

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2014-0010

ADDRESSING 14-DAY TIME PERIODS IN WHICH THE CENTRAL VALLEY WATER BOARD WILL GENERALLY NOT ACCEPT OTHERWISE ALLOWABLE EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS, GENERAL WATER QUALITY CERTIFICATIONS, AND GENERAL WAIVERS

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds:

1. *Ex parte communications* are generally defined as those communications that occur between one party to a proceeding and the decisionmaker, when the communication is regarding a substantive matter and when the other parties to the proceeding are not included in the communication.
2. The California Government Code, in the provisions that comprise the California Administrative Procedure Act, places restrictions on *ex parte* communications in administrative adjudications. The Government Code states that while a matter is pending before an administrative agency, “there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the [Board Members] from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.” (Gov’t. Code § 11430.10.)
3. In 2012, the California Legislature enacted a bill that altered the *ex parte* rules as they apply to the Board’s issuance, modification, or rescission of General Waste Discharge Requirements (WDRs), General Water Quality Certifications, and General Waivers. (California Senate Bill History, 2011-2012 S.B. 965.) The bill added Chapter 4.1 (commencing with Section 13287) to Division 7 of the Water Code.
4. Water Code section 13287 now allows *ex parte* communications between “interested persons” and the Central Valley Water Board members regarding pending matters, as long as the following conditions are met:
 - a. The pending action does not identify specific persons as dischargers, but instead allows persons to enroll or file an authorization to discharge under the action; and
 - b. The pending action is for the adoption, modification, or rescission of one or more of the following: waste discharge requirements pursuant to Section 13263 or 13377, conditions of water quality certification pursuant to Section 13160, or conditional waiver of waste discharge requirements pursuant to Section 13269.

Water Code section 13267 also requires that the *ex parte* communication be disclosed by the interested person making the *ex parte* communication within seven days, and that the

Board promptly distribute the disclosure on any available electronic distribution list concerning the action and post the disclosure on the Board's website.

5. For the purposes of the new ex parte rules for General WDRs, General NPDES Permits, General Water Quality Certifications, and General Conditional Waivers, "interested persons" are defined as:
 - a. Persons who will be required to enroll or file authorization to discharge pursuant to the action at issue before the Board, or those person's agents or employees, including persons receiving consideration to represent that person;
 - b. Persons with a financial interest in a matter at issue before a Board, or those person's agents or employees, including persons receiving consideration to represent that person; and
 - c. Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intend to influence the decision of a Board member on a matter before the Board.
6. Water Code section 13287 further allows the Central Valley Water Board to prohibit otherwise allowable ex parte communications for a time period beginning not more than 14 days before the day of a Board meeting at which the decision in the proceeding is scheduled for Board action.
7. On 31 January 2013, the Central Valley Water Board discussed the new ex parte provisions of the Water Code and unanimously concluded that it would be reasonable to impose a prohibition on otherwise allowable ex parte contacts commencing 14 days before the day of a Board meeting at which a decision in the proceeding is scheduled for Board action. However, the Central Valley Water Board did not formalize this conclusion at that time.
8. Generally prohibiting otherwise allowable ex parte contacts 14 days before the day of a Board meeting at which a decision is scheduled for Board action is reasonable for a number of reasons, including:
 - a. It allows sufficient time for Board staff to distribute the ex parte communication disclosure forms on electronic distribution lists concerning the action, and it gives Board staff the opportunity to post the ex parte communication disclosure forms on the Board's website well in advance of the Board's hearing.
 - b. It promotes fairness by giving parties who do not have the resources or time to meet with individual Board members the opportunity to prepare presentations for the Board hearing that address the issues discussed by the other parties in ex parte communications that those other parties may have had with the Board members.
 - c. It helps avoid placing unreasonable last-minute scheduling demands on Board members, whom often are under significant pressure to accommodate all viewpoints on a particular matter, which may be impossible in the time period immediately before a Board meeting.

THEREFORE, CENTRAL VALLEY WATER BOARD HERBY RESOLVES THAT,

1. In order to promote fairness and the orderly administration of proceedings before the Central Valley Water Board, and in order to avoid placing unreasonable demands upon the Board members in the time period immediately before the Board meetings, the Board will ordinarily prohibit all ex parte communications in the 14-day time period preceding the day of a Board meeting at which a decision regarding General WDRs, General NPDES Permits, General Water Quality Certifications, or a General Conditional Waivers is scheduled for Board action.
2. In order to effectively communicate the Board's interest in enforcing the 14-day period in which otherwise allowable ex parte communications are prohibited, notices involving pending General WDRs, General NPDES Permits, General Water Quality Certifications, and General Conditional Waivers should include language reiterating the fact that the Board will not be accepting ex parte communications within this 14 day period.
3. Exemptions to the prohibition can be made on a case-by-case basis for compelling reasons, which may include:
 - a. Situations where the Board staff propose significant changes to the pending General WDRs, General NPDES Permits, General Water Quality Certification, or General Conditional Waiver immediately before or immediately after the start of the 14-day time period.
 - b. Situations where significant and critical matters of fairness are implicated by the imposition of the 14-day prohibition period.
4. If an exemption to the prohibition is made, the board staff will inform interested persons of the exemption by posting on the web site and by circulating notice of the exemption on electronic distribution lists concerning the action. The notice will include any limitation on scope of the exemption. For instance, if the reason for allowing the exemption is a specific, significant change to the proposed action, the scope of the exemption may be limited to communications relevant to the proposed change(s).

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region on 7 February 2014.

PAMELA C. CREEDON, Executive Officer