



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-747 State Water Resources Control Board: Administrative Hearings Office. (2017-2018)

SHARE THIS:  

Date Published: 09/24/2018 09:00 PM

Assembly Bill No. 747

CHAPTER 668

An act to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, the Water Code, relating to water.

[Approved by Governor September 22, 2018. Filed with Secretary of State September 22, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 747, Caballero. State Water Resources Control Board: Administrative Hearings Office.

Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to a person who violates certain use and diversion of water provisions and subjects the violator to administrative civil liability. Existing law also authorizes the board to issue an order to a person to cease and desist from violating, or threatening to violate, certain requirements relating to water use, including diverting or using water, other than as authorized.

This bill, operative July 1, 2019, would create within the board an Administrative Hearings Office composed of attorneys qualified to act as hearing officers in adjudicative proceedings involving water rights matters. The bill would require the office to preside over hearings on the following matters: a complaint subjecting a violator of certain water use and diversion provisions to administrative civil liability, a proposed cease and desist order for violating, or threatening to violate, certain requirements relating to water use, and a revocation of a permit or license to appropriate water. The bill would exclude from the office's purview a hearing that includes, in addition to any of those enumerated matters, consideration of a matter not enumerated. The bill would authorize the board to assign additional work to the office, as specified. The bill would prescribe procedures for hearings presided over by the office, including the adoption of a final order by the office for certain matters imposing administrative civil liability, and the preparation of a proposed order to be submitted for final review by the board for all other matters presided over by the office.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 3.5 (commencing with Section 1110) is added to Part 1 of Division 2 of the Water Code, to read:

CHAPTER 3.5. State Water Resources Control Board Administrative Hearings Office

1110. (a) There is within the board an Administrative Hearings Office. The board shall administer the Administrative Hearings Office as an independent organizational unit consistent with the role of the Administrative Hearings Office as a neutral, fair, and efficient forum for adjudications. The Administrative Hearings Office shall be overseen by a presiding hearing officer.

(b) The purpose of the Administrative Hearings Office is to provide qualified, impartial hearing officers, to ensure that water rights matters, including water-related cannabis enforcement matters, are resolved in a timely manner, and to provide the board

flexibility to assign hearing officers to other matters, such as those involving water right change petitions and other matters concerning water right permits and licenses.

(c) The Administrative Hearings Office shall conduct adjudicative hearings pursuant to this chapter in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. Except as otherwise provided in Section 1113 or the regulations of the board, this section does not limit the discretion of the board where Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code makes the applicability of a procedure or requirement discretionary.

1111. (a) The Administrative Hearings Office shall include attorneys qualified to act as hearing officers in adjudicative proceedings involving water right matters. The hearing officers shall have qualifications equivalent to those of administrative law judges and knowledge and experience in water law.

(b) The board shall designate a hearing officer to serve as the presiding hearing officer.

(c) The presiding hearing officer shall have authority to supervise the Administrative Hearings Office, including, but not limited to, the authority to do all of the following:

- (1) Hire personnel, including technical experts.
- (2) Assign matters to hearing officers.
- (3) Reassign matters as convenience and necessity require.
- (4) Serve as a hearing officer.

1112. (a) Except as provided in subdivision (b), a hearing officer from the Administrative Hearings Office shall preside over a hearing in any of the following matters:

- (1) A complaint issued under Section 1055.
- (2) A notice of a proposed cease and desist order issued under Section 1834.
- (3) A notice of a revocation of a permit issued under Section 1410 or revocation of a license issued under Section 1675.

(b) Subdivision (a) does not apply if the hearing notice includes, in addition to a proceeding under subdivision (a), consideration of a decision or order on a matter not subject to subdivision (a).

(c) In an adjudicative hearing presided over by the board or a board member, all of the following shall apply:

- (1) Upon request by the board, a hearing officer from the Administrative Hearings Office shall assist the board or board member in conducting the hearing.
- (2) The board may assign an adjudicative hearing, in whole or in part, to the Administrative Hearings Office.
- (3) A hearing officer may perform additional work requested by the board, including, but not limited to, presiding over hearings on nonadjudicative matters, mediations, and overseeing investigations.

(d) A hearing officer may only perform the work specified in subdivision (c) if the additional work does not conflict with the officer's primary responsibility to serve as a hearing officer for matters listed in subdivision (a) and to resolve those matters in a timely manner.

1113. In accordance with subdivision (c) of Section 1110, the Administrative Adjudication Code of Ethics (Article 16 (commencing with Section 11475) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) shall apply to hearing officers of the Administrative Hearings Office.

1114. (a) Proposed and final orders in an adjudicative proceeding presided over by a hearing officer from the Administrative Hearings Office shall be prepared in accordance with this section.

(b) In a proceeding presided over by a hearing officer for administrative civil liability under Section 1847 or 5107, both of the following shall apply:

- (1) Within 90 days after the matter is submitted, the hearing officer shall adopt a final order that meets the requirements of Section 11425.50 of the Government Code. If the hearing officer finds that a delay is required by special circumstances, the

hearing officer shall issue an order delaying the final order for no more than 30 days and specifying the reasons for the delay. Failure of the hearing officer to adopt a final order within the time required shall not prejudice the rights of any party in the case.

(2) A final order adopted under this subdivision is subject to review as provided in Chapter 4 (commencing with Section 1120).

(c) In a proceeding presided over by a hearing officer other than a proceeding under subdivision (b), all of the following apply:

(1) Within 90 days after the matter is submitted, the hearing officer shall prepare a proposed order in a form that meets the requirements of Section 11425.50 of the Government Code and may be adopted by the board as the final order in the case. If the hearing officer finds that a delay is required by special circumstances, the hearing officer shall issue an order delaying the proposed order for no more than 30 days and specifying the reasons for the delay. Failure of the hearing officer to deliver a proposed order within the time required shall not prejudice the rights of any party in the case. A copy of the proposed order shall be served on all parties to the proceeding and posted on the board's Internet Web site on the same day that it is provided to the board.

(2) Within 90 days after receipt of the hearing officer's proposed order, the board may do any of the following:

(A) Adopt the proposed order in its entirety.

(B) Reduce or otherwise mitigate the proposed administrative civil liability and adopt the balance of the proposed order.

(C) Make technical or other minor changes in the proposed order and adopt it as the board's order. Action under this subparagraph is limited to a clarifying change or a change of a similar nature that does not materially change the factual or legal basis of the proposed order.

(D) Reject the proposed order and remand the case to the same hearing officer if reasonably available, otherwise to another hearing officer from the Administrative Hearings Office, for further proceedings. If the board remands the matter to a hearing officer pursuant to this subparagraph, the hearing officer shall prepare a revised proposed order, as provided in paragraph (1), based upon the record of the prior hearing and any additional evidence admitted in the proceeding. A copy of the revised proposed order shall be served on all parties to the proceeding and posted on the board's Internet Web site on the same day it is provided to the board. The board may remand a proceeding pursuant to this subparagraph only once.

(E) Reject the proposed order, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the board may decide the case upon the record without including the transcript. If the board acts pursuant to this subparagraph, all of the following provisions apply:

(i) The board shall make available a copy of the record to the parties and may require payment of fees covering only the direct costs of making the copy.

(ii) The board shall afford the parties the opportunity to present either oral or written argument before the board.

(iii) The authority of the board to decide a case pursuant to this subparagraph includes the authority to adopt portions of the hearing officer's recommended order, as provided in subparagraphs (A) to (C), inclusive, while deciding for itself the remaining issues in the case.

(iv) If the board elects to proceed under this subparagraph, the board shall issue its final order no later than 90 days after rejection of the proposed order, or no later than 90 days after its receipt of the transcript if the board has ordered a transcript of the proceedings before the hearing officer.

(v) If the board finds that further delay is required by special circumstances, the board shall issue an order delaying the issuance of its final order by no more than 30 days and specifying the reasons for that delay.

(3) After 90 days following receipt of the proposed order, if the board fails to act as prescribed in paragraph (2) or fails to issue a rejection under subparagraph (E) of paragraph (2), the proposed order shall be deemed adopted by the board.

(4) Within 30 days of receipt of the hearing officer's proposed order, any interested party may submit a written request to the board describing which of the actions authorized by paragraph (2) the party requests the board to take, including an explanation of the reasons for the party's request. The board shall consider all requests submitted pursuant to this paragraph when it acts on the hearing officer's proposed order.

(d) (1) The time limits for issuance of a proposed order and board action under this section do not apply to a proceeding that the hearing officer determines to be complex because it involves any of the following:

(A) Novel and difficult legal or factual issues.

(B) A large number of parties.

(C) Numerous witnesses.

(D) A large amount of documentary evidence.

(E) Coordination with related proceedings.

(2) A proceeding is deemed to be complex if it is a reference from a court under Section 2000 or a statutory adjudication under Section 2525.

(3) If a hearing officer determines a proceeding to be complex, or a proceeding is deemed to be complex pursuant to paragraph (2), the hearing officer shall establish a hearing management plan and monitor the proceeding to ensure timely disposition.

SEC. 2. This act shall become operative on July 1, 2019.