



California Regional Water Quality Control Board Colorado River Basin Region



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Arnold Schwarzenegger
Governor

BOARD MEETING AGENDA

Thursday, September 17, 2009, 10:00 a.m.

City of Palm Desert
City Council Chambers
73-510 Fred Waring Drive
Palm Desert, CA 92260

The primary duty of the Colorado River Basin Regional Water Quality Control Board (Colorado River Basin Water Board or Board) is to protect the quality of the 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 and industrial waste discharges. Specific responsibilities and procedures of the Colorado River Basin Water Board and the State Water Resources Control Board are specified in the Porter-Cologne Water Quality Control Act (commencing with Section 13000 of the California Water Code) and implementing regulations in Titles 23 and 27 of the California Code of Regulations.

The purpose of this meeting is for the Board to obtain testimony and information from concerned and affected parties and make decisions after considering the information received. Persons who want to submit written comments or evidence on any agenda item must comply with the **Meeting Procedures** described at the end of the listing of **Agenda** items. Persons wishing to speak at the meeting should complete a speaker request card and provide it to staff. You may also wish to sign in on the attendance sheet that will be provided. Although signing in is voluntary, we appreciate knowing who attended to help us evaluate the level of public interest.

The Board and staff welcome information on pertinent problems, but comments at the meeting should be brief and directed to specifics. Whenever possible, lengthy testimony should be presented to the Board in writing and only a summary of pertinent points presented verbally.

Any member of the public may address the Board and ask questions relating to any matter within the Board's jurisdiction. This need not be related to any item on the agenda, and the presentation should normally be limited to five (5) minutes. If the matter should appropriately be included within an item that is listed on the agenda, the presentation to the Board should be made at the time that the particular item is taken up by the Board.

Pursuant to Title 23 of the California Code of Regulations (hereafter Title 23), Section 648.4, the Board may refuse to admit into evidence written testimony pertaining to agenda items if it is not submitted to the Board in a timely manner, unless the proponent can demonstrate why he or she was unable to timely submit the evidence or that compliance with the deadline would create an unreasonable hardship.

All items appearing under the "Uncontested Items" calendar will be acted upon by the Board by one motion without discussion. Should any Board Member or other person request that any item be considered separately, that item will be taken up at a time as determined by the Board Chair.

Details concerning these agenda items are available for public reference during normal working hours at the Board's office. The staff will assist in answering questions. Agenda items are numbered for identification purposes only and will not necessarily be considered in the order indicated.

The facility is accessible to people with disabilities. Individuals requiring special accommodations are requested to contact Hilda Vasquez at (760) 776-8950 at least five (5) 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.

Persons applying for, or actively opposing, waste discharge requirements or National Pollutant Discharge Elimination System (NPDES) permits being considered by the Board must comply with legal requirements if they or their agents have contributed, or propose to contribute, more than \$250 to a Board member for an election campaign. Contact the Board office for details if you believe that you fall into this category.

Any person adversely affected by a decision of the Board may petition the State Water Resources Control Board to review the decision. The petition must be received by the State Water Resources Control Board within thirty (30) days of the Board's meeting at which the action was taken. Copies of the laws regarding the filing of petitions will be provided upon request to the Board, or may be obtained on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

Board agendas and copies of the items to be considered by the Board may be downloaded from the Board's Website at: http://www.waterboards.ca.gov/coloradoriver/board_info/agenda/index.shtml

Board-approved minutes are posted at the Board's Website at: http://www.waterboards.ca.gov/board_info/agendas/

A listing of pending applications for Water Quality Certifications, pursuant to Section 401 of the Federal Clean Water Act, may be obtained from the Board's Website at: http://www.waterboards.ca.gov/coloradoriver/water_issues/programs/401_certification/ or by calling Jay Mirpour at (760) 776-8981.

The **Agenda** for this meeting begins on the next page.

ROLL CALL

MINUTES

1. [Minutes of June Meeting](#)

PUBLIC FORUM

2. Any person may address the Colorado River Basin Water Board at this time regarding any matter within the Board's jurisdiction that is not related to an item on this Meeting agenda. **Comments will generally be limited to five (5) minutes, unless otherwise directed by the Board Chair.** Members of the public may also address the Board from noticed telephonic location(s), if any.

UNCONTESTED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS AND WASTE DISCHARGE REQUIREMENTS

3. [R7-2009-0028](#) Waste Discharge Requirements (Board Order R7-2009-0028) for **CalEnergy, Owner/Operator, Region 2 Vulcan and Del Ranch (Hoch) Geothermal Power Plants**, Calipatria – Imperial County (Supercedes)
[Monitoring & Reporting Programs](#)
4. [R7-2009-0058](#) National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for **Heber Public Utilities District**, Heber – Imperial County (Amendment)
[USEPA Approval Letter](#) [Biological Assessment](#)
5. [R7-2009-0062](#) Waste Discharge Requirements for **Kiewit Pacific Co., Owner/Operator, United States Bureau of Reclamation, Land Owner All American Canal Lining Project – Aggregate Washing Facility**, Winterhaven – Imperial County (New)
[Monitoring & Reporting Programs](#)
6. [R7-2009-0063](#) Waste Discharge Requirements for **County of San Bernardino, Owner/Operator Landers Waste Management Facility Class III Landfill Class II Surface Impoundments**, Northwest of Joshua Tree – San Bernardino County (Amendment)
[Monitoring & Reporting Programs](#)

7. [R7-2009-0400](#) **General National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements (WDRs) for Discharges of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic Constituents into Surface Waters in the Colorado River Basin Region – (CAG917001) (Rescission)**

ENFORCEMENT

8. [R7-2009-0061](#) **Cease and Desist Order No. R7-2009-0061 Issued to City of Holtville, Owner/Operator Municipal Wastewater Treatment Plant, Holtville – Imperial County (New)**
9. [R7-2009-0067](#) **Administrative Civil Liability Order No. R7-2009-67 in the Matter City of Calexico, Owner/Operator Wastewater Treatment Plant for Violations Alleged in Complaint No. R7-2009-0048 Calexico – Imperial County (New)**
10. [R7-2009-0068](#) **Administrative Civil Liability Order No. R7-2009-0068 in the Matter of Imperial Irrigation District, Owner/Operator El Centro Generating Station, El Centro – Imperial County (New)**

RESOLUTION

11. [R7-2009-0066](#) **Resolution Expressing Appreciation to Richard Post (New)**

OTHER BUSINESS

12. Informational Update on State Water Resources Control Board Activities – TV
13. Colorado River Basin Water Board Executive Officer's Report – RP
14. Colorado River Basin Water Board Member Comments
15. Colorado River Basin Water Board Chair's Report – EW

CLOSED SESSION

16. At any time during the regular session, the Board may adjourn to meet in closed session to consider evidence received in an adjudicatory hearing and deliberate on a decision to be reached based on that evidence [Authority: Government Code Section 11126(c)(3)]; to discuss significant exposure to litigation [Authority: Government Code Section 11126(e)(2)(B)(i)]; to discuss whether to initiate litigation [Authority: Government Code Section 11126(e)(2)(C)(i)]; or to discuss initiated litigation [Authority: Government Code Section 11126(e)]. Discussion of litigation is within the attorney-client privilege and may be held in closed session [Authority: Government Code Section 11126(e)(2)].

ARRANGEMENTS FOR NEXT BOARD MEETING: Thursday, November 19, 2009, 10:00 a.m. in Palm Desert.

ADJOURNMENT

BILL OF RIGHTS FOR ENVIRONMENTAL PERMIT APPLICANTS

The California Environmental Protection Agency (Cal/EPA) endorses the following precepts that form the basis of a permit applicant's "Bill of Rights":

- Permit applicants have the right to assistance in understanding regulatory and permit requirements. All Cal/EPA programs maintain an Ombudsman to work directly with applicants. Permit Assistance Centers located throughout California have permit specialists from all State, regional, and local agencies to identify permit requirements and assist in permit processing.
- Permit applicants have the right to know the projected fees for review of applications, how any costs will be determined and billed, and procedures for resolving any disputes over fee billings.
- Permit applicants have the right of access to complete and clearly written guidance documents that explain the regulatory requirements. Agencies must publish a list of all information required in a permit application and of criteria used to determine whether the submitted information is adequate.
- Permit applicants have the right of timely completeness determinations for their applications. In general, agencies notify the applicant within 30 days of any deficiencies to determine that the application is complete. California Environmental Quality Act (CEQA) and public hearing requests may require additional information.
- Permit applicants have the right to know exactly how their applications are deficient and what further information is needed to make their applications complete. Pursuant to California Government Code Section 65944, after an application is accepted as complete, an agency may not request any new or additional information that was not specified in the original application.
- Permit applicants have the right of a timely decision on their permit application. The agencies are required to establish time limits for permit reviews.
- Permit applicants have the right to appeal permit review time limits by statute or administratively that have been violated without good cause. For state environmental agencies, appeals are made directly to the Cal/EPA Secretary or to a specific board. For local environmental agencies, appeals are generally made to the local governing board, or under certain circumstances to Cal/EPA. Through this appeal, applicants may obtain a set date for a decision on their permit and in some cases a refund of all application fees (ask boards and departments for details).
- Permit applicants have the right to work with a single lead agency where multiple environmental approvals are needed. For multiple permits, all agency actions can be consolidated under the lead agency. For site remediation, all applicable laws can be administered through a single lead agency.
- Permit applicants have the right to know who will be reviewing their application and the time required to complete the full review process.

For further information you may contact the Colorado River Basin Regional Water Quality Control Board at (760) 346-7491.

MEETING PROCEDURES

GENERAL MEETING RULES

The Colorado River Basin Regional Water Quality Control Board (Board) and staff welcome information on issues and matters within the Board's jurisdiction, but comments and submittals at the meeting should be concise and directed to specifics of the item under discussion to enable the Board to be fully informed and take appropriate action.

Persons wishing to speak at the meeting should complete a speaker request card and provide it to staff. You may also wish to sign in on the attendance sheet that will be provided. Although signing in is voluntary, we appreciate knowing who attended the meeting to help us evaluate the level of public interest.

Any person planning to make a presentation to the Board that requires the use of visual aids (such as overheads, slides, or video projector) should contact the assigned staff person to make arrangements before the meeting date in order to avoid unnecessary delays during the meeting.

All interested persons may speak at the Board meeting, and are expected to orally summarize their written submittals. Testimony should be presented in writing prior to the meeting and only a summary of pertinent points presented orally. The time allowed for oral testimony (i.e., direct testimony or comment as well as cross-examination and closing statements) will be limited by the Board Chair (typically, for direct testimony, no more than 10 minutes for designated parties and 3 minutes for other interested parties—see discussion of these terms under “adjudicative proceedings” below). A timer may be used and speakers are expected to honor the time limits. Oral testimony must be relevant. Where speakers can be grouped by affiliation or interest, such groups will be expected to select a spokesperson and not be repetitive.

Any person may submit comments in writing on any agenda item. Written comments shall not be read into the record unless allowed by the Board Chair. Persons who want to submit written comments, testimony, or evidence on any agenda item must provide such written documents to the Board office in advance of the meeting, which must be by the date and time specified in the applicable Notice of Public Hearing or Meeting. Comments received by the noticed deadline will be included in the administrative record before the Board. Staff may provide responses to timely submitted comments. With respect to written comments or other written testimony not timely submitted, however, the Board may refuse to accept such evidence or admit it into the administrative record unless the proponent can demonstrate why he or she was unable to timely submit the evidence, that compliance with the deadline would create an unreasonable hardship, or that allowing the evidence would not prejudice any party or the Board. (Title 23, Section 648.4.) Written materials or other documents submitted at the Board meeting must be provided first to Board counsel, who will advise the Board regarding acceptance of these documents into the record.

PROCEDURE FOR UNCONTESTED ITEMS (Title 23, Section 647.2(f))

Uncontested or consent agenda items are items for which there appears to be no controversy and that can be acted upon by the Board without discussion. Such items have been properly noticed and all interested parties consent to the staff recommendation. The Board Chair will recognize late revisions submitted by staff and will then call for a motion and vote by the Board members. If any Board member or member of the public raises a question or issue regarding the item that requires Board discussion, the item may be removed from the consent calendar and considered in its numerical order on the agenda, or in an order determined by the Board Chair. Anyone wishing to contest a consent item on the agenda is expected to appear in person at the Board meeting and explain to the Board the reason the item is being contested.

PROCEDURE FOR INFORMATIONAL ITEMS (Title 23, Section 649 et seq.)

Informational items are items presented to the Board for discussion only and for which a Board action or vote is normally not taken. The Board will usually hear only a presentation by staff, but comments by interested persons shall also be allowed. Members of the public wishing to address the Board on the topic under discussion should submit a speaker request card beforehand indicating their desire to speak to the Board on the informational item. Comments from the public should be for clarification purposes or to add to the Board's understanding or knowledge about the item. Such comments must not be testimonial in nature or argumentative, however, since speakers are not under oath and the proceeding is not an adversarial one. Time limits may be imposed on interested persons who wish to speak.

PROCEDURE FOR CONTESTED AGENDA ITEMS

Contested agenda items are items to which the parties involved have not consented and the staff recommendation is in dispute. The procedure that applies to such items depends on the nature of the matter. Matters before the Board may be quasi-legislative (i.e., rulemaking, such as amending the Basin Plan) or quasi-judicial (i.e., adjudicative proceedings). Such items may require a public hearing and all interested persons will be provided an opportunity to make comments. Contested agenda items that are adjudicative are governed by the State Water Resources Control Board's regulations for **adjudicative proceedings**, which are set forth in Title 23, Division 3, Chapter 1.5, Article 2 of the California Code of Regulations, commencing with Section 648.

As a general matter, adjudicative proceedings before the State Water Resources Control Board (State Water Board) and each of the nine Regional Water Quality Control Boards (Regional Water Boards) are governed by State Water Board regulations, as authorized by Chapter 4.5 of the Administrative Procedure Act (commencing with Section 11400 of the Government Code). State Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with Sections 801-805 of the Evidence Code and Section 11513 of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. (Other provisions of Chapter 5 do not apply to adjudicative proceedings before the State Water Board and Regional Water Boards).

A copy of the applicable Title 23 State Water Board regulations can be found at http://www.waterboards.ca.gov/water_laws_regulations/. A copy of applicable the Chapter 4.5 Administrative Procedure Act statutory provisions, commencing with Government Code Section 11400, Section 11513 of the Government Code, and

Sections 801-805 of the Evidence Code can be found at the general California Codes website at: <http://www.leginfo.ca.gov/calaw.html>.

An **adjudicative proceeding** is a hearing to receive evidence for determination of facts pursuant to which the State Water Board or a Regional Water Board formulates and issues a decision. A decision determines a legal right, duty, privilege, immunity, or other legal interest of a particular person or persons. Examples of adjudicative proceedings include hearings to receive evidence concerning: the issuance of waste discharge requirements or National Pollutant Discharge Elimination System (NPDES) permits; decisions or orders on water right applications, petitions or complaints; cease and desist orders; and orders setting administrative civil liability.

Adjudicative hearings are not conducted according to the technical rules of evidence, and the Board will accept any evidence or testimony that is reasonably relevant. The Notice of Public Hearing will set forth the process for the hearing. When the hearing is **formal** (as opposed to the more informal Board meetings typically held), participants in contested agenda items are either “designated parties” or “interested persons”. Only designated parties will have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness; and to rebut the evidence against him or her. Designated parties may be subject to cross-examination as well.

The designated parties typically include:

- Staff of the Board
- The Discharger or Responsible Party
- Persons directly affected by the discharge

All other persons wishing to testify or provide comments for a formal hearing item are “interested persons” and not “designated parties”. Interested persons do not have a right to cross-examination, but may ask the Board to clarify testimony. Interested persons may also be asked to clarify their testimony at the discretion of the Board. Such interested persons may request status as a designated party for purposes of the formal hearing by submitting such request in writing to the Board no later than the date specified in the Notice of Public Hearing. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge. All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying.

The order of testimony for formal hearings generally will be as follows, unless modified by the Board Chair:

- Testimony and cross-examination of Board staff
- Testimony and cross-examination of discharger
- Testimony and cross-examination of other designated parties
- Testimony of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff

- Recommendation by Executive Officer (as appropriate)
- Close hearing
- Deliberation and voting by Board members

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony. After considering evidence, testimony, and comments, the Board may choose to adopt an order regarding a proposed agenda item. All Board files, exhibits, and agenda material pertaining to items on the agenda are made a part of the administrative record. Persons wishing to introduce item exhibits (e.g., maps, charts, photographs) must leave them with the Board's Assistant Executive Officer. Photographs or slides of large exhibits are acceptable.

Quasi-legislative matters considered by the State Water Board and Regional Water Boards include rulemaking and some informational proceedings. These matters may include hearings for the adoption or amendment of regulations, such as Basin Plan Amendments (considered rulemaking), water quality control plans or state policy for water quality control, and hearings to gather information to assist the State Water Board and Regional Water Boards in formulating policy for future action. Because they are not adjudicative proceedings, quasi-legislative matters are subject to different hearing procedures. (See PROCEDURE FOR INFORMATIONAL ITEMS, above, and Title 23, Section 649 et seq.)

Within 30 days of any action or failure to act by the Board, any aggrieved person may petition the State Water Board to review that action or failure to act pursuant to California Water Code Section 13320 and California Code of Regulations, Title 23, Section 2050 et seq. In the case of a failure to act, the 30-day period shall commence upon the refusal of the Board to act, or 60 days after request has been made to the Board to act. The petition must be addressed to the Office of Chief Counsel at the State Water Board. The State Water Board must *receive* the petition by 5:00 p.m., within the applicable time period. Copies of the law and regulations applicable for filing petitions (and cited above) will be provided upon request and are available at http://www.waterboards.ca.gov/laws_regulations/.

Any questions or comments regarding these procedures may be directed to:

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