

EXECUTIVE OFFICER SUMMARY REPORT  
November 10, 2010

- ITEM: 15
- SUBJECT: The Board will consider designating the Chair, who may in turn further designate the responsibility from time to time, to conduct prehearing conferences pursuant to Water Code section 13228.15 to address any of the matters described in Government Code section 11511.5, subdivision (b).
- PURPOSE: Designation of a board member who may conduct necessary prehearing conferences pursuant to Water Code section 13228.15 will facilitate the orderly and timely resolution of prehearing matters in advance of a hearing to be conducted by the San Diego Water Board at a noticed meeting.
- PUBLIC NOTICE: Publication of the agenda for the November 10, 2010, San Diego Water Board meeting satisfies the legal requirements for public notice of this item.
- DISCUSSION: State Water Board regulations governing rules of practice and procedure are set forth in California Code of Regulations (CCR), tit. 23, section 647 et seq. These regulations govern meetings of the regional water boards generally, as well as laws governing adjudicative proceedings. The chair serves as presiding officer and is accorded a number of discretionary powers to direct and control proceedings. These include the power to waive non-statutory requirements in the regulations pertaining to the conduct of adjudicative proceedings (CCR, tit. 23, § 648(d)). Section 648.5 assigns a lead role for the presiding officer or chairperson (opening statement, determinations as to order and presentation by the parties). Other procedural powers and decisions accorded to "the Board or presiding officer" are: providing opportunity for presentation of statements or comments by interested persons (CCR, tit. 23, § 648.1); taking official notice of facts as may be judicially noticed by courts (CCR, tit. 23, § 648.2); and refusing admission of proposed testimony or exhibits where procedural requirements are not met (CCR, tit. 23, § 648.4). The above roles should be read in the context of the powers granted

jointly to the regional water boards. That is, these powers are granted only pursuant to the joint authority of the regional water board to act and do not represent a separate grant of authority to act independent of the board as a whole.

In addition, the Water Code explicitly authorizes prehearing conferences, which may be conducted as needed prior to a hearing before the regional water board on an adjudicative matter such as an administrative liability order or a cleanup and abatement order. Specifically, “[T]he members of a regional water board, or their designees, with respect to matters within the regional board’s jurisdiction, may carry out prehearing conferences to address any of the matters described in subdivision (b) of Section 11511.5 of the Government Code. No party who appears at a prehearing conference is precluded from appearing before the regional board at any subsequent hearing relating to the matter.” (Wat. Code, § 13228.15.) The matters described in the referenced Government Code section include, but are not limited to, exploring settlement possibilities or use of alternative dispute resolution, ruling on issuance of subpoenas or protective order motions, ruling on exhibits or other documents to be offered into evidence at the hearing, and “any other matters as shall promote the orderly and prompt conduct of the hearing.” (Gov. Code § 11511.5, subd. (b)(12).) Typically, prehearing conferences will be necessary and useful only in more complex adjudicatory matters.

The San Diego Water Board retains the authority to conduct prehearing conferences at its publicly noticed meetings and may always designate a board member to conduct prehearing conferences in specific matters. In the event of a lack of quorum or other noticing requirement (such as the need for a 10-day notice of a board meeting under the Bagley-Keene Open Meeting Act) that prevents the regional board from meeting to designate a board member to conduct prehearing conferences in a particular matter, it is good practice for the San Diego Water Board to designate the chair (whichever board member is serving in that capacity) to serve in this role. It is also advisable that the board consider allowing the chair to further designate this responsibility from time to time in the event he is unable to conduct prehearing conferences in a particular case. This designation, and further designation by the chair as needed, will facilitate timely and orderly prehearing conferences in appropriate

cases without requiring further action by the San Diego Water Board.

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS: None

RECOMMENDATION(S): Consider a motion designating the chair to conduct prehearing conferences under Water Code section 13228.15, subdivision (b) and authorizing the chair to further designate, from time to time, the responsibility to conduct prehearing conferences.