

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

**STAFF REPORT FOR REGULAR MEETING OF OCTOBER 22, 2004
Prepared on September 21, 2004**

ITEM NUMBER: 21

SUBJECT: ADOPTION OF RESOLUTION APPOINTING HEARING PANEL

The Regional Board may hold hearings when investigating water quality, prescribing waste discharge requirements (including NPDES permits), issuing cease and desist orders, issuing cleanup and abatement orders, or imposing administrative civil liabilities (ACLs) or penalties. In the case of ACLs, a hearing is mandatory unless the discharger waives the hearing. In other cases, the Board holds a hearing if the matter is contested or any person (including a Board member) objects to placing the matter on the consent agenda.

The Porter-Cologne Water Quality Control Act permits the Regional Board to appoint a hearing panel of three or more Regional Board members to conduct these hearings. Following a panel hearing, the panel must provide a report of its proposed decision and order to the Regional Board and provide a copy to all parties who appeared at the hearing and requested a copy. The statute does not specify what level of detail is required, but an explanation of the basis of the decision should suffice.

A hearing panel cannot take an action on the Regional Board's behalf. A quorum of the Regional Board must consider the panel's recommendation at a future meeting. Panel members may participate in the subsequent Regional Board action. The Regional Board members participating in the action item must review the record. The Regional Board may accept additional evidence after the hearing.

The terms of Board members Daniel Press and Russ Jeffries expire on September 30, 2004. A sixty-day holdover period applies unless new appointments are made to fill their seats.

Staff Counsel is recommending the Regional Board adopt this resolution because the Board will have only five members as of November 29, 2004, unless the Governor reappoints Dr. Press and/or Mr. Jeffries or appoints new members before then. If any of the five remaining members are recused for an item, the Board will not have a quorum. Similarly, if any of the five members cannot attend a regular meeting, the meeting would have to be cancelled. Appointing a hearing panel would allow the Board to conduct as much business as possible without a quorum. The Board could take final action on the items heard by the panel after a quorum is present. Some of these items may become uncontested. Even for contested items, the full-Board hearings would be streamlined, and the Board could avoid the extremely long meetings that would result from a long period with no Board meetings at all.

RECOMMENDATION: Adopt Resolution R3-2004-0168

ATTACHEMENT:

Draft Resolution R3-2004-0168