

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JANUARY 30-31, 2020

Prepared on January 6, 2020

ITEM NUMBER: 13

SUBJECT: “Quiet Period” Prior to Public Meeting at Which Agricultural Order 4.0 Will Be Considered

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ACTION: Information / Discussion

SUMMARY

The Central Coast Water Board is currently developing an order to replace Order No. R3-2017-0002 (referred to as Agricultural Order 3.0), which regulates waste discharges from irrigated agricultural lands. The Central Coast Water Board will consider adoption of the replacement order, Agricultural Order 4.0, at a future board meeting, likely later this year. The Board has directed staff to develop Agricultural Order 4.0 as general waste discharge requirements (WDRs).

Because Agricultural Order 4.0 will be a general order, ex parte communications between “interested persons” and members of the Central Coast Water Board regarding the order are permissible under Water Code section 13287, subject to disclosure requirements. Additionally, the Board may establish a “quiet period” prohibiting all ex parte communications for a period of up to 14 days immediately preceding the public meeting at which the Board is scheduled to consider adoption of Agricultural Order 4.0.

BACKGROUND

Ex parte communications are generally defined as oral and written communications that occur between a party to a proceeding and the decisionmaker, when the communication concerns a substantive matter pending before the decisionmaker and when the other parties to the proceeding are not included in the communication.

The Government Code, in the provisions that comprise the California Administrative Procedure Act, restricts ex parte communications in administrative adjudications, such as in the adoption of general WDRs. 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 presiding officer 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.) For the purposes of issuing, modifying, or rescinding general WDRs like Agricultural Order 4.0, the Central Coast Water Board is the presiding officer.

Effective January 1, 2013, Water Code section 13287 altered the ex parte rules as they apply to the Central Coast Water Board’s issuance, modification, or rescission of general WDRs. Section 13287 now allows ex parte communications between “interested persons” and Central Coast Water Board members regarding pending actions, as long as the following conditions are met:

- 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
- 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.

For the purposes of the ex parte rules for general WDRs and general conditional waivers, “interested persons” are defined as:

- 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;
- 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
- 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.

Water Code section 13287 also requires that the ex parte communication be disclosed to the Board by the interested person making the communication within seven days, and that the Board promptly distribute the disclosure notice on any available electronic distribution list concerning the action and post the disclosure on the Board’s website. Since November 2018, interested persons have filed over 40 disclosures of ex parte communications with the Central Coast Water Board members.

Water Code section 13287 further allows the Central Coast Water Board to establish a quiet period and 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.

Prohibiting otherwise allowable ex parte contacts 14 days before the Board meeting at which a decision is scheduled for Board action is reasonable for a number of reasons, including:

- 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 hearing.
- It promotes fairness by giving interested persons 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 other interested persons in ex parte communications with Board members.
- It helps avoid placing unreasonable last-minute scheduling demands on Board members, who 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.
- It also provides greater process transparency and trust by ensuring all ex parte communication are disclosed in advance of the Board's decision.

Examples of quiet period usage throughout the state include:

- The State Water Board currently uses 14-day quiet periods associated with adoption of general orders.
- The Central Valley Water Board (R5) has adopted a resolution stipulating that all general orders have a 14-day quiet period prior to the adoption hearing.
- Both the North Coast Water Board (R1) and the Colorado River Water Board (R7) have included in hearing notices 14-day quiet periods requirements prior to recent adoption hearings for general orders.
- The San Diego Water Board (R9) delegated to its executive officer to establish a quiet period (14 days).

RECOMENDATION

Consistent with precedent in other regions at the State Water Board, staff recommends a 14-day quiet period immediately prior to the public meeting at which the Board is scheduled to consider adoption of Agricultural Order 4.0.

CONCLUSION

Staff requests direction from the Central Coast Water Board regarding 1) whether it will establish a quiet period, and 2) the length of that quiet period, prior to the public meeting at which the Board is scheduled to consider adoption of Agricultural Order 4.0.