

CONDUCT OF MEETING AND HEARING PROCEDURES

July 24, 2013

- A. The primary duty of the Central Coast Water Board is to protect the quality of waters within the Region for all beneficial uses. This duty is implemented by formulating and adopting water quality plans for specific ground or surface water basins and by prescribing and enforcing requirements on all domestic, municipal, and industrial waste discharges. Specific responsibilities and procedures of the Regional Water Quality Control Boards and the State Water Resources Control Board are set forth in the Porter-Cologne Water Quality Act Division 7 of the California Water Code.
- B. The purpose of the meeting is for the Board to obtain input from concerned and affected persons and make decisions after considering the recommendations made by the Executive Officer. The Board will vote only on matters listed on the agenda as action items. The Board may give direction to the Executive Officer on any matter discussed during the meeting.
- C. Agenda items are numbered for identification purposes and will not necessarily be considered in the order listed.
- D. Ex Parte Communications: An ex parte communication is a communication to a board member from any person, about a pending matter, that occurs in the absence of other parties and without notice and opportunity for them to respond. The California Government Code prohibits the board members from engaging in ex parte communications during permitting, enforcement, and other “quasi-adjudicatory” matters. Ex parte communications are allowed on pending general orders (such as general waste discharge requirements, general waivers, and general Clean Water Act section 401 water quality certifications) subject to the disclosure requirements of Water Code section 13287 (for further information and disclosure forms, please visit http://www.waterboards.ca.gov/centralcoast/publications_forms/forms/docs/central_coast_disclosure.pdf).

All ex parte communications must be completed prior to 14 days before the Board meeting. The Regional Board discourages ex parte communications during rulemaking and other “quasi-legislative” proceedings. The ex parte rules are intended to provide fairness, and to ensure that the board’s decisions are transparent, based on the evidence in the administrative record, and that evidence is used only if stakeholders have had the opportunity to hear and respond to it. Ex parte rules do not prevent anyone from providing information to the water boards or requesting that the water boards take a particular action. They simply require that the information come into the record through proper channels during a duly noticed, public meeting. A board member who has engaged or been engaged in a prohibited ex parte communication will be required to publicly disclose the communication on the record and may be

disqualified from participating in the proceeding. For more information, please look at the ex parte questions and answers document found at www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

- E. **RULES FOR LATE SUBMISSION OF WRITTEN MATERIALS:** This paragraph applies only if there are no deadlines for written evidence, testimony or comments in a separate hearing notice for an item. Written material received after the due date on the first page of the agenda and before noon on the Monday of board meeting week generally will not be provided to Board members until the day of the meeting, but will become part of the record unless the Chair rules that the late submission would prejudice the Central Coast Water Board staff or any party. Written material received after noon on the Monday of board meeting week will not be provided to Board members or become part of the record, unless the Chair approves the late submission. The Chair will not approve a late submission if doing so would prejudice any party (including Central Coast Water Board staff) or the Board, but may modify this rule if a party demonstrates severe hardship. The Chair will rule at or before the hearing. Late submissions that consist of evidence (as opposed to policy statements or comments) will generally be deemed prejudicial unless all designated parties (see below) have time to consider the evidence before the meeting.
- F. The Board and staff welcome information on pertinent issues, but comments at the meeting should be brief and directed to specifics of the case to enable the Board to take the appropriate action. Lengthy testimony should be presented to the Board in writing and only a summary of pertinent points presented verbally. In order to give everyone an opportunity to be heard, comments should have been previously submitted in writing and a time limit on presentations may be imposed on any agenda item. Speakers should plan to summarize key points within three minutes. You will need to receive approval from the Chair prior to meetings to speak for longer than three minutes. Please make your request to the Executive Officer at least one week before the meeting.
- G. Material presented to the Board, as part of testimony (e.g., photographs, slides, charts, diagrams, etc.) must be left with the Assistant Executive Officer, Michael Thomas. Photographs or slides of large exhibits are acceptable. If you plan to use visual aids such as PowerPoint, contact the Central Coast Water Board staff prior to the meeting to arrange for equipment set-up. You must provide a printed or electronic copy of any PowerPoint presentation. All Board files, exhibits, and agenda material pertaining to items on this agenda are hereby part of the record.
- H. **BOARD MEETING PRINCIPLES AND CONDUCT:** Any person who appears before the Board has an obligation not to act abusively or discourteously. Zealous representation of your interest, or the interest of a person or organization you represent, should be carried out in a professional manner. Speakers should not engage in derogatory conduct based on race, national origin, religion, gender, sexual orientation, or similar characteristics of any person. Speakers should always be civil and courteous when communicating with Board members,

staff, or other interested persons. All speakers should be punctual and prepared for all Board meeting appearances so that all matters may start on time and proceed efficiently. The Board will not delay proceedings to accommodate late arrivals. The same considerations apply to members of the audience who choose not to address the Board.

The Board may refuse to allow any person who engages in discourteous or disruptive conduct to speak. In the event that any person or group intentionally interrupts the orderly conduct of a meeting, the Board can have the person or group removed from the meeting. In the event that order cannot be restored by the removal of individuals who are interrupting the meeting, the Board may order the meeting room cleared and continue in session. (Gov. Code § 11126.5.) The Board may place reasonable limitations on taking still or video photographs or using placards or signage if these disrupt the meeting.

The Board may also issue contempt sanctions in adjudicatory proceedings. "Adjudicatory proceedings" include all permitting, cleanup and enforcement matters, but do not include basin planning. Any person is subject to the contempt sanction in an adjudicatory proceeding, whether or not the person is a "party" to the matter. The Board can issue contempt citations for the following conduct: obstruction or interruption of the meeting or hearing by any of the following: (1) disorderly, contemptuous, or insolent behavior toward the Board; (2) breach of the peace, boisterous conduct, or violent disturbance; or (3) other unlawful interference with the process or proceedings. Conduct that is not in the Boardroom but that is near the meeting or hearing can also give rise to contempt sanctions. (Ca. Gov. Code sections 11455.10-11455.30; Ca. Code of Civ. Proc. section 128.5; Cal. Code of Regs, tit. 23, sections 648(b), 648.8.)

If the Board decides to impose contempt sanctions, the process is as follows. The Board first makes findings that a person should be cited for contempt. The findings are then referred to a court. The court will issue an order to the person(s) involved to appear before the court and defend the contempt charge. The court then may issue the same types of contempt penalties that would apply in a civil court trial, or dismiss the matter. In addition, the Board can order payment of attorney's fees when any person engages in bad faith actions or tactics that are "frivolous" or solely intended to cause unnecessary delay. In that case, the person engaging in the improper conduct must pay the attorney's fees of any party that result from the conduct. "Frivolous" means totally and completely without merit, or for the sole purpose of harassing another party (including Water Board staff). An order to pay attorney's fees takes effect immediately, does not require court action, and cannot be petitioned to the State Water Board.

Public participation is very important to the Board. Members of the public should not be afraid to comment on matters before the Board, even if they do not fully understand the applicable law. However, public participation is hampered by an individual's or a group's disruptive conduct. It is not the intent of the Board to use its contempt powers (including attorney's fee orders) before providing a warning

and allowing an opportunity to correct the conduct and avoid contempt proceedings. Additional information on Board meeting conduct is available on our website:

http://www.waterboards.ca.gov/centralcoast/resources/docs/board_meeting_conduct.pdf

- I. HEARING RULES FOR CONTESTED HEARINGS IN ADJUDICATORY MATTERS (WASTE DISCHARGE OR WATER RECYCLING REQUIREMENTS, NPDES PERMITS, ADMINISTRATIVE CIVIL LIABILITY ORDERS AND INVESTIGATION OR ENFORCEMENT ORDERS [CWC §§ 13267, 13300-13308, 13383]: This section applies unless there are different requirements in a hearing notice for an item. Designated parties may request these procedures: to call and examine witnesses; to have witnesses testify under oath; to receive a witness list from other designated parties; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness; to rebut the evidence against him or her; and to make opening or closing statements. A request for these hearing procedures must be received by the Executive Officer at least five working days before the hearing, and must specify the procedures the designated party is requesting.

Designated parties are any persons named in the proposed order. Central Coast Water Board staff is a designated party for administrative civil liability complaints, and for cease and desist orders that establish monetary liability and that are not issued concurrently with waste discharge requirements. All other persons wishing to testify or provide comments are interested persons and not designated parties. Such interested persons may request status as a designated party for purposes of an item by submitting such request in writing to the Central Coast Water Board no later than two weeks after the draft order is available for public comment. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge.

- J. The Board Chair may specify a time limit for oral presentations and testimony. Board members may interrupt a presentation with questions or comments. The time for Board member questions and witnesses' answers will not count toward the time limit for a presentation. In order for presentations to be fully understood, presenters must use a rate of speaking comparable to what is acceptable to a court reporter. Please do not race through presentations faster than a normal, clear speech pattern.
- K. A copy of the procedures governing Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq., and is available upon request. Hearings before the Central Coast Water Board are conducted pursuant to Government Code sections 11400 et seq. but not Government Code sections

11500 et seq. The Chair may waive any procedural statutes or regulations that are not required by the United States or California Constitutions.

- L. All Board files, exhibits, and agenda material pertaining to items on this agenda are hereby part of the record.
- M. Any person affected adversely by a decision of the Board, may petition the State Water Resources Control Board (State Water Board) according to Water Code section 13320 and Title 23 California Code of Regulations section 2050. The Petition should be addressed to Office of Chief Counsel and must be received by the State Water Board within 30 days of the Board's action or failure to act (i.e., the meeting date). Copies of the law and regulations applicable to filing petitions will be provided upon request and are available on the State Water Board website, www.waterboards.ca.gov
- N. The facility is accessible to people with disabilities. Individuals who require special accommodations are requested to contact John Goni (805/542-4628) at least seven working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.
- O. All persons who actively support or oppose the adoption of waste discharge requirements or an NPDES permit pending before the Central Coast Water Board must submit a statement to the Board disclosing any contributions of \$100 or more to be used in a federal, state, or local election, made by the action supporter or opponent, or his or her agent within the last 12 months to any Central Coast Water Board Member.
- P. All permit applicants or persons who actively support or oppose adoption of a set of waste discharge requirements or an NPDES permit pending before the Central Coast Water Board, are prohibited from making a contribution of \$100 (or more) to any Board Member for three months following a Central Coast Water Board decision on the permit application.
- Q. The Board may conduct any scheduled hearing as a Panel Hearing as allowed by law in the event of a lack of a Board member quorum. In the event that a Panel Hearing is held, final action on that item will not be taken until a Board member quorum is present. The Board generally will not accept additional public comment or testimony after the Panel Hearing, unless the proposed order is substantially changed. (Water Code Section 13228.14, gov. Code Section 11125.7)