

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING—DIVISION OF WATER RIGHTS
SEPTEMBER 18, 2007

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION PROPOSING CHANGES IN THE DELEGATION OF AUTHORITY TO THE STATE WATER RESOURCES CONTROL BOARD MEMBERS INDIVIDUALLY AND THE DEPUTY DIRECTOR FOR WATER RIGHTS

DISCUSSION

State Water Resources Control Board (State Water Board) Resolution No. 2002-0106 delegates authority to the State Water Board Members individually and the Chief, Division of Water Rights (Division Chief), to administer the water right program. (The State Water Board now refers to the Division Chief as the Deputy Director for Water Rights (Deputy Director).) Pursuant to Resolution No. 2006-0022, the State Water Board delegated authority to the Deputy Director to designate local agencies to administer the groundwater extraction recordation program. The draft resolution would update and replace Resolution Nos. 2002-0106 and 2006-0022. The two resolutions would be revoked.

The draft resolution revises the delegation to authorize the Deputy Director to administer the water right program more efficiently, including authorizing the Deputy Director to (1) review the delegation every two years and recommend to the State Water Board whether to revise the delegation; (2) collect unpaid fees and initiate subsequent enforcement actions pursuant to Water Code section 1525 et seq.; (3) develop a list of general conditions applicable to small domestic use or livestock stockpond use registrations; (4) establish monitoring and reporting requirements for activities subject to water quality certification; (5) take action on claims for stockpond certificates and registrations for small domestic use or livestock stockpond use, including renewals and revocations; (6) cancel an application or petition if the applicant or petitioner fails to timely provide information requested by the State Water Board and does not show good cause for additional time to submit the requested information; (7) redelegate additional authorities to the Assistant Deputy Director for Water Rights or senior program staff; and (8) issue a notice of proposed cancellation of an application or a notice of proposed revocation of a permit or license. The draft resolution also contains organizational, minor, and nonsubstantive changes to the existing water right delegation.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed resolution.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2007 -

DELEGATION OF AUTHORITY TO STATE WATER RESOURCES CONTROL BOARD MEMBERS INDIVIDUALLY AND TO THE DEPUTY DIRECTOR FOR WATER RIGHTS

WHEREAS:

1. Pursuant to Water Code section 7, the State Water Resources Control Board (State Water Board or Board) is authorized to delegate authority to the Board Members individually and to the Deputy Director for Water Rights.
2. Water Code section 186, subdivision (b) directs the State Water Board to appoint a chief of the Division of Water Rights (Division), who shall supervise the work of the Division and act as a technical advisor to the Board on functions under his or her jurisdiction. The State Water Board refers to the chief of the Division as the Deputy Director for Water Rights (Deputy Director).
3. The State Water Board has delegated authority to the Board Members individually and to the Deputy Director as specified in the delegation document approved by [Resolution No. 2002-0106](#).
4. Pursuant to [Resolution No. 2006-0022](#), the State Water Board has delegated authority to the Deputy Director to designate local agencies to administer the groundwater extraction recordation program.
5. To promote efficiency in administering the water right program, it is desirable to delegate authority to the Board Members individually and to the Deputy Director to act on behalf of the State Water Board, and to consolidate authority delegated to the Deputy Director in one document.

THEREFORE BE IT RESOLVED:

1. That Resolution Nos. 2002-0106 and 2006-0022 are revoked.
2. That the State Water Board delegates to the Board Members individually the authority to:
 - 2.1. Act on an application or request for renewal of a conditional temporary water right permit pursuant to chapter 6.5 (commencing with section 1425) of part 2 of division 2 of the Water Code. This delegation includes the authority to:
 - 2.1.1. Hold a hearing on any application or request for renewal made pursuant to chapter 6.5.
 - 2.1.2. Make the findings required by chapter 6.5 as conditions precedent to the issuance or renewal of a temporary permit.
 - 2.1.3. Make any findings required by the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.

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- 2.2. Act on a petition or request for renewal of a conditional temporary urgency change pursuant to chapter 6.6 (commencing with section 1435) of part 2 of division 2 of the Water Code. This delegation includes the authority to:
 - 2.2.1. Hold a hearing on any petition or request for renewal made pursuant to chapter 6.6.
 - 2.2.2. Make the findings required by chapter 6.6 as conditions precedent to the issuance or renewal of a temporary change order.
 - 2.2.3. Make any findings required by CEQA as conditions precedent to the issuance or renewal of a temporary change order.
3. That the State Water Board delegates the authority herein to the Deputy Director with the following direction:
 - 3.1 The enumeration of delegated authorities in this resolution shall not be interpreted as revoking authorities already delegated, or hereafter delegated, to the Executive Director or to the Deputy Director, from the State Water Board or the Executive Director.
 - 3.2. Unless otherwise specified in this resolution, the authorities delegated to the Deputy Director under this resolution may not be redelegated. The Deputy Director may delegate to a senior member of the Division staff the authorities delegated herein, to be exercised only if the Deputy Director is absent or recused. Where this resolution authorizes the redelegation of authority to the Assistant Deputy Director for Water Rights (Assistant Deputy Director), and the Deputy Director makes that redelegation, the Deputy Director or the Assistant Deputy Director may further delegate to a senior member of the Division staff the authorities delegated to the Assistant Deputy Director, to be exercised only if the Assistant Deputy Director is absent or recused.
 - 3.3. For purposes of this resolution, and for any purposes of any other resolution, decision, or order assigning or delegating responsibility to Chief of the Division of Water Rights, that reference means the Deputy Director for Water Rights, Assistant Deputy Director for Water Rights, or other officer or employee of the State Water Board who is responsible for managing the activities of the Division of Water Rights.
 - 3.4. The Deputy Director shall administer and implement the delegation under this resolution as follows:
 - 3.4.1. Maintain the delegation, including any appendices, redelegation memoranda, and subsequent resolutions that add to, amend, or revoke the authorities identified therein.

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- 3.4.2. Every two years, review the authority delegated herein and recommend to the State Water Board whether or not to revise the delegation.
- 3.4.3. In exercising the authority delegated herein, and without restricting the authority specified, bring the following matters to the attention of the members of the State Water Board by appropriate communication:
 - 3.4.3.1. Matters of a unique or unusual nature;
 - 3.4.3.2. Matters that appear to depart from the policies of the State Water Board;
 - 3.4.3.3. Matters involving significant policy questions;
 - 3.4.3.4. Highly controversial matters;
 - 3.4.3.5. Matters that involve a substantial risk of litigation;
 - 3.4.3.6. Any matter that a Board Member requests to be brought to the attention of the State Water Board; and
 - 3.4.3.7. Any matter that, in the judgment of the Deputy Director, should be brought to the attention of the State Water Board.
4. That the State Water Board delegates to the Deputy Director the authority to take the following actions:
 - 4.1. General Administration.
 - 4.1.1. Conduct and supervise the general administrative activities of the Division, including preparing and signing documents, transmitting documents adopted or approved by the State Water Board, and maintaining custody of records. This general administrative authority may be redelegated.
 - 4.1.2. Issue subpoenas for the attendance of witnesses and the introduction of evidence before the State Water Board with respect to all proceedings for which the Division has program responsibility. This authority may be redelegated.
 - 4.1.3. Amend or modify a decision or order to correct any obvious typographical or clerical error or oversight, pursuant to Water Code section 1124. This authority may be redelegated.
 - 4.1.4. Develop and maintain a list of standard permit terms in accordance with California Code of Regulations, title 23, section 780. This authority may be redelegated.

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- 4.1.5. Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code section 1052 or 1845.
 - 4.1.6 Assess and collect fees in accordance with chapter 8 (commencing with section 1525) of part 2 of division 2 of the Water Code or section 13160.1 of the Water Code. This authority may be redelegated.
 - 4.1.7 Cancel an application, registration, petition, request, or claim for failure to pay a fee when due pursuant to Water Code section 1535, subdivision (b).) This delegation may be redelegated.
 - 4.1.8 Amend or modify water quality control plans adopted by the State Water Board to correct any obvious typographical or clerical error or oversight, or to make clarifying changes requested by the Office of Administrative Law, after notice to the Executive Director.
- 4.2 Appropriation of Water.
- 4.2.1 Prepare and sign notices of applications to appropriate water. This authority may be redelegated.
 - 4.2.2 Act on a request by an applicant for an extension of time to complete an application to appropriate water in accordance with California Code of Regulations, title 23, section 681. This authority may be redelegated.
 - 4.2.3 Request additional information from an applicant or petitioner in accordance with Water Code sections 1275, 1334, 1701.3, or 1703.5. This authority may be redelegated.
 - 4.2.4 Act on applications and change petitions pursuant to Water Code sections 1340 et seq., and 1701 et seq. after proceedings in accordance with Water Code sections 1345-1348 or 1704.1-1704.4 or in proceedings where no hearing is required in accordance with Water Code section 1351 or 1704, subdivision (c). In the case of change petitions, this authority includes the authority to issue an amended permit or license if the change petition is approved. This authority may be redelegated.
 - 4.2.5 Act on a request to allow additional time to submit information pursuant to Water Code section 1276 or 1701.4. This authority may be redelegated.
 - 4.2.6 Act on a request to approve a compliance plan, monitoring plan, conservation plan, and other programs, plans, reports, or evaluations required to be submitted to the State Water Board as a condition of a permit, license, or enforcement order. This authority may be redelegated.

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- 4.2.7 Act on a request for an extension of time to complete construction or beneficial use of water under a permit in accordance with California Code of Regulations, title 23, sections 840-848, provided that an extension may be granted only if (a) there are no competing projects that would be adversely affected; (b) there are no outstanding protests; and (c) either: (1) the extension is for ten years or less and the period of the extension in combination with all extensions previously granted under delegated authority does not exceed 15 years; or (2) the extension is for a municipality, the period of extension in combination with all extensions previously granted under delegated authority does not exceed 25 years, and the Deputy Director finds that the time extension is necessary to serve development allowable under the applicable land-use plan for the place of use identified in the permit. This includes the authority to issue an amended permit if the extension of time is approved, consistent with the order approving the extension of time. This authority may be redelegated to the Assistant Deputy Director.
- 4.2.8 Act on a request for an extension of time to meet a deadline, other than the time to complete construction or put water to beneficial use, contained in a permit if no Board Member objects after being informed by appropriate communication. This authority may be redelegated.
- 4.2.9 Issue permits or licenses, amendments thereto, change orders, and extension orders after the State Water Board issues a decision or order. This authority may be redelegated to the Assistant Deputy Director.
- 4.2.10 Prepare and sign licenses when the terms and conditions have been accepted by the permittee. This authority may be redelegated.
- 4.2.11 Correct the description in an application, permit, or license of the point of diversion, place of use, purpose of use, or name of source if (a) there is no physical change in project facilities already constructed or the current use of water, or no change in the intent of the applicant or permittee regarding the proposed location of project facilities or use of water, and (b) no one could have been misled by the original description. This authority may be redelegated.
- 4.2.12 Make changes to cover incidental uses of a reservoir in accordance with California Code of Regulations, title 23, section 798. This authority may be redelegated to the Assistant Deputy Director.
- 4.2.13 Issue separate permits or licenses to replace an existing permit or license when the place of use has been divided into two or more ownerships and each owner succeeds to a separate interest in the permit or license. Revoke the existing permit or license provided that no objection is received from any of the owners. This authority may be redelegated.

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4.2.14 Act on an application or a request for renewal of a temporary water right permit pursuant to chapter 6.5 (commencing with section 1425) of part 2 of division 2 of the Water Code if there are no outstanding objections. This authority may be redelegated to the Assistant Deputy Director in the absence of the Deputy Director.

4.3 Protests.

4.3.1 Request information from a protestant in accordance with Water Code sections 1332, 1334, 1703.3, or 1703.5. This authority may be redelegated.

4.3.2 Act on requests to extend time for filing protests and answers to protests and approve a request upon finding that good cause has been shown. This authority may be redelegated.

4.3.3 Cancel a protest in accordance with Water Code section 1335 or 1703.6. This authority may be redelegated to the Assistant Deputy Director.

4.3.4 Reject protests which do not substantially comply with the requirements of the Water Code or title 23 of the California Code of Regulations. This authority may be redelegated.

4.4 Transfers or Temporary Changes.

4.4.1 Act on a petition for a temporary urgency change, or a request for renewal of a temporary change order, pursuant to chapter 6.6 (commencing with section 1435) of part 2 of division 2 of the Water Code. If the State Water Board receives any objections to a petition for a temporary urgency change, the Deputy Director shall refer the matter to the Executive Director for action under section 2.2. This authority may be redelegated to the Assistant Deputy Director in the absence of the Deputy Director.

4.4.2 Act on a petition for a temporary change due to a transfer of water or water rights in accordance with Water Code sections 1725-1732 if the State Water Board does not hold a hearing. This authority may be redelegated to the Assistant Deputy Director in the absence of the Deputy Director.

4.4.3 Act on a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use in accordance with Water Code sections 1735-1737, following notice of the proposed transfer, if the State Water Board does not hold a hearing. This authority may be redelegated to the Assistant Deputy Director in the absence of the Deputy Director.

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4.5 Cancellation or Revocation.

- 4.5.1 Issue a notice of proposed cancellation of an application pursuant to California Code of Regulations, title 23, section 845, a notice of proposed revocation of a permit pursuant to Water Code section 1410 et seq., or a notice of proposed revocation of a license pursuant to Water Code section 1675 et seq.
- 4.5.2 Prepare and sign orders canceling or revoking an application, petition, permit, or license to appropriate water, under any of the following circumstances:
 - 4.5.2.1 When requested by the applicant, petitioner, permittee, or licensee. This authority may be redelegated.
 - 4.5.2.2 When an applicant or petitioner fails to timely provide information in accordance with Water Code sections 1276, 1335, 1701.4, or 1703.6, and does not show good cause for additional time to submit the requested information under Water Code section 1276 or 1701.4. This authority may be redelegated to the Assistant Deputy Director.
 - 4.5.2.3 When the application or petition is defective or incomplete and has not been perfected within the time allowed for that purpose, and no request for extension of time is filed. This authority may be redelegated to the Assistant Deputy Director.
 - 4.5.2.4 When the applicant or petitioner fails to submit complete or adequate information in accordance with Government Code section 65956. This authority may be redelegated to the Assistant Deputy Director.
 - 4.5.2.5 When fees have not been paid within the time required by law. This authority may be redelegated to the Assistant Deputy Director.
 - 4.5.2.6 When the applicant or petitioner fails to file an affidavit of posting or publication of notice as required by law. This authority may be redelegated to the Assistant Deputy Director.
 - 4.5.2.7 When an application is conditionally approved and the applicant fails to comply with the conditions or to inform the State Water Board that it has complied, within a reasonable time or the time provided, pursuant to California Code of Regulations, title 23, section 845, except when the applicant requests a hearing after notice of the proposed cancellation.

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This authority may be redelegated to the Assistant Deputy Director.

- 4.5.2.8 When a permit is issued subject to continuing compliance with one or more specified conditions and the permittee fails to certify compliance with the conditions, or it is discovered that the permittee is not complying with a specified condition, pursuant to California Code of Regulations, title 23, section 845, except when the permittee requests a hearing after notice of proposed revocation. This authority may be redelegated to the Assistant Deputy Director.
- 4.5.2.9 After notice of proposed revocation pursuant to Water Code section 1410 or 1675 has been sent to the permittee or licensee and no request for hearing has been received. This authority may be redelegated.
- 4.5.2.10 When the stream has been declared fully appropriated in accordance with Water Code section 1206, subdivision (a), Board Order WR 98-08, and any orders that supersede or modify Order WR 98-08. This authority may be redelegated to the Assistant Deputy Director.
- 4.5.3 Act on requests to set aside the revocation of a permit or license, in accordance with Water Code section 1410.2 or 1675.2.
- 4.6 Small Domestic Use or Livestock Stockpond Use.
 - 4.6.1 Act on claims for stockpond certificates and registrations (including renewal of registrations) for small domestic use or livestock stockpond use in accordance with Water Code sections 1226 et seq. and 1228 et seq., including revoking a certificate or registration pursuant to Water Code section 1226.4 or 1228.4, except that the Deputy Director is not authorized to revoke a certificate or registration if a notice of proposed revocation has been sent to the certificate holder or registrant and a request for hearing has been received. This authority may be redelegated.
 - 4.6.2 Establish and revise a list of general conditions to be applied to small domestic use or livestock stockpond use registrations as authorized by Water Code section 1228.6. This authority may be redelegated.
- 4.7 Determination of Rights.
 - 4.7.1 Prepare and announce draft reports of referee in accordance with Water Code section 2010 et seq.
 - 4.7.2 Apportion the State Water Board's expenses among the parties, request the court to order interim or partial payment of expenses, and

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take steps necessary to ensure collection of the expenses in accordance with Water Code section 2040 et seq.

4.7.3 Perform the following duties pursuant to “Order of Appointment of California State Water Resources Control Board as Special Master,” issued by the United States District Court for the District of Nevada, on April 9, 1990, in *United States of America v. Walker River Irrigation District*, In Equity No. C-125 (“the Walker River Action”), and the accompanying Administrative Rules and Regulations (as amended by “Final Order Pursuant to Stipulation,” issued on June 3, 1996):

4.7.3.1 Accept, or reject as defective or incomplete, compliance applications (as defined in the Administrative Rules and Regulations) and applications to change point of diversion, manner of use, or place of use of water in the exercise in California of water rights identified in the decree in the Walker River Action. This authority may be redelegated to the Assistant Deputy Director.

4.7.3.2 Process applications in the manner required by the Order of Appointment, including publishing and mailing notices, acting on protests, conducting a field investigation, preparing and announcing the draft report of Special Master, accepting objections to the draft report and, if there are no issues that require a hearing before the State Water Board, adopting the final report of Special Master. This authority may be redelegated to the Assistant Deputy Director.

4.7.3.3 Following final action by the State Water Board to approve or reject the change application, prepare a statement of total expense incurred by the State Water Board in conducting the proceeding, together with an equitable apportionment of such total expense among the parties to the proceeding. This authority may be redelegated to the Assistant Deputy Director.

4.7.3.4 Prepare, announce, serve, and file the Report of Special Master, including therein the statement of total expense and the equitable apportionment thereof.

4.7.3.5 Prepare and transmit to the court a certified copy of the record of proceeding for judicial review of the Report of Special Master.

4.8 Statutory Adjudications.

4.8.1 Prepare, issue, cause to be published, and record notices of statutory adjudication proceedings in accordance with Water Code sections 2526-2529. This authority may be redelegated.

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- 4.8.2 Conduct investigations of stream systems in accordance with Water Code section 2550 et seq., including providing notice of investigations, conducting field investigations, and determining facts. This authority may be redelegated.
 - 4.8.3 Issue any notices, copies of factual determinations, reports, objections, orders, or other correspondence or documents authorized by chapter 3 (commencing with section 2500) of part 3 of division 2 of the Water Code. This authority may be redelegated.
 - 4.8.4 Prepare and issue a notice of inspection of proofs and evidence in accordance with Water Code section 2625 et seq. This authority may be redelegated.
 - 4.8.5 Prepare and issue the report, preliminary order of determination, and notice in accordance with Water Code sections 2600 -2604.
 - 4.8.6 Take actions to file the final State Water Board order with the superior court in accordance with Water Code sections 2750-2756, including filing the required documents and communicating with the superior court, and mailing and causing the order to be published.
 - 4.8.7 Furnish copies of the decree or supplemental decree and notice of entry to water right claimants in accordance with Water Code sections 2825-2826.
 - 4.8.8 Take actions to apportion and collect the State Water Board's expenses and costs against the parties to the proceeding in accordance with Water Code section 2850 et seq., including mailing statements of expense, ordering interim or partial payments, and taking steps necessary to ensure collection of the expenses.
- 4.9 Enforcement of Water Rights and Complaints.
- 4.9.1 Issue a notice of cease and desist order and, when a hearing has not been timely requested, issue a cease and desist order in accordance with Water Code section 1831 et seq. This authority may be redelegated to the Assistant Deputy Director.
 - 4.9.2 Issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within the period provided under Water Code section 1055. This authority may be redelegated to the Assistant Deputy Director.
 - 4.9.3 Take actions to collect unpaid fees and initiate subsequent enforcement actions, including revocation of permits or licenses, pursuant to Water Code section 1535 et seq. This authority may be redelegated to the Assistant Deputy Director.

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- 4.9.4 Dismiss a complaint filed pursuant to California Code of Regulations, title 23, section 820 or 856, or under the public trust, where: (a) the complainant files an incomplete complaint according to section 820; (b) the complainant does not show good cause for the State Water Board to investigate an allegation of misuse of water; (c) an investigation results in the determination that no violation or misuse of water has occurred; (d) the alleged violation or misuse of water that forms the basis of the complaint has been remedied; or (e) the State Water Board declines to exercise its discretion to investigate or prosecute an allegation that a violation has occurred. This authority may be redelegated to the Assistant Deputy Director.

- 4.10 California Environmental Quality Act (CEQA).
 - 4.10.1 Take actions to comply with CEQA for all projects carried out or approved by the State Water Board in connection with the administration of the water right program to the extent authorized under section 15025 of the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). This authority shall be exercised in conformity with the State CEQA Guidelines and the State Water Board's regulations. This authority may be redelegated.

- 4.11 Certification of Water Right.
 - 4.11.1 In response to a request for certification made pursuant to Public Resources Code section 26013 or Public Utilities Code section 2821, certify or decline to certify that:
 - 4.11.1.1 The State Water Board has issued a water right permit for the appropriation of water for the operation of a hydroelectric facility; or
 - 4.11.1.2 In the opinion of the State Water Board, the energy producer possesses riparian or other water rights that authorize the operation of a hydroelectric facility.

- 4.12 Water Quality.
 - 4.12.1 Enter into or decline to enter into collaborative communication protocol agreements for licensing and relicensing of hydroelectric projects pursuant to the Federal Energy Regulatory Commission's regulation at 18 Code of Federal Regulations part 4.34(i)(3)(ii). In recognition of the State Water Board's adjudicative responsibilities, and the requirement that it avoid bias, prejudice, or interest in contested matters subject to its approval, this delegation applies only to agreements that do not bind or commit the State Water Board to approve or disapprove an application for water quality certification, water right permit application, or petition for water right change order, or any term or condition of such an approval. This authority may be redelegated to the Assistant Deputy Director.

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- 4.12.2 Establish monitoring, inspection, entry, reporting and recordkeeping requirements and require other information as may reasonably be required, pursuant to Water Code section 13383, for activities subject to water quality certification under section 401 of the Clean Water Act that involve the diversion of water for beneficial use. This authority may be redelegated.
- 4.12.3 Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code sections 13350, 13385 or 13386, if the violation relates to water quality certification of an activity involving the diversion of water for beneficial use.
- 4.13 Groundwater Extraction Recordation Program.
 - 4.13.1 Designate local agencies, in accordance with the requirements of Water Code section 5009, to administer the groundwater extraction recordation program. This authority may be redelegated to the Assistant Deputy Director.

CERTIFICATION

The undersigned, Acting Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 18, 2007.

Jeanine Townsend
Acting Clerk to the Board