

## State Water Resources Control Board

JAN 22 2019

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State Water Resources Control Board  
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### CLARIFICATION REGARDING NOTICES OF PUBLIC HEARING AND EXTENSION OF DEADLINE FOR SUBMITTAL OF MATERIALS FOR MARCH HEARINGS

This letter is in response to the Prosecution Team's request, received January 7, 2019, for:  
(1) clarification of the background discussion within each Notice of Public Hearing (hearing notice) regarding failure to file Supplemental Statements of Water Diversion and Use (Supplemental Statements) for 2016 and/or 2017 and Key Issue 3 of each of these hearing notices and  
(2) modification of the deadline for the submission of materials for those hearings scheduled for March 11 and 12, 2019.<sup>1</sup>

#### Clarification of Hearing Notice and Key Issue 3

The Prosecution Team requested clarification of the relationship of Water Code sections 5100–5107 to the noticed hearings that regard alleged failure to file Supplemental Statements and of whether the State Water Resources Control Board (State Water Board) will consider the factors set forth in Water Code section 1055.3, Water Code section 1848, subdivision (d), or Water Code section 5107, subdivision (e) when determining liability.

Water Code section 1846 permits the State Water Board to impose civil liability administratively upon a person or entity for violation of a term or condition of a permit, license, certificate, or registration issued pursuant to the Water Code, or of a regulation or order adopted by the Board. When a person or entity diverts water under a right or claim of right that is not covered by a permit, license, certificate, or registration, section 1846 applies if the person or entity has violated a State Water Board regulation or order. In the pending cases, the Administrative Civil Liability complaints issued against statement filers allege violation of California Code of Regulations title 23, chapter 2.7, article 2, section 920. This section sets forth requirements for filing Supplemental Statements, but it does not identify the persons or entities who are subject to (or exempt from) the filing requirements.<sup>2</sup> That information is contained in Water Code sections 5100–5107. The hearing notices for statement

<sup>1</sup> On January 17, 2019, the Prosecution Team sent requests for postponement for several hearings which are the subject of settlement discussions. The Hearing Officer's decision on those requests is forthcoming. This response is being sent to all parties, regardless of whether their hearing is subject to a request for postponement.

<sup>2</sup> In contrast, sections 925 and 929 of the same title, chapter, and article of the California Code of Regulations do themselves identify the persons to which they apply: water right permit holders and water rights license holders, respectively.

filers reference Sections 5100–5107 to enable the responding parties to understand the underlying sources of their potential liability. In connection with that reference, the hearing notices note the penalty that can be imposed under section 5107, but the recommended and maximum penalties that are set forth in the hearing notices correspond to section 1846 and the amounts stated in the Administrative Civil Liability Complaints.

A violation of the requirements to file Supplemental Statements can be enforced either directly under Water Code section 5107 or by virtue of the application (and alleged violation) of the requirements of California Code of Regulations section 920 via Water Code section 1846. The Hearing Team recognizes that, for these alleged violations, the Prosecution Team is proceeding under Water Code section 1846. Regardless of which path is used, the State Water Board's imposition of administrative civil liability is pursuant to Water Code section 1055. (Wat. Code, §§ 1846, subd. (c), 5107, subd. (c).)

Because Water Code section 1055.3 sets forth the factors to be considered by the State Water Board in determining the amount of civil liability to be imposed under section 1055, and the Prosecution Team is proceeding under Water Code section 1846, both section 1055.3 and section 1848, subdivision (d) apply to the State Water Board's consideration of whether and in what amount to impose liability in the pending cases alleging failure to file Supplemental Statements. However, we note that section 1055.3 and section 1848, subdivision (d) (as well as section 5107, subdivision (e)) are duplicative—they each direct the State Water Board to consider factors including, but not limited to: (i) the extent of harm caused by the violation, (ii) the nature and persistence of the violation, (iii) the length of time over which the violation occurs, and (iv) any corrective action undertaken by the violator. Accordingly, this response clarifies, but does not alter, the information provided in the hearing notices.

#### **Extension of Deadline for March 2019 Hearings**

The Prosecution Team's request to extend the deadline for service of exhibits, exhibit identification indices, and statements of service for hearings scheduled for March 11 and 12, 2019, is granted. The deadline for submission of such materials for hearings scheduled for March 11 and 12, 2019, shall be **Friday, March 1, 2019, at 12:00 noon**. The procedure for submitting hearing materials shall be the same as stated in the hearing notices. This extension applies only to the March 2019 hearings. Parties with hearings scheduled for February 7 and 8, 2019, are required to submit exhibits, exhibit identification indices, and statements of service by the original deadline, **January 29, 2019, at 12:00 noon**.

Sincerely,



E. Joaquin Esquivel  
Hearing Officer  
State Water Board Member

**cc:**

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|--|--|
| Baywood Golf and Country Club<br>3600 Buttermilk Ln<br>Arcata, CA 95521                          | Richard Jennings<br>HCR #2 Box 304<br>Canby, CA 96015  |
| David E. Hopkins<br>PO Box 357<br>Cool, CA 95614   | Robert A. Lawson<br>PO BOX 298<br>Victor, CA 95253   |
| Delbert L. Mearse<br>38375 Road 600<br>Raymond, CA 93653   | Robert H. Waterman Jr.<br>Attn: Peter Waller<br>1925 Carleton Street Berkeley, CA 94704                          |
| Ellis Family Enterprises LP<br>1111 Joellis Way<br>Sacramento, CA 95815                          | Sallie L. Chatteron<br>Brandie Dunn<br>PO Box 1190, Acton, CA 93510  |
| Lake Canyon Mutual Water Co.<br>PO Box 866<br>Los Gatos, CA 95030                                | Sallie L. Chatteron<br>Brandie Dunn<br>PO Box 1661, Rosemond, CA 93560   |
| Laura Stehly<br>4804 Crestwood Court<br>Santa Maria, CA 93455                                    | Sandra Jean Varozza<br>7661 South Shingle Road<br>Shingle Springs, CA 95682                                      |
| Lewis Evans<br>PO Box 930<br>Kings Canyon Ntnl Park, CA 93633                                    | Skylawn Memorial Park<br>PO Box 5070<br>San Mateo, CA 94402  |
| Lewis Evans<br>PO Box 52<br>Dunlap, CA 93621   | Stone House Ranch Properties<br>PO Box 60760<br>Reno, NV 89506   |
| Ostrom Family Trust<br>Attn: William L. Ostrom<br>4500 East Fremont Street<br>Stockton, CA 95215 | Timothy W. Cusick<br>PO Box 181<br>Zamora, CA 95698  |
| Phyllis Brooks<br>Attn: Dave Roorda<br>2102 Pillsbury Road<br>Manteca, CA 95337                  | Walker Land Company<br>Attn: Chris Baldivid, President<br>2795 East Bidwell Street, #100-137<br>Folsom, CA 95630 |
| Richard Jennings<br>PO Box 595<br>Maxwell, CA 95955  |  |

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