

Colorado River Basin Regional Water Quality Control Board

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. - 2 - 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, and 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 Chapter 4.5 Administrative Procedure Act statutory provisions (Government Code Sections 11400-11475), 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. Instead, the Board is allowed to 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 are 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 the 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 or responsible party
- Testimony and cross-examination of other designated parties
- Testimony of interested persons
- Closing statement by designated parties other than the discharger or responsible party
- Closing statement by discharger or responsible party
- Closing statement by Board 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 (e.g., Regional Water Board water quality control plans (Basin Plans) and state policy for water quality control), and for gathering information to assist the State Water Board and Regional Water Boards in formulating policy for future action.

Because they are not adjudicative proceedings, quasilegislative matters are subject to different hearing procedures. (See PROCEDURE FOR INFORMATIONAL ITEMS, above)

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 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 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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