

Ex Parte Rules for General Permits SB 965

ILRP Stakeholder Meeting
January 2013

Ex Parte Communications

- Background
 - Prior to January 1, 2013, ex parte communication prohibition applied to all pending adjudicative proceedings, including general WDR and waiver proceedings.
 - Under the prohibition, all substantive ex parte communications with Board members were prohibited.

Ex Parte Communications

- SB 965
 - Effective January 1, 2013.
 - Added Section 13287 to the Water Code
- Carves out an exception for general permit proceedings
 - Ex parte communications no longer prohibited.
 - Special disclosure provisions applicable to “interested persons.”
 - Board may impose quiet period 14 days prior to hearing.

Applicability of SB 965

- Disclosure Requirements Apply only to Interested Persons
 - All other persons not required to disclose ex parte communications; however Board members are advised to disclose these communications
- Statutory Definition of Interested Person
 - Dischargers and their representatives/employees.
 - Persons with a financial interest in general order
 - Representatives acting on behalf of an interest group

Applicability of SB 965

- Only Applies to General Permit or Waiver Proceedings
 - Rules applicable to all other adjudicative proceedings unchanged.
- Definition of General Permit Proceeding
 - One that allows a general category of dischargers to enroll under the permit without identifying their names.
 - Typical enrollment procedures include Notice of Intent.
 - Board staff can identify SB 965 applicability when the proceeding becomes pending.

Implementation of SB 965

- Disclosure Requirements
 - Applies to oral and written communications
 - Within 7 working days of the communication, must provide written disclosure to the Water Board staff
 - Contents of Disclosure:
 - Date, time, location, type of communication, participants in the communication; initiator of communication.
 - Must include a description of the communication, including all materials that were used.
 - Board-provided template will assist implementation

Implementation of SB 965

- Posting of Disclosures
- Staff Review of Disclosures
- Sanctions
- 14 Day Quiet Period

Conclusion

- SB 965 Loosens Ex Parte Restrictions for Pending General Order Proceedings
- Board Members Retain Discretion on How and When to Have Ex Parte Communications
- Water Board Templates and Guidance Documents Will Promote Consistent Implementation