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# State Water Resources Control Board



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## Office of Chief Counsel

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**TO:** Stakeholders

**FROM:** /original signed by/  
Michael A.M. Lauffer  
Chief Counsel  
**OFFICE OF CHIEF COUNSEL**

**DATE:** April 18, 2006

**SUBJECT:** DRAFT QUESTIONS ADDRESSED IN THE QUESTIONS AND ANSWERS DOCUMENT ON EX PARTE COMMUNICATIONS BEING PREPARED BY THE OFFICE OF CHIEF COUNSEL

The members of the State Water Resources Control Board have requested an updated document explaining the legal requirements associated with ex parte communications. After meetings with a variety of stakeholders, I have decided to address the issue through a question and answer document that will be more useful and usable to the members of the state and regional water boards. The preliminary list of questions is set forth below.

Accompanying the question and answer document will be a flow chart, with each decision point referencing specific questions. A mock up of that flow chart is also included below. The flow chart is not final, and the responsive questions are not specifically identified, because the questions remain in flux.

If you have any additional questions or feel a specific question requires clarification, please e-mail with your suggestion ([mлаuffer@waterboards.ca.gov](mailto:mлаuffer@waterboards.ca.gov)) no later than May 5, 2006.

### Proposed Questions:

#### **I. Ex Parte Summary**

1. Q. What is an ex parte communication?
2. Q. What is a communication?
3. Q. What purposes are served by limitations on ex parte communications?
4. Q. Do ex parte communications rules prevent me from understanding the issues and people's concerns?

5. Q. How can I educate myself without violating the prohibition on ex parte communications?
6. Q. How do I explain ex parte rules to the public?
7. Q. What proceedings are subject to the prohibition on ex parte communications?

## **II. Adjudicative Proceedings**

### **A. Types of Adjudicative Actions**

8. Q. What actions are adjudicative?
9. Q. Are ex parte communications prohibited for pending adjudicative actions?
10. Q. Does the ex parte communications prohibition apply to general permits?
11. Q. Does the ex parte communications prohibition apply to waivers?

### **B. Pending Adjudicative Actions**

12. Q. When is an action pending?
13. Q. What is an impending matter?
14. Q. How can a board member determine whether an action is pending?
15. Q. Are adjudicative matters pending before the regional water boards also pending before the State Water Board?
16. Q. Does a reopener provision in a permit mean an action is pending?

### **C. Scope of Ex Parte Communications Prohibition**

17. Q. What subjects are covered by the ex parte communications prohibition?
18. Q. Are all communications prohibited with a person interested in an adjudicative proceeding pending before a water board?
19. Q. Are there exceptions to the prohibition?
20. Q. What is a matter of practice or procedure that is not in controversy?

### **D. Persons Subject to the Ex Parte Communications Prohibition**

21. Q. Who is subject to the rules for ex parte communications?
22. Q. May staff communicate with board members without violating ex parte rules?
23. Q. May other government officials communicate with board members without violating ex parte rules?
24. Q. May a board member attend a publicly noticed staff-level workshop on an adjudicative matter?

### **E. Consequences of Prohibited Ex Parte Communications**

25. Q. What are the consequences of violating the ex parte communications prohibition?
26. Q. How may a board member cure an inadvertent ex parte communication?
27. Q. What if I received a communication about an adjudicative proceeding before becoming a board member?

**III. Rulemaking and Other Proceedings**

28. Q. What actions are rulemaking?
29. Q. Is there a prohibition on ex parte communications in rulemaking actions?
30. Q. What is the Office of Chief Counsel's recommendation on handling ex parte communications in rulemaking proceedings?
31. Q. If a member chooses to disclose a communication, what is the preferred procedure?
32. Q. May a board member communicate with a person about how a general requirement may be translated into a subsequent permit requirement?
33. Q. What are "other proceedings"?
34. Q. Are "other proceedings" subject to ex parte rules?

**IV. Site Visits**

35. Q. Is a site visit a form of "communication"?
36. Q. Can a board member visit a regulated facility when an adjudicative action is pending?
37. Q. Can a board member visit a regulated facility when no adjudicative action is pending for that facility?

**V. General Issues**

38. Q. Why can legislators talk to anyone and the board members cannot?
39. Q. Why can the public talk to city council members and not board members?
40. Q. Is a communication about a pending adjudicative matter, received during a public forum, an ex parte communication?
41. Q. Who can a board member speak with to clarify ex parte concerns?
42. Q. Who is responsible for complying with the ex parte rules – the board members or the public?

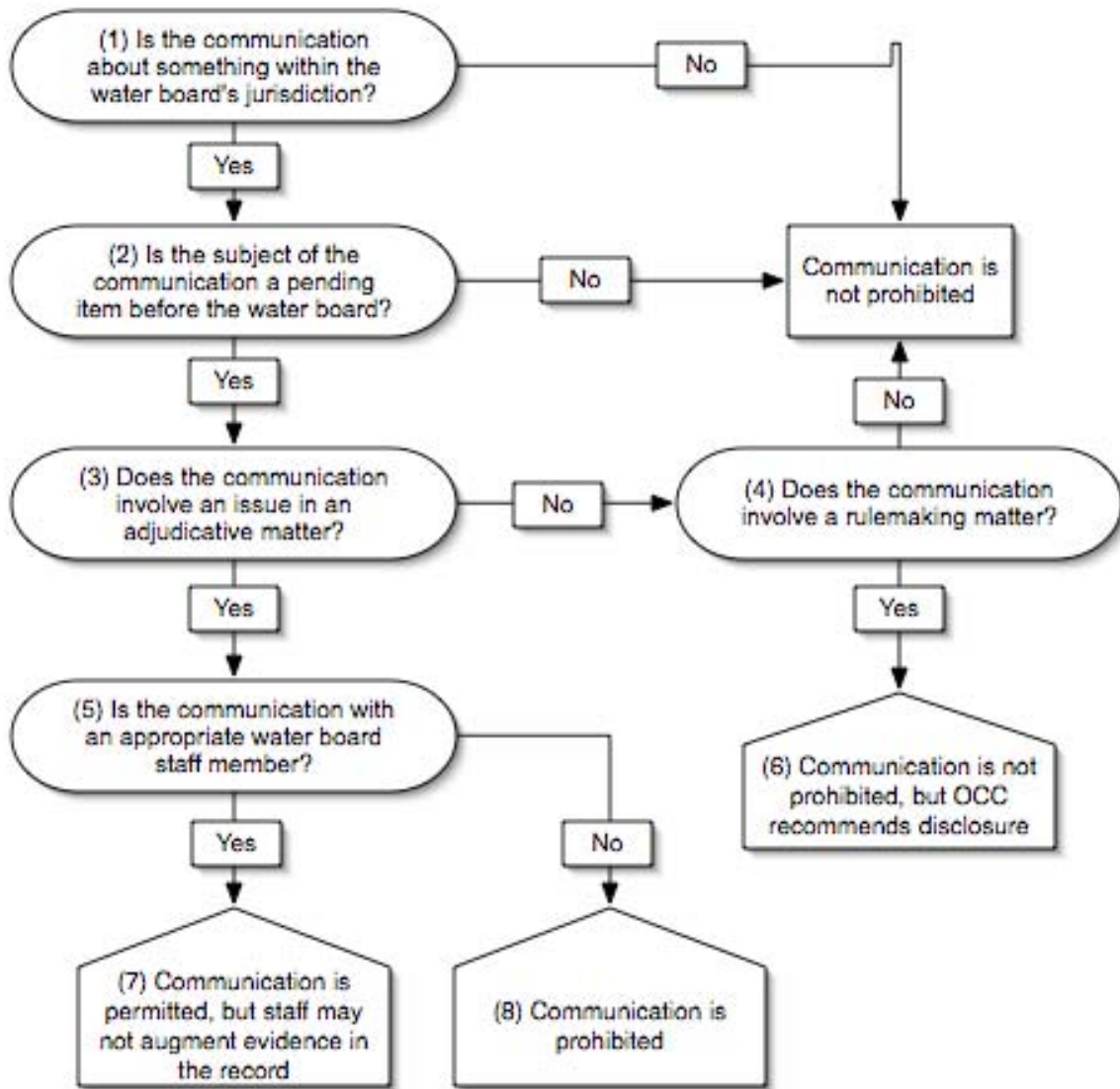


Figure 1: Model Ex Parte Flow Chart