

AGENDA

Public Meeting

Central Valley Regional Water Quality Control Board



Thursday, 14 July, 2011– 9:00 a.m.
Central Valley Regional
Water Quality Control Board
[1685 E Street, Fresno, CA 93706](#)

Wednesday, 20 July, 2011– 9:00 a.m.
Central Valley Regional
Water Quality Control Board
[11020 Sun Center Drive, #200
Rancho Cordova, CA 95670](#)

HEARING PANELS FOR DAIRY ENFORCEMENT ORDERS

The purpose of this meeting is for the hearing panels of the Board to obtain testimony and information from concerned and affected parties and to make decisions based on the information received. The hearing panels have been established pursuant to Water Code section 13228.14. Accordingly, the hearing panels cannot take any final action at these hearings. Instead, the hearing panels will make recommendations on each proposed action for deliberation and voting at a future Board meeting, at which a Board quorum is present. At the future Board meeting, the Board may adopt, modify, or reject, the recommendation of the hearing panel. However, all evidence, testimony and policy statements must be made at the July 14 and 20 hearings.

Persons who want to submit written comments or evidence on any agenda item must comply with the Notice of Public Hearing for the item and the [Meeting Procedures](#) described at the end of the listing of Agenda items. Persons wishing to speak at the meeting should complete an [attendance card](#) and provide it to staff. Although filling out the attendance card is voluntary, we do appreciate receiving a card from all persons in attendance.

Items showing times will begin no sooner than indicated. Items are numbered for identification purposes only and may not be considered in order. They may, however, be delayed by previous items. Items scheduled for the first day of a multi-day meeting may be delayed or continued to the next day of the meeting. The hearing panels are authorized to enter into Closed Session to deliberate on the evidence received in each of these matters. (Government Code section 11126(c)(3)). The hearing panel Chair will announce prior to any Closed Session the anticipated time that the public session will resume.

Technical questions regarding agenda items should be directed to the responsible staff person whose name and direct phone number are indicated by the agenda item. If no staff person is listed, or for general questions and requests for agenda material, please contact Kiran Lanfranchi-Rizzardi at (916) 464-4839.

The facility is accessible to people with disabilities. Individuals requiring special accommodations are requested to contact Ms. Rizzardi at (916) 464-4839 at least 5 working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Electronic presentations: Power Point and other electronic presentations may be presented. Please e-mail presentations to the Board Webmaster at: webmaster5@waterboards.ca.gov at least 24 hours in advance, or bring your files either on a USB Flash drive, or CD ROM and give them to Board Staff prior to the start of the meeting. Providing the electronic files in advance will allow the meeting to proceed without any interruption.

TIME LIMITATIONS

In order to move the meeting along in a timely manner, and assure time for adequate consideration of items later in the Agenda, the Chair may enforce maximum time limitations on each item. The goal is to complete all presentations, cross-examination, hearing panel deliberation and voting within the allotted time. Allotted times are listed on the agenda following each item. Please consider the allotted time when preparing your presentations. Items with specific times listed will not be heard before that time but may be heard later.

THURSDAY, JULY 14 – 9:00 A.M.
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD
1685 E STREET, FRESNO, CA 93706

1. Introductions, Pledge of Allegiance.
2. Meeting Rules and Procedures.
3. Hearing Panel Member Communications – Hearing panel Members may discuss meetings, communications, correspondence, or other items of general interest relating to matters within the hearing panel's jurisdiction. There will be no voting or formal action taken.
4. Public Forum – *Any member of the public may address the hearing panel on any matter within the hearing panel's jurisdiction and not scheduled for consideration at this meeting, or pending before the hearing panel* (3 minute time limit per subject) 9:00.A.M.
5. [Overview of Order No. R5-2007-0035, Waste Discharge Requirements General Order for Existing Milk Cow Dairies and Required Reports](#) (This overview of Order R5-2007-0035 will be included in the records for Items 6 through 10) [Clay Rodgers (559) 445-5116] **(Time Limit – 20 minutes)**
6. [Glenn & Marie Chaney Trust and Tom Chaney, Chris Chaney Dairy, Fresno County – Hearing on Complaint R5-2011-0541 to assess Administrative Civil Liability](#) [Dale Essary (559) 445-5093] **(Time Limit – 60 minutes)**
7. [Johnnie L. Fagundes, Bruce A. Fagundes, John L. Fagundes, and John L. Fagundes Sr. Revocable Trust, Fagundes Agribusiness Dairy, Kings County – Hearing on Complaint R5-2011-0558 to assess Administrative Civil Liability](#) [Dale Essary (559) 445-5093] **(Time Limit – 60 minutes)**
8. [Richard Gravance and Joyce Gravance, Frank Mendes Dairy, Fresno County – Hearing on Complaint R5-2011-0559 to assess Administrative Civil Liability](#) [Dale Essary (559) 445-5093] **(Time Limit – 60 minutes)**
9. [James G. Sweeney and Amelia M. Sweeney, Sweeney Dairy, Tulare County – Hearing on Complaint R5-2011-0562 to assess Administrative Civil Liability](#) [Dale Essary (559) 445-5093] **(Time Limit – 60 minutes)**
10. [David Albers, Vintage Dairy, Fresno County – Hearing on Complaint R5-2011-0542 to assess Administrative Civil Liability](#) [Dale Essary (559) 445-5093] **(Time Limit – 60 minutes)**

WEDNESDAY, JULY 20– 9:00 A.M.
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD
11020 SUN CENTER DRIVE, SUITE 200
RANCHO CORDOVA, CA 95670

1. Introductions, Pledge of Allegiance.
2. Meeting Rules and Procedures.
3. Hearing Panel Member Communications – Hearing panel Members may discuss meetings, communications, correspondence, or other items of general interest relating to matters within the hearing panel’s jurisdiction. There will be no voting or formal action taken.
4. Public Forum – *Any member of the public may address the hearing panel on any matter within the hearing panel’s jurisdiction and not scheduled for consideration at this meeting, or pending before the hearing panel* (3 minute time limit per subject) 9:00.A.M.
5. [Overview of Order No. R5-2007-0035, Waste Discharge Requirements General Order for Existing Milk Cow Dairies and Required Reports](#) (This overview of Order R5-2007-0035 will be included in the records for Items 6 through 10)[Clay Rodgers (559) 445-5116] **(Time Limit – 20 minutes)**
6. [Barry, Arnold and Clara Van Leeuwen, JAB Dairy, Stanislaus County – Hearing on Complaint R5-2011-0543 to assess Administrative Civil Liability](#) [Charlene Herbst (916) 464-4724] **(Time Limit – 60 minutes)**
7. ~~John Bos, John Bos Dairy, Stanislaus County – Hearing on Complaint R5-2011-0554 to assess Administrative Civil Liability~~ [Charlene Herbst (916) 464-4724] **(Time Limit – 60 minutes)**
THIS ITEM HAS BEEN SETTLED
8. ~~Steven Evangelho, Lakeview Dairy, Stanislaus County – Hearing on Complaint R5-2011-0555 to assess Administrative Civil Liability~~ [Charlene Herbst (916) 464-4724] **(Time Limit – 60 minutes)**
THIS ITEM HAS BEEN SETTLED
9. [Leno Bettencourt, Bettencourt & Sons Dairy, Stanislaus County – Hearing on Complaint R5-2011-0551 to assess Administrative Civil Liability](#) [Charlene Herbst (916) 464-4724] **(Time Limit – 60 minutes)**
10. [Frank Pimentel, Fialho & Sons Dairy, San Joaquin County – Hearing on Complaint R5-2011-0548 to assess Administrative Civil Liability](#) [Charlene Herbst (916) 464-4724] **(Time Limit – 60 minutes)**

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD HEARING PANEL

MEETING PROCEDURES

GENERAL MEETING RULES

The Central Valley Regional Water Quality Control Board Hearing Panel (hearing panel) and staff welcome information on issues and matters within the hearing panel's jurisdiction, but comments and submittals at the meeting should be concise and directed to specifics of the item under discussion to enable the hearing panel to be fully informed and take appropriate action.

Persons wishing to speak at the meeting are asked to complete an attendance card and provide it to staff. Although filling out the attendance card is voluntary, we do appreciate receiving a card from all persons in attendance.

Any person planning to make a presentation to the hearing panel that requires the use of visual aids (such as overheads, slides, or video projector) should contact the assigned staff person to make arrangements before the meeting date in order to avoid unnecessary delays during the meeting.

If the Meeting Procedures in this agenda conflict with a specific Notice of Public Hearing or Hearing Procedures for a specific item, the Notice of Public Hearing or specific Hearing Procedures will control.

All interested persons may speak at the meeting, and are expected to orally summarize their written submittals. Testimony and policy statements should be presented in writing prior to the meeting and only a summary of pertinent points presented orally. Oral presentations (e.g., direct testimony, policy comments, cross examination and closing statements) will be limited in time by the hearing panel Chair. A timer may be used and speakers are expected to honor the time limits. Oral presentations must be relevant. Where speakers can be grouped by affiliation or interest, such groups will be expected to select a spokesperson and not be repetitive. The hearing panel will accommodate spokespersons by granting additional time if other group members will not also be speaking.

Any person may submit comments in writing on any agenda item. Written comments shall not be read into the record unless allowed by the hearing panel Chair. Persons who want to submit written materials for any agenda item must provide such written documents in advance of the meeting, which must be by the date and time specified in the applicable Notice of Public Hearing and/or Hearing Procedures. Materials received by the deadline and in compliance with the Notice of Public Hearing and/or Hearing Procedures will be included in the administrative record. Staff may provide written responses to comments. Late written materials will not be provided to hearing panel members or included in the administrative record, unless the Chair allows the late submission. A party requesting to submit late materials must demonstrate good cause for the late submission, and the Chair must find that the late submission would not prejudice the hearing panel or any designated party. The Chair may modify this rule if a party shows severe hardship. Late submissions that consist of evidence (as opposed to policy statements) will generally be deemed prejudicial unless all designated parties and staff have time to consider the evidence before the meeting. Written materials or other documents submitted at the meeting must be provided first to the hearing panel's counsel who will advise the hearing panel regarding acceptance into the record.

PROCEDURE FOR ACTION ITEMS (see also 23 CCR 649 et.seq.)

Contested agenda items are items to which the parties involved have not consented and the staff recommendation is in dispute.

Contested agenda items are governed by the rules for adjudicative proceedings. The regulations setting forth the procedures for adjudicative proceedings are codified in Title 23 California Code of Regulations Division 3. Adjudicative proceedings before the Central Valley Water Board are governed by these regulations as authorized by chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code). The regulations provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with sections 800-805 of the Evidence Code and section 11513 of Chapter 5 of the Government Code. (Other provisions of chapter 5 do not apply). A copy of those regulations and chapter 4.5 of the Administrative Procedure Summary Agenda

July 14 and July 20 Dairy ACL Panel Hearings

Act, section 11513 of the Government Code, and sections 801-805 of the Evidence Code can be found at http://www.waterboards.ca.gov/laws_regulations/

These hearings are **adjudicative proceedings** because they are hearings to receive evidence for determination of facts pursuant to which the hearing panel formulates and issues a recommendation to determine a legal right, duty, privilege, immunity, or other legal interest of a particular person or persons. A hearing to receive evidence concerning a proposed order setting administrative civil liability is an adjudicative hearing. Adjudicative hearings are not conducted according to the technical rules of evidence, and the hearing panel will accept any evidence or testimony that is reasonably relevant. The Notice of Public Hearing will set for the process for the hearing.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying.

PROCEDURE FOR CONTESTED HEARINGS IN ADJUDICATIVE MATTERS (WASTE DISCHARGE OR WATER RECYCLING REQUIREMENTS, NPDES PERMITS AND INVESTIGATION OR ENFORCEMENT ORDERS [CWC §§ 13267, 13300-13308, 13383])

All persons interested in a specific item should consult the Hearing Procedures issued for that item to see if any of the following information is inapplicable. Contact staff if you do not know whether there are Hearing Procedures for the item or if you need a copy. If the following conflicts with a specific Notice of Public Hearing or Hearing Procedures, the Notice of Public Hearing or specific Hearing Procedures will control.

Designated parties may request these procedures: to call and examine witnesses; to have witnesses testify under oath; to receive a witness list from other designated parties; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness; to rebut the evidence against him or her; to make or oppose evidentiary objections; to make opening or closing statements; or to have a prehearing conference with the hearing panel's advisors. A request for these hearing procedures must be received at least five working days before the hearing, and must specify the procedures the designated party is requesting.

Designated parties are any persons named in the proposed order. All other persons wishing to address the hearing panel or provide comments are interested persons and not designated parties. Such interested persons may request status as a designated party for purposes of an item by submitting such request in writing to staff assigned to the matter, no later than two weeks after the draft order is available for public comment. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge.

Staff will designate a prosecution team to serve as a designated party for prosecutorial matters, such as administrative civil liability. Advisory staff in prosecutorial matters, and all staff in non-prosecutorial matters, are not designated parties but are present to assist the hearing panel.

The order of testimony for adjudicative hearings generally will be as follows, unless modified by the hearing panel Chair:

- Testimony (and cross-examination, if provided) of Prosecution Team
- Testimony (and cross-examination, if provided) of discharger
- Testimony (and cross-examination, if provided) of other designated parties
- Statements of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Assistant Executive Officer (as appropriate)
- Close hearing
- Deliberation by hearing panel

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony.

All Prosecution Team files, exhibits, and agenda material pertaining to adjudicative proceedings on the agenda are hereby made a part of the record.

Summary Agenda
July 14 and July 20 Dairy ACL Panel Hearings