

California Regional Water Quality Control Board
North Coast Region

Resolution No. R1-2011-0022

**Designating Panel and Specifically Acknowledging Certain Powers and Duties
Of The Board Chair**

Whereas, this Resolution contains provisions necessary to ensure efficient and consistent procedures in the administration of enforcement proceedings.

Whereas, to help ensure the fairness and impartiality of enforcement hearings, in some cases the functions of North Coast Regional Water Quality Control Board (Water Board) staff who act in a prosecutorial role by presenting evidence for consideration may be separated from those who will advise the Water Board in deciding the matter. The Office of Enforcement (OE) was created in mid-2006 to assist Water Board staff in bringing certain enforcement actions before the Water Board. When separated, prosecution staff are subject to all applicable rules and regulations, including the prohibition on ex parte communications with decision-makers and advisory staff.

Whereas, Water Code section 13228.14 provides that any hearing or investigation by a regional board, including hearings on proposed cease and desist orders, cleanup or abatement orders, or orders imposing administrative civil liabilities or penalties may be conducted by a panel of three or more members of the regional board. After a hearing, the panel shall report its proposed decision and order to the regional board. The regional board, after making an independent review of the record and taking additional evidence as may be necessary, may adopt, with or without revision, or reject, the proposed decision and order of the panel. It would be advisable for the Water Board to have the ability to conduct hearings by a panel of three or more members for particularly lengthy hearings or in the event that a quorum is not present at a regularly scheduled meeting.

Whereas, certain regulations governing rules of practice and procedure for adjudicatory proceedings are set forth in California Code of Regulations, title 23, sections 648-648.8. Generally, the Chair of the Water Board serves as the presiding officer and is accorded a number of discretionary powers to direct and control proceedings. In addition, the Water Code authorizes the Water Board or their designees the authority to conduct prehearing conferences as needed prior to a hearing. (Wat. Code, §13228.15.) No party who appears at a prehearing conference is precluded from appearing before the Water Board at any subsequent hearing relating to the matter. It would be useful for the Water Board to specifically designate the Chair to serve as the presiding officer for hearings in order to facilitate the orderly and timely resolution of prehearing matters, and to conduct prehearing conferences pursuant to Water Code section 13228.15, who may in turn further designate this authority from time to time.

Whereas, the Water Board has the need to develop a standard template Hearing Notice and Hearing Procedures to be used by prosecution staff in issuing complaints for administrative civil liability (ACL), and it would be useful to specifically acknowledge the authority to the Chair to approve such document on behalf of the Water Board.

Therefore, Be It Resolved, consistent with Water Code section 13228.14 and Government Code section 11120 et seq., the Water Board may hold evidentiary hearings as a hearing panel as long as at least three Board members are present. The hearing panel may conduct hearings in conjunction with regularly scheduled meetings of the full Regional Board or at special hearings convened for the purpose of hearing one or more matters as set forth in Water Code section 13228.14. The Chair may designate the panel members for any particular hearing.

Be It Further Resolved, that the California Regional Water Quality Control Board, North Coast Region, hereby designates the Chair to serve as a presiding officer in administration of enforcement proceedings before the Water Board. The presiding officer holds discretionary powers to direct and control the proceedings, and to conduct prehearing conferences pursuant to Water Code section 13228.15. The Chair may further delegate these powers from time to time in the event that the Chair is unable to conduct prehearing conferences and direct proceedings in a particular case. This includes designating another Water Board member to serve as the presiding officer for a specific case, and delegating certain duties and responsibilities to advisory staff to help assist the presiding officer in a particular case. These further designations and delegations need not be in writing.

Be It Further Resolved, that the California Regional Water Quality Control Board, North Coast Region, hereby specifically acknowledges the Chair's the authority to approve a standard template Hearing Notice and Hearing Procedures to be used by prosecution staff in issuing ACL complaints.

Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on January 27, 2011.

Catherine Kuhlman
Executive Officer