



State Water Resources Control Board



Alan C. Lloyd, Ph.D.
Agency Secretary

Executive Office

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor

OCT 17 2005

Mr. Steven M. Kennedy
Brunick, McElhaney & Beckett
1839 Commercenter West
P. O. Box 6425
San Bernardino, CA 92412

Dear Mr. Kennedy:

LAKE ARROWHEAD ENFORCEMENT HEARING: RULING ON YOUR REQUEST FOR A CONTINUANCE

This letter responds to your letter dated October 5, 2005, requesting a continuance of the enforcement hearing scheduled to commence on November 8, 2005, against Lake Arrowhead Community Services District (LACSD). You are representing the Mojave Water Agency (MWA), and you have filed on behalf of MWA a notice of intent to appear in the hearing and present evidence. You express an interest on behalf of MWA in the water supplies downstream from Lake Arrowhead. You are asking for a continuance of at least 60 days. The Lake Arrowhead Association and Mr. Theodore Heyck have joined in MWA's request for a continuance. None of the proposed participants seeking a continuance or joining in the request for a continuance is the respondent in this proceeding. For the reasons discussed below, the request for a continuance of the hearing is denied, but the State Water Resources Control Board (State Water Board) will allow three additional days to submit required documents to the State Water Board and exchange documents required before the hearing.

In requesting a continuance, you state that despite your request for notice of all documents filed and served in the proceeding, your law office was not included on the mailing list for the Notice of Hearing. You admit, however, that MWA's consulting engineer, Robert C. Wagner, was on the mailing list for the notice and subsequently provided you a copy of the notice. You also state that the State Water Board should provide a longer notice before holding a hearing on this enforcement action because it took the Board's staff two and one-half years to investigate the complaints. The proposed hearing participants joining you claim that there are procedural irregularities due to LACSD not having provided a copy of its Notice of Intent to Appear to them as soon as it filed the notice with the State Water Board.

California Environmental Protection Agency



OCT 17 2005

Regarding the service of the Notices of Intent to Appear on other participants, the Notice of Public Hearing does not require that such service be made until noon on Tuesday, October 18, 2005. That date has not arrived yet, and any lack of service before then is not a procedural irregularity. Further, the amount of time consumed in investigating the complaints in this matter is not an appropriate basis for a delay in holding the hearing.

Regarding the mailing list for the hearing notice, the State Water Board's Division of Water Rights (Division) normally issues its correspondence and notices of public hearing to an interested entity through only one designated representative of the entity. Mr. Wagner represented MWA during the investigation of this matter and was on the mailing lists for the correspondence during the investigation and when the Division mailed the draft Cease and Desist Order and the Administrative Civil Liability Complaint to LACSD. Accordingly, MWA was duly notified of the hearing when the notice was sent to Mr. Wagner. Since you are now the designated representative of MWA pursuant to MWA's Notice of Intent to Appear, we have substituted your name and address for the name and address of Mr. Wagner as the representative of MWA on the service list for the hearing.

Except in extraordinary circumstances, the nature of an enforcement proceeding does not support the position that parties other than the prosecution or the respondent are in a position to justify a delay in the hearing. The only parties to an enforcement action are the Division's prosecution staff and the respondent. (See, e.g., State Water Board Order WR 2005-0006.) The State Water Board normally authorizes other entities or individuals to participate in a hearing on a water rights enforcement matter with the permission of the hearing officers, but they are not the respondent in the proceeding and are not parties in the hearing.

An enforcement proceeding should come to a swift resolution once an adjudicative proceeding is commenced by the respondent's request for a hearing. When the prosecution staff notifies the respondent of the enforcement action, the respondent has only twenty days in which to request a hearing, pursuant to Water Code sections 1055(b) and 1834(a). The respondent cannot delay its request without waiving its rights. The Division issued its enforcement actions on August 1, 2005, and LACSD, the respondent, requested a hearing within the period allowed. Further, it is the policy of the State Water Board to hold hearings as promptly as possible. (Cal. Code Regs., tit. 23, §765.) Considering the uncertainty caused to the water supply practices of LACSD by the two unresolved enforcement actions, it would not be appropriate to delay the hearing over the objection of the respondent, LACSD. LACSD has made it clear in its letters dated October 10, 2005, October 11, 2005, October 12, 2005, that it opposes the request for a continuance and that this matter should be heard as soon as possible.

The notice provides that the evidentiary materials for the hearing must be submitted no later than noon on Tuesday, October 18, 2005. Because the due date is impending and the request for continuance has resulted in some confusion among the parties, the State Water Board will not reject submittals of proposed testimony, exhibits, lists of exhibits, witness qualifications, and

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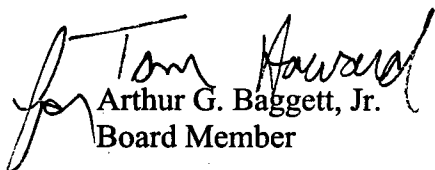
- 3 -

OCT 17 2005

statements of service if they are received by the State Water Board no later than noon on Friday, October 21, 2005.

If you have questions about this letter, you may call Barbara Leidigh, Staff Counsel IV, at (916) 341-5190.

Sincerely,


Arthur G. Baggett, Jr.
Board Member

cc: Service List