

Resolution 2006-06
of the
Fox Canyon Groundwater Management Agency

**ADOPTING PROTOCOLS AND HEARING PROCEDURES GOVERNING APPEALS OF THE
EXECUTIVE OFFICER'S DETERMINATIONS PURSUANT TO CHAPTER 6.0
OF THE AGENCY'S ORDINANCE CODE**

WHEREAS, pursuant to the authority found in California Water Code Appendix, Section 121-102, et seq., the Fox Canyon Groundwater Management Agency (Agency) has been granted certain powers by the State Legislature for purposes of groundwater resource management within the geographical boundaries of the Agency; and

WHEREAS, the Agency's Board of Directors adopted Agency Ordinance No. 8.1 (the Ordinance Code), which, among other things, enumerates executive functions required to be performed in order to administer the Ordinance Code; and

WHEREAS, Board Resolution No. 2005-08, adopted during the September 28, 2005 regular meeting, designated the Director of the Watershed Protection District as the Agency's Executive Officer; and

WHEREAS, Board Resolution No. 2005-08, also charged the Executive Officer with carrying out the duties, performing the functions, and exercising executive powers enumerated in the Ordinance Code; and

WHEREAS, Chapter 6.0, Appeals, of the Agency's Ordinance Code states that any person aggrieved by the decision or determination made by the Agency's Executive Officer may appeal to the Board of Directors; and

WHEREAS, the Board of Directors desires to establish clear, concise, and equitable protocols and procedures governing the administrative handling of appeals of the Executive Officer's determinations made pursuant to the Ordinance Code.

THEREFORE, BE IT RESOLVED that the Agency's Board of Directors adopts the appeal protocols and hearing procedures referenced below pursuant to Chapter 6.0, Appeals, of the Agency's Ordinance Code.

SECTION 1.0: SCOPE OF DECISIONS BY THE EXECUTIVE OFFICER SUBJECT TO APPEAL

Any discretionary decision made by the Agency's Executive Officer or his designee, exercising executive powers enumerated and delegated thereto, pursuant to Agency Ordinance Code No. 8.1 (as amended) may be appealed to the Board of Directors.

SECTION 2.0: REQUEST FOR APPEAL - TIMING AND CONTENT OF WRITTEN REQUEST FOR APPEAL

The written request for appeal shall be filed with the Clerk of the Board of Directors of the Agency within forty-five (45) days of the date of the Executive Officer's decision being appealed. The written request shall state clearly and concisely all of the following:

- a) A description of the nature, scope, and adverse impact of the decision being appealed.
- b) The factual and legal basis for the appeal.

The Executive Officer shall make a threshold determination whether or not all relevant information has been provided by the appellant no later than (60) days from the date the written request for appeal is filed with the Clerk of the Board of Directors.

SECTION 3.0: APPEAL FILING FEE

Pursuant to the statutory authority granted to the Agency under Section 102 of the Fox Canyon Groundwater Management Agency Act (California Water Code Appendix, Section 121-102, et seq.), the Board of Directors hereby establishes a \$250.00 appeal filing fee payable to the Agency upon the filing of each written request for appeal.

SECTION 4.0: BOARD DECISION TO HEAR THE APPEAL

The Board of Directors shall determine whether or not it will hear the appeal. If the Board does not make an affirmative decision to hear or summarily deny the appeal within 60 days of the date on which the Executive Officer determines that all relevant information has been received, it shall be deemed to have been denied and the appellant's administrative remedies exhausted.

SECTION 5.0: APPEAL HEARING SCHEDULING AND WRITTEN NOTICE

If the Board of Directors decides to hear the appeal, it shall fix the date, time, and place of the appeal hearing. Unless otherwise mutually agreed between the Board and the appellant, the Board of Directors shall equitably act on the appeal within one-hundred and twenty (120) days after all relevant information has been provided by the appellant. The Clerk of the Board of Directors shall give not less than (30) days' advance notice of the date, time, and place of the appeal hearing in writing, to the appellant, either personally or by United States mail, postage, prepaid. If the Board does not hold a hearing on the appeal within the prescribed time, and no agreement is reached with the appellant to extend the time in which a hearing shall take place, the appeal shall be deemed to have been denied and the appellant's administrative remedies exhausted.

SECTION 6.0: APPEAL HEARING PROCEDURES – PRESENTATION OF EVIDENCE AND RECORDING

All hearings on appeals shall be recorded on the medium normally used by the Agency to record its regular Board of Directors meetings. Any person desiring to have a hearing transcribed by a stenographic reporter may do so at his/her own expense.

SECTION 7.0: APPEAL HEARING – STATEMENT OF LEGAL PRINCIPLES

The Chair or a member of the Board shall act as the hearing officer, who shall be responsible for the conduct of the appeal hearing. The hearing officer and/or the Agency Counsel shall make a brief statement of applicable legal principles and rules governing the appeal hearing, and any requirements for those intending to participate in the hearing, and an explanation of the process to be followed in reaching a decision on the appeal.

SECTION 8.0 APPEAL HEARING – ORDER OF PROCEDURE

Unless the hearing officer decides otherwise, the order for presentation of the matter(s) before the Board of Directors during the appeal hearing shall be as follows:

1. Presentation of the Agency staff report;
2. Presentation of the appellant;
3. Presentations of persons in favor of the appeal;
4. Presentations of persons opposed to the appeal;
5. Appellant's rebuttal, if any;
6. Closing comments by Agency Staff and/or Agency Counsel;
7. Board discussion and decision

SECTION 9.0 APPEAL HEARING – SWEARING OF WITNESSES

All witnesses, including Agency staff, who intend to offer testimony or evidence in the appeal hearing, shall be sworn at the commencement of the hearing or before giving testimony.

SECTION 10.0 APPEAL HEARING – RULES OF EVIDENCE

Any relevant evidence may be considered in the discretion of the hearing officer if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings, ensuring basic fairness and a full airing of the issues involved in the appeal hearing.

SECTION 11.0 APPEAL HEARING – EXHIBITS AND STAFF REPORT

- a) Subject to the conditions stated below, all exhibits, including documentary materials such as photographs, drawings, maps, charts, letters, petitions, and

other physical evidence presented at the appeal hearing shall be retained by the Agency as part of the administrative record of the hearing.

- b) All exhibits presented during the hearing shall be marked for purposes of identification. Exhibits presented by Agency staff will be marked in order numerically. Any written Agency staff report presented to the Board of Directors shall be marked as "Exhibit 1" and shall be made available to the public prior to, or at the beginning of, the hearing.
- c) Exhibits presented by persons other than Agency staff shall be marked in order alphabetically. Each exhibit shall also be marked so as to clearly identify materials submitted which are unique to that appeal, and the name, business and/or residential address, and telephone number of the person who presented that exhibit shall also be shown on the exhibit.
- d) Scale models and other physical exhibits which cannot be conveniently retained in the Agency's case files may be photographed at the expense of, and then released to, the person submitting them. The photograph shall be entered in the Agency's case file in place of the original physical exhibit, and a notation shall be made on the photograph as to where the original exhibit is located, as well as the name, business and/or residential address, and telephone number of the person who presented that physical exhibit.

SECTION 12.0 APPEAL HEARING – TIME LIMITS AND NUMBER OF WITNESSES

The hearing officer may limit the maximum time which a person may testify to avoid repetitious and cumulative evidence.

SECTION 13.0 APPEAL HEARING – QUESTIONING OF SPEAKERS

The hearing officer, at his/her discretion, may allow: a) Board members, Agency staff, or Agency Counsel to ask questions of the appellant or its witnesses; or b) the appellant to ask questions of Agency staff, Agency Counsel, or its representatives.

SECTION 14.0 APPEAL HEARING – INFORMATION OBTAINED OUTSIDE PUBLIC HEARING

- a) After a request for appeal has been filed with the Agency, no member of the Board of Directors shall solicit or receive evidence relating to the matter under appeal outside of the appeal hearing conducted pursuant to applicable Agency Ordinance Code provisions.
- b) Members of the Board of Directors shall avoid personal contacts, correspondence, and telephone calls concerning substantive issues relating to a matter under appeal and shall inform persons contacting them to make their information or objections known in public at the appeal hearing.
- c) Any member of the Board of Directors who received evidence outside of the appeal hearing or has viewed the property mentioned in the appeal, or is familiar with the subject property, shall disclose at the hearing such evidence,

his/her observations, and familiarity with the property so that all interested persons may be aware of the information upon which he/she is relying and have an opportunity to respond to such information.

- d) Notwithstanding anything herein to the contrary, the Board of Directors or its designated representative may participate in settlement negotiations or mediation involving the appeal, and the information provided or discussed in settlement negotiations or mediation shall remain subject to Evidence Code Section 1152.
- e) Agreements to resolve the appeal which are developed during settlement negotiations or mediation shall not be deemed final until they are approved by a majority of the Board during a duly scheduled and noticed regular, adjourned, and/or special meeting of the Board of Directors.

SECTION 15.0 APPEAL HEARING – FIELD INVESTIGATIONS

The Board of Directors may take field trips to view property or for other purposes relevant to the hearing. All field trips shall be taken as part of a regular, adjourned, or special meeting of the Board of Directors, and all interested parties shall be afforded the opportunity to be present to view the property and hear any reports or comments. A record of the field trip shall be entered into the minutes so the hearing record will indicate that the field trip was taken by the Board of Directors and was taken into consideration as evidence.

SECTION 16.0 APPEAL HEARING – DECISION

- a) The Board of Directors must have a quorum to act on an appeal, and any action on an appeal shall require the vote of the majority present.
- b) A member of the Board of Directors who is absent from any portion of the appeal hearing conducted by the Board of Directors may vote on the matter at the time it is acted upon by the Board provided that he/she: (1) has listened to the audio recording or watched the video streaming for the portion of the appeal hearing from which he/she was absent, (2) has examined all of the exhibits presented during any portion of the hearing from which he/she was absent, and (3) states for the record prior to voting that he/she deems himself/herself to be as familiar with the record and with the evidence presented at the hearing as he/she would have been had he/she personally attended the entire appeal hearing.

SECTION 17.0 APPEAL HEARING – DECISION OF THE BOARD OF DIRECTORS FINAL


Any decision(s) made by the Board of Directors on the matters before it during the appeal hearing are conclusive and final.

On motion by Director Craven, and seconded by Director Fox, the foregoing Resolution was passed and adopted at a regularly scheduled meeting of the FCGMA Board of Directors on October 25, 2006 at Ventura, California.



Lynn E. Maulhardt, Chair, Board of Directors
Fox Canyon Groundwater Management Agency

ATTEST: I hereby certify that the above is a true and correct copy of Resolution 2006-06.

by: 

Tammy Butterworth, Clerk of the Board