

CALIFORNIA CODE OF REGULATIONS

TITLE 23. WATERS

DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY  
CONTROL BOARDS

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS

(As amended through January 1, 2000)

**§ 640. Definitions.**

(a) "Board" when used in this chapter and chapter 1.5, unless otherwise designated, means either the State Water Resources Control Board or any California Regional Water Quality Control Board.

(b) "State Board" when used in this chapter and chapter 1.5 means the State Water Resources Control Board.

(c) "Regional Board" when used in this division means any California Regional Water Quality Control Board.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Section 13203, Water Code.

CHAPTER 1.5. RULES OF PRACTICE AND PROCEDURE

ARTICLE 2. ADJUDICATIVE PROCEEDINGS

**§ 648. Laws Governing Adjudicative Proceedings.**

(a) For purposes of this article, "adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which the State Board or a Regional Board formulates and issues a decision.

(b) Incorporation of Applicable Statutes. Except as otherwise provided, all adjudicative proceedings before the State Board, the Regional Boards, or hearing officers or panels appointed by any of those Boards shall be governed by these regulations, chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code.

(c) Portions of Administrative Procedure Act Not Applicable. The following articles and sections of chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code) are

specifically not included in the procedures governing the conduct of hearings before the State Board, any of the Regional Boards, or hearing officers or panels appointed by those Boards:

Article 8. Language Assistance (except that the procedures for language assistance shall apply to an adjudicative proceeding pursuant to Article 6 [commencing with section 25299.50] of Chapter 6.75 of Division 20 of the Health and Safety Code)

Article 13. Emergency Decision

Article 14. Declaratory Decision

Except as provided in subdivision (b) of this section, chapter 5 of the Administrative Procedure Act (commencing with section 11500 of the Government Code) does not apply to hearings before the State Board, any of the Regional Boards, or hearing officers or panels appointed by those Boards.

(d) Waiver of Nonstatutory Requirements. The presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but not limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses, and the presentation of argument, so long as those requirements are not mandated by state or federal statute or by the state or federal Constitutions.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263 and 13378, Water Code.

#### **§ 648.1 Parties and Other Interested Persons.**

(a) The party or parties to an adjudicative proceeding before the Board shall include the person or persons to whom the agency action is directed and any other person whom the Board determines should be designated as a party. The hearing notice may specify a procedure for designation of the parties to a particular adjudicative proceeding.

(b) In a water right proceeding, the party or parties shall include the water right applicant or petitioner, persons who have filed unresolved protests, persons who have filed unresolved objections to a temporary change petition, persons who have filed an unresolved written complaint with the Board concerning the subject matter of the hearing, and any other persons who are designated as parties in accordance with the procedure specified in the hearing notice.

(c) Persons who fail to comply with the procedural requirements specified in the hearing notice for participation as parties in a proceeding may be dismissed as parties to the proceeding.

(d) The Board or presiding officer may provide an opportunity for presentation of policy statements or comments, either orally or in writing, by interested persons who are not participating as parties in the proceeding. Persons presenting nonevidentiary policy statements will not be subject to cross-examination but may be asked to respond to clarifying questions from the Board, staff, or others, at the discretion of the Board or presiding officer. The criteria and procedures applicable to participation in a Board adjudicative proceeding as an interested person may be established in the hearing notice or by the presiding officer. Interested persons will not normally be required to serve copies of their statements on the parties to the proceeding nor will they normally be allowed to participate in cross-examination. The hearing notice may require that any written policy statements proposed to be submitted to the Board, be submitted prior to the hearing. If the requirement for prior submittal of policy statements applies to persons who address the Board or a subcommittee of the Board at a meeting subject to the Bagley-Keene Open Meeting Act (article 9 [commencing with section 11110] of chapter 1 of article 1 of division 3 of title 2 of the Government Code), the requirement shall be included in the notice of the meeting. Interested persons are not

entitled to receive service of exhibits, testimony, or other documents served on the parties to the proceeding unless specifically so provided in the hearing notice or by the presiding officer.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263, and 13378, Water Code.

#### **§ 648.2 Official Notice.**

The Board or presiding officer may take official notice of such facts as may be judicially noticed by the courts of this state. Upon notice to the parties, official notice may also be taken of any generally accepted technical or scientific matter within the Board's field of expertise, provided parties appearing at the hearing shall be informed of the matters to be noticed. The Board or presiding officer shall specify the matters of which official notice is to be taken. Parties shall be given a reasonable opportunity on request to refute officially noticed technical or scientific matters in a manner to be determined by the Board or presiding officer.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263 and 13378, Water Code.

#### **§ 648.3 Evidence by Reference.**

Public records of the Board that are relevant to the subject of the hearing, and books, reports, and other evidence that have been prepared and published by a public agency, if otherwise admissible, may in the discretion of the Board be received in evidence as exhibits by reference without the necessity of supplying copies to the Board and other parties, provided the original or a copy is in the possession of the Board and the specific file folder or other exact location where it can be found is identified. The party offering an exhibit by reference shall designate the particular portions on which the party relies. Each exhibit shall be appropriately identified and designated in the record as an exhibit of the party offering the exhibit or an exhibit of Board staff.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263, and 13378, Water Code.

#### **§ 648.4 Identification of Witnesses; Presubmission and Presentation of Testimony and Exhibits.**

(a) It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits.

(b) The hearing notice may require that all parties intending to present evidence at a hearing shall submit the following information to the Board prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness' proposed testimony, the estimated time required by the witness to present direct testimony, and the qualifications of each expert witness. The required information shall be submitted in accordance with the procedure specified in the hearing notice.

(c) The hearing notice may require that direct testimony be submitted in writing prior to the hearing. Copies of written testimony and exhibits shall be submitted to the Board and to other parties designated by the Board in accordance with provisions of the hearing notice or other written instructions provided by the Board. The hearing notice may require multiple copies of written testimony and other exhibits for use by the Board and Board staff. Copies of general vicinity maps or large, nontechnical photographs generally will not be required to be submitted prior to the hearing.

(d) Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record unless allowed by the presiding officer.

(e) Where any of the provisions of this section have not been complied with, the presiding officer may refuse to admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Board. This rule may be modified where a party demonstrates that compliance would create severe hardship.

(f) Rebuttal testimony generally will not be required to be submitted in writing, nor will rebuttal testimony and exhibits be required to be submitted prior to the start of the hearing.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263 and 13378, Water Code.

### **§ 648.5 Order of Proceedings.**

(a) Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board. Adjudicative proceedings generally will be conducted in the following order except that the chairperson or presiding officer may modify the order for good cause:

(1) An opening statement by the chairperson, presiding member, or hearing officer, summarizing the subject matter and purpose of the hearing;

(2) Identification of all persons wishing to participate in the hearing;

(3) Administration of oath to persons who intend to testify;

(4) Presentation of any exhibits by staff of the State or Regional Board who are assisting the Board or presiding officer;

(5) Presentation of evidence by the parties;

(6) Cross-examination of parties' witnesses by other parties and by Board staff assisting the Board or presiding officer with the hearing;

(7) Any permitted redirect and recross-examination;

(b) Questions from Board members or Board counsel to any party or witness, and procedural motions by any party shall be in order at any time. Redirect and recross-examination may be permitted.

(c) If the Board or the presiding officer has determined that policy statements may be presented during a particular adjudicative proceeding, the presiding officer shall determine an appropriate time for presentation of policy statements.

(d) After conclusion of the presentation of evidence, all parties appearing at the hearing may be allowed to present a closing statement.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Section 11126, Government Code.

**§ 648.5.1 Rules of Evidence.**

Adjudicative proceedings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay evidence is admissible subject to the provisions of Government Code section 11513.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263 and 13378, Water Code.

**§ 648.6 Alternative Dispute Resolution.**

Pursuant to article 5, commencing with section 11420.10, of chapter 4.5 of the Administrative Procedure Act, the State Board or any Regional Board may refer a dispute in a proceeding before it to mediation or nonbinding arbitration to resolve any adjudicative issues pending before it. Under no circumstances may any Board refer an issue to arbitration that is binding upon it with respect to adjudicative issues pending before that Board.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Section 11420.10, Government Code; Sections 183, 13263 and 13378, Water Code.

**§ 648.7 Informal Hearings.**

Unless the hearing notice specifies otherwise, the presiding officer shall have the discretion to determine whether a matter will be heard pursuant to the informal hearing procedures set forth in article 10, commencing with section 11445.20, of chapter 4.5 of the Administrative Procedure Act.

Among the factors that may be considered in making this determination are:

- The number of parties,
- The number and nature of the written comments received,
- The number of interested persons wishing to present oral comments at the hearing,
- The complexity and significance of the issues involved, and
- The need to create a record in the matter.

An objection by a party, either in writing or at the time of the hearing, to the decision to hold an informal hearing shall be resolved by the presiding officer before going ahead under the informal procedure. Failure to make a timely objection to the use of informal hearing procedures before those procedures are used will constitute consent to an informal hearing. A matter shall not be heard pursuant to an informal hearing procedure over timely objection by the person to whom agency action is directed unless an informal hearing is authorized under subdivision (a), (b), or (d) of section 11445.20 of the Government Code.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263, 13378, Water Code.

**§ 648.8 Enforcement Orders and Sanctions.**

(a) The presiding officer or Board shall have the power to impose sanctions as specified in Sections 11455.10 and 11455.30 of the Government Code.

(b) If the Board cites a person for contempt for any of the actions listed in Section 11455.10 of the Government Code, then the matter shall be certified to the superior court for contempt proceedings without further review by the Board. If the Board orders payment of costs pursuant to Section 11455.30 of the Government Code, then the order is effective upon issuance.

(c) Board Review of Enforcement Orders and Sanctions Imposed by Hearing Officers and Hearing Panels.

(1) If the presiding officer is a Board member or other hearing officer or hearing panel authorized by the Board to conduct the hearing, a citation for contempt issued pursuant to Section 11455.10 of the Government Code or an order for payment of costs issued pursuant to Section 11455.30 of the Government Code is subject to review by the Board as provided in this subdivision.

(2) The person or persons subject to the citation or order may request a hearing before the Board within 10 days of entry of the citation or order. The hearing will take place at the next regularly scheduled meeting of that Board, subject to the limitations of the Bagley-Keene Open Meeting Act (Article 9 [commencing with Section 11120] of chapter 1 of part 1 of division 3 of title 2 of the Government Code). If the Board determines that the actions listed in Section 11455.10 of the Government Code occurred, then the matter shall be certified to the superior court for contempt proceedings. The Board may affirm, set aside, or modify as appropriate an order entered to pay reasonable expenses pursuant to the provisions of Section 11455.30 of the Government Code.

(3) If the person or persons subject to a citation or order fails to request a hearing before the Board within 10 days of entry of the citation or order, then the citation or order is final and subject to enforcement pursuant to Sections 11455.20 and 11455.30 of the Government Code.

(d) A determination by a Regional Board pursuant to this section is not subject to review by the State Board under Water Code Section 13320.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 13263 and 13378, Water Code.

#### ARTICLE 4. SUBPOENAS

##### **§ 649.6 Subpoenas.**

(a) Upon its own motion or upon request of any person, the Board may issue subpoenas and subpoenas duces tecum for attendance at a proceeding and for production of documents at any reasonable time and place or at a hearing.

(b) Article 11 (commencing with section 11450.05) and article 12 (commencing with section 11455.10) of chapter 4.5 of part 1 of division 3 of title 2 of the Government Code shall apply to the issuance of a subpoena or subpoena duces tecum in an adjudicative proceeding. The Board may also compel attendance, testimony, or the production of evidence as provided in article 3 (commencing with section 1090) of chapter 3 of part 1 of division 2 of the Water Code.

(c) Section 1086 of the Water Code does not apply to any witness required to attend an adjudicative proceeding pursuant to article 11 (commencing with section 11450.05) of chapter 4.5 of part 1 of division 3 of title 2 of the Government Code.

(d) Article 5 (commencing with section 1105) of chapter 3 of part 1 of division 2 of the Water Code applies to any person required to testify or produce any evidence pursuant to a subpoena or subpoena duces tecum or pursuant to a notice issued under section 11450.50 of the Government Code.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 1080 and 13221, Water Code.

## CHAPTER 2. APPROPRIATION OF WATER

### ARTICLE 11. HEARINGS AND PROCEEDINGS IN LIEU OF HEARING

#### **§ 760. Hearings on Water Right Applications and Other Water Right Matters.**

Adjudicative hearings on water right applications and other water right matters shall be conducted in accordance with the procedures set forth in article 2 of chapter 1.5 of this division. Nothing in this section shall limit the Board's authority to conduct nonadjudicative informational hearings.

Authority cited: Sections 185 and 1058, Water Code.

Reference: Sections 183, 1051, 1342, 1345, 1346, 1347, 1348, 1350, 1391 and 1394, Water Code.