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An act to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, and to add Section 1529.7 to, the Water Code, relating to water.



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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

Article 1. 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 permits, licenses, and change petitions.

1111. (a) The Administrative Hearings Office shall include attorneys qualified to act as hearing officers in adjudicative proceedings involving water rights matters. The hearing officers shall have qualifications equivalent to an administrative law judge 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.
- (2) Assign matters to hearing officers.
- (3) Reassign matters as convenience and necessity require.

Article 2. Proceedings

1112. (a) Notwithstanding any other law, and except as provided in subdivision (b), a hearing officer from the Administrative Hearings Office shall preside over a hearing in all 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, both 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.

(d) Hearing officers may perform additional work requested by the board, including, but not limited to, presiding over hearings on nonadjudicative matters.

(e) Hearing officers may only perform the work specified in subdivisions (c) and (d) if the additional work does not conflict with their primary responsibility to serve as hearing officers for matters listed in subdivision (a) and to resolve those matters in a timely manner.

1113. 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. In an adjudicative proceeding presided over by a hearing officer from the Administrative Hearings Office, there shall be no communication, direct or indirect, regarding the merits of any issue in the proceeding between the hearing officer and an interested person, a board member, or a staff advisor to a board member before a final order has been issued in that proceeding.

### Article 3. Proposed and Final Orders

1115. (a) An adjudicative proceeding presided over by a hearing officer from the Administrative Hearings Office shall be held 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 in a form 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), both of the following shall apply:

(1) Within 90 days after the matter is submitted, the hearing officer shall prepare and submit to the board 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 final 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. 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.

(E) (i) 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, it shall do all of the following:

(I) Make available a copy of the record to the parties. The board may require payment of fees covering direct costs of making the copy.

(II) Afford the parties the opportunity to present either oral or written argument before the board.

(III) Issue its final order not later than 90 days after rejection of the proposed order.

(IV) If the board has ordered a transcript of the proceedings before the hearing officer, issue its final order not later than 90 days after receipt of the transcript.

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

(iii) If the board finds that a further delay is required by special circumstances, it shall issue an order delaying the order for no more than 30 days and specifying the reasons for the delay.

(3) If the board fails to act as prescribed in paragraph (2) within 90 days of receipt of the proposed order, the proposed order shall be deemed adopted by the board.

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

(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. Section 1529.7 is added to the Water Code, to read:

1529.7. (a) Consistent with Section 3 of Article XIII A of the California Constitution, the board shall adopt a schedule of non-tax charges as emergency regulations in accordance with Section 1530 in an amount sufficient to recover the reasonable costs incurred and expended, upon appropriation by the Legislature, from the Water Rights Fund in administering Chapter 3.5 (commencing with Section 1110) of Part 1.

(b) The fee schedule adopted under this section may include, but is not limited to, either or both of the following:

(1) A fee for participation as a petitioner in or party to an adjudicative proceeding in which a hearing officer from the Administrative Hearings Officer presides or assists the board or a board member.

(2) A fee payable on the filing of a statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100).

(c) The board is not required to set fees under this section to recover costs of administering Chapter 3.5 (commencing with Section 1110) of Part 1 that are recovered through fees imposed pursuant to provisions of law other than this section. In setting fees for persons or entities not subject to fees imposed pursuant to provisions of law other than this section that recover costs of administering Chapter 3.5 (commencing with Section 1110) of Part 1, the board shall set the fees in an amount not to exceed the estimated cost of proceedings involving alleged violations by persons or entities not subject to those other fees.



## LEGISLATIVE COUNSEL'S DIGEST

Bill No.  
as introduced, \_\_\_\_\_.  
General Subject: Water rights: State Water Resources Control Board: Administrative Hearings Office.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the board grants and revokes permits and licenses to appropriate water. Existing law requires a person who holds a permit or license to appropriate water, leases water pursuant to specified provisions of law, or files a specified application, registration, petition, or request relating to water use to pay fees imposed by the board. The board is required to adopt a fee schedule so that the total amount of fees collected equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in points of discharge, place of use, or purpose of use of treated wastewater. The board is required to set the amount of total revenue collected each year through the fees at an amount equal to the amount appropriated by the Legislature from the Water Rights Fund in the annual Budget Act for this activity. The revenue generated by those fees is required to be deposited in the Water Rights Fund.

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 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 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. The bill would require the board to adopt a schedule of fees in an amount sufficient to recover the reasonable costs incurred and expended, upon appropriation by the Legislature, from the Water Rights Fund in administering the bill's provisions and would authorize the fee schedule to include a fee for participation as a petitioner in or party to an adjudicative proceeding that the office presides over or assists with and a fee payable on the filing of a statement of water diversion and use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

