Prosecution Team and Respondent) for the Executive Director’s consideration, and, if acceptable, signature.¹ The AHO will issue a notice of cancellation of the hearing if the AHO receives the proposed

¹ State Water Resources Control Board Resolution 2002-0104 (“The Executive Director may issue a decision or order by settlement of the parties under Government Code section 11415.60”).

order from the Division and the parties' signed settlement agreement before the hearing date. If the AHO does not receive these documents before the hearing date, then the AHO will hold the hearing.

3. **Matter Proceeds to Hearing.** If the Prosecution Team does not withdraw the ACL Complaint (scenario 1, above) and if the Prosecution Team and the Respondent do not transmit a signed settlement agreement and proposed order to the AHO before the hearing date (scenario 2, above), then the AHO will hold a hearing on the ACL Complaint, prepare a proposed order, and transmit the proposed order to the Clerk of the Board.

If the Respondent does not appear at the hearing, the AHO still will hold the hearing and give the Prosecution Team an opportunity to present its evidence and arguments. The AHO then will prepare a proposed order and transmit it to the Clerk of the Board.