TO: Water Board Members  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

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SUBJECT: ROLES AND RESPONSIBILITIES OF REGIONAL WATER BOARD MEMBERS AND EXECUTIVE OFFICERS

The purpose of this memorandum is to summarize the roles and responsibilities of members of California Regional Water Quality Control Boards (regional water boards), including roles and responsibilities of regional water board chairs and executive officers.

Water Code section 185 governs the conduct of the State Water Resources Control Board (State Water Board) in carrying out its affairs and requires the board to adopt procedural rules. The State Water Board has promulgated regulations that establish procedural rules for its meetings and hearings, as well as those of the regional water boards. The State Water Board also adopts water quality control plans and statewide policy. Regional water board actions must be consistent with statewide plans and policies.

The regional water boards operate pursuant to statutes setting forth specific powers and procedures, as well as the plans, policies and regulations adopted by the State Water Board. The regional water boards are authorized to set rules governing their practice and procedure, as long as they do not conflict with the State Water Board’s regulations. The regional water boards primarily establish rules of general applicability within their boundaries by amending their regional water quality control plans (basin plans). The Water Code addresses the organization

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1 “The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.” (Wat. Code, § 185.)
2 Cal. Code Regs., tit. 23, § 647 et seq.
4 Id., §§ 13146, 13170, 13240; see also, Gov. Code, § 11353.
5 Wat. Code, § 13222.
6 Id., §§ 13240-13248; Gov. Code, § 11353.
and membership of regional water boards,\textsuperscript{7} and the powers and duties of regional water boards.\textsuperscript{8}

As a multimember state body, the regional water boards are subject to open meeting and notice requirements set forth in the Bagley-Keene Open Meeting Act.\textsuperscript{9} The Administrative Procedure Act sets forth procedural rules for adjudicatory hearings.\textsuperscript{10} In addition, the regional water boards are subject to constitutional due process and fairness requirements in adjudicative hearings.\textsuperscript{11} The State Water Board and the regional water boards conduct their meetings in accordance with the guidance contained in the \textit{Standard Code of Parliamentary Procedure}, by Alice Sturgis.

\textbf{Roles and Responsibilities of Regional Water Board Board Members}

Each regional water board selects a chairperson at the first regular meeting each year.\textsuperscript{12} There is no requirement for a regional water board to select a vice chair. However, all of the regional water boards have a custom of selecting a vice chair at the same time the chair is selected.

The statute designates no specified role for the chairs.\textsuperscript{13} Therefore, that role is defined by State Water Board regulations as well as guidance set forth in the \textit{Standard Code of Parliamentary Procedure}. The powers of the chairs are constrained by the general principle that the powers and duties of a regional water boards can only be exercised by a quorum of the board at a properly noticed meeting; individual members do not have authority to bind or speak for the board except pursuant to a formal authorization, such as a delegation of authority from the regional water board or pursuant to the State Water Board’s regulations on meeting procedures.

The chair of each of the nine regional water boards presides over meetings of the board. This typically includes presiding over prehearing conferences and issuing any necessary prehearing evidentiary or procedural rulings. In most regions, the chair also serves as the executive officer's primary point of contact for informal communications with the board and works with the executive officer in overseeing day-to-day functions of the board. Some chairs work with the executive officer to finalize meeting agendas, allot time for agenda items and suggest topics for informational items. Notwithstanding the chair’s additional responsibilities, all members have equal rights, privileges, and obligations, including the right to make motions and vote.

State Water Board regulations\textsuperscript{14} govern meetings of the regional water boards generally, together with laws governing adjudicative proceedings. The chair is the presiding officer at

\begin{footnotes}
\item[8] Id., §§ 13220-13228.15.
\item[9] Gov. Code, § 11120 et seq.
\item[10] Id., § 11400 et seq.
\item[12] Wat. Code, § 13220, subd. (b).
\item[13] When the chair is unavailable to attend a meeting or is recused from an item, another board member must assume the chair’s duties for that meeting or item. The vice chairs typically fulfill those duties.
\item[14] Cal. Code Regs., tit. 23, § 647 et seq.
\end{footnotes}
board meetings for purposes of the regulations. The general duties of the chair as presiding officer include maintaining order and ensuring fairness and due process. These responsibilities include recognizing speakers, directing order of business and testimony, making evidentiary rulings in adjudicative proceedings, and controlling and expediting debate.

As the presiding officer, the chair is accorded a number of discretionary powers to direct and control pre-hearing proceedings and meetings. These include the power to waive requirements of the State Water Board’s regulations, as long as the waiver is consistent with applicable statutes and the state and federal constitutions. The regulations assign a lead role for the Chair or presiding officer regarding opening statements, administration of the oath, and determinations as to order and presentations by parties. Other procedural powers and decisions accorded to the board or presiding officer include providing an opportunity for presentation of statements or comments by interested persons; taking official notice of facts as may be judicially noticed by courts; and refusing admission of proposed testimony or exhibits where procedural requirements are not met.

The chair typically conducts any prehearing conferences that may be necessary in adjudicative matters. Prehearing conferences may address settlement possibilities, evidentiary or procedural matters, clarification of issues for hearing, discovery issues and other matters that promote the orderly and prompt conduct of the hearing.

The regional water board can appoint panels of three or more members to conduct hearings or investigations and report back to the board with a proposed decision and order. However, any final action must be taken by the regional water board at a public meeting. The chair or the board can also form a subcommittee on other matters within the board’s jurisdiction. The regional water boards have used subcommittees to conduct stakeholder outreach related to quasi-legislative or other programmatic issues, and to make nominations for the chair and vice chair elections. As a matter of practice, the boards typically limit subcommittees to two members.

The chairs participate in monthly conference calls with the State Water Board chair or vice-chair to discuss policy developments and high priority issues. Regional water board chairs thus serve as a primary liaison with the State Water Board. The chairs may also seek assistance from the State Water Board as needed, for example, when an informal “second opinion” is desirable on a complex technical or legal issue.

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15 In some cases, regional water boards have designated another board member to serve as the presiding officer for specific adjudicative proceedings.
17 Id., § 648.5.
18 Id., § 648.1.
19 Id., § 648.2.
20 Id., § 648.4.
21 Wat. Code, § 13228.15.
22 Gov. Code, § 11511.5, subd. (c).
24 Gov. Code, § 11121, subd. (c).
The regional water boards are responsible for conducting periodic performance reviews of the executive officer. The chair frequently plays a lead role in developing, summarizing and presenting performance surveys, but all board members should participate in providing feedback.

The above roles should be read in the context of the powers granted jointly to the regional water boards. That is, these powers are granted only pursuant to the joint authority of the board to act and do not represent a separate grant of authority to act independently of the board as a whole.

Regional water board members are entitled to compensation of $100 per day that they perform official duties.25 “Performing official duties” includes appearing at regional water board meetings, conducting prehearing proceedings and attending other regional water board-related meetings or conferences. The total compensation for all board members is limited to $13,500 per year for each regional water board.26

Authority of the Executive Officer

Each regional water board must appoint an executive officer who meets the technical qualifications as defined by the State Water Board.27 The executive officer serves at the pleasure of the regional water board. The Water Code allows each regional board to delegate any of its powers and duties to its executive officer, with the following exceptions: (1) promulgating a regulation, (2) issuing, modifying, or revoking basin plans, water quality objectives, or waste discharge requirements, (3) issuing, modifying, or revoking cease and desist orders; (4) holding a hearing on a basin plan, or (5) applying to the Attorney General for judicial enforcement of specified authorities under the Water Code.28

Activities delegated to the executive officers are specified in the individual regional water board delegation resolutions. While the individual regional water board delegation resolutions vary, each regional water board has delegated to its executive officer all of the powers and duties of the regional water board other than the five non-delegable actions listed above. (See, e.g. Central Valley Water Board Resolution R5-2009-0027).29 Delegated duties falling within these broad authorizations include, among other things, noticing board meetings and hearings, managing staff, meeting with other agency officials, implementing regional water board policy and basin plans, and issuing administrative civil liability orders, cleanup and abatement orders and time schedule orders. Regional water boards may limit the exercise of the delegated authority through informal direction to the executive officer or formal resolutions addressing the scope of the executive officer’s authority in particular matters. For example, the regions generally limit the dollar amount or type of administrative civil liability order or settlement the executive officer may execute. Waste discharge requirements or other board orders may also include directions to the executive officer regarding the substance or process for implementing the order.

25 Wat. Code, § 13205.
26 Ibid.
27 Id., § 13220.
28 Id., § 13223.
The executive officer, in exercising his or her authority, will bring certain matters to the attention of the regional water board at a workshop or by other appropriate communication, even if not specifically required by a delegation resolution or board order. These include matters of a unique or unusual nature, matters that may depart from board policy or historic practices, matters involving significant policy questions or risk of litigation, and highly controversial matters.

If members have questions about specific actions or authority of either board members or the executive officer, they should contact the assigned regional water board counsel or, in the case of personnel matters, the Assistant Chief Counsel for the regional water boards.

cc: Executive Officers, Regional Water Boards
    Regional Water Board Attorneys, OCC