

CWFhearing

From: Ochenduszko, Kyle@Waterboards on behalf of CWFhearing
Sent: Tuesday, December 06, 2016 2:46 PM
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Subject: WaterFix Hearing Officers' Responses to Notices of Unavailability

Service List,

The hearing officers received multiple emails regarding unavailability to attend WaterFix hearing days on December 8-9, 2016. These parties provided very late notice, which is discourteous to the hearing officers and the other parties. Last-minute notices of unavailability without proposed scheduling solutions are not constructive or appreciated. Disregarding the hearing officers' directions to the parties regarding unavailability places an unnecessary burden on everyone involved in the hearing.

Throughout the hearing, the hearing officers have been doing their best to provide estimates for when parties should be ready to participate in the hearing, but with limited exceptions these estimates were tentative and subject to change. The hearing officers have warned the parties repeatedly that they should be ready to present their case in chief when their party is called in the posted order or they need to coordinate with another party to take their place in line. Parties should not have relied on these tentative estimates as a commitment by the hearing officers of a date certain to present their cases in chief. In the future, the hearing officers are unlikely to accommodate parties with scheduling conflicts that could have been anticipated and avoided, or parties who provide late notice of scheduling conflicts and do not attempt to arrange a change in the order of presentation so that the hearing can proceed without interruption.

The hearing officers appreciate the efforts of all other parties who were prepared to go in the posted order, or were able to work with other parties to go out of order. Coordinating this many schedules is a challenge, and the hearing officers appreciate those parties' flexibility.

Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Research (PCFFA/IFR)

Although Mr. Jackson informed the hearing officers on November 30, 2016, that counsel for the PCFFA/IFR needed to attend a mediation in San Diego on December 9, 2016, he did not inform the hearing officers that PCFFA/IFR also has a conflict on December 8, 2016, nor did counsel for PCFFA/IFR notify all of the parties of his scheduling conflicts until last Friday. After hearing staff called PCFFA/IFR to confirm Mr. Volker's unavailability this week, PCFFA/IFR is on notice they should be prepared to present their case in chief as early as December 13, 2016.

In addition, the hearing officers will expect PCFFA/IFR to adhere to the time limitations set forth in the hearing notice for the presentation of their case in chief.

Ms. Des Jardins

Similar to PCFFA/IFR, Ms. Des Jardins provided the hearing officers and other parties little advanced notice of her unavailability and reliance on Mr. Volker as legal counsel. Although Ms. Des Jardins has tried to work with other parties to ensure hearing continuity, these efforts have not been successful. The hearing officers are similarly displeased with this lack of advanced notice, but in light of Mr. Volker's availability, Ms. Des Jardins is on notice that she should be prepared to present her case in chief as early as December 13, 2016.

In addition, the hearing officers will expect Ms. Des Jardins to adhere to the time limitations set forth in the hearing notice for the presentation of her case in chief.

North Delta CARES (NDC)

NDC, like Ms. Des Jardins and PCFFA/IFR, should not have assumed that tentative scheduling estimates for the presentation of their cases in chief were commitments from the hearing officers. Their witnesses should have been available for all the hearing dates that were noticed on May 11, 2016. Following PCFFA/IFR and Ms. Des Jardins, NDC should be prepared to present its case in chief as early as December 13, 2016. The conflict of witness Steve Haze after 2:00 p.m. on December 14, 2016, is unlikely to be a problem. The only remaining NDC witness with a conflict is Richard Marshall, who is unavailable December 8 through 14. If the hearing continues on December 15, the hearing officers may allow this witness to testify out-of-turn. But if the presentation of cases in chief for Part 1B of the hearing is complete by December 14, with the exception of this one witness, then NDC will lose the opportunity to present his testimony as part of its case in chief in Part 1B of the hearing.

A more detailed update will be discussed in the hearing, but starting on December 8, 2016, we anticipate hearing cases in chief from the following parties:

1. South Delta Water Agency, et al. – Mr. Chip Salmon
2. Restore the Delta
3. Snug Harbor

All parties are expected to adhere to the time limitations set forth in the hearing notice for the presentation of their case in chief.

Respectfully,

CA WaterFix Hearing Team

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Phone: 916-319-0960

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml