

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
JUNE 19, 2012**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO AMEND RESOLUTION NO. 2011-0005 TO ALLOW CALIFORNIA ENVIRONMENTAL QUALITY ACT COST RECOVERY AUTHORITY TO BE USED FOR WATER QUALITY CERTIFICATION-RELATED ACTIONS

DISCUSSION

The State Water Resources Control Board (State Water Board) must comply with the California Environmental Quality Act (CEQA) when it issues water quality certifications. When the State Water Board is the lead agency under CEQA, it ordinarily directs water quality certification applicants to enter into a Memorandum of Understanding (MOU) for payment and completion of CEQA activities and documentation. Under the MOU, the applicant selects a consultant, who then works under the sole direction of State Water Board staff. The applicant is responsible for payment of the consultant's work pursuant to the MOU. At times, State Water Board staff experience difficulties directing the CEQA consultants. In some cases, consultants halt or delay work on CEQA activities over work disagreements, difficulties agreeing to terms, or because the applicant ceases making payments. In other cases, CEQA consultants provide State Water Board staff with unsatisfactory work products. These situations can unnecessarily delay the processing of water quality certification applications.

In recognition of the difficulties that can arise in producing satisfactory CEQA work under an MOU, Budget Change Proposal 5 (BCP 5) for the Fiscal Year (FY) 2010/2011 was approved on October 8, 2010, establishing up to \$1 million per year in cost recovery authority for CEQA activities not previously available to the State Water Board. California Code of Regulations, title 14, section 15045, subdivision (a) provides legal authority for the CEQA lead agency to charge and collect reasonable fees for the cost of CEQA work.

[Resolution No. 2011-0005](#) authorized the Executive Director to implement a pilot project to execute a contract for an amount not to exceed \$1 million per year for up to five years: to administer funds from the Water Rights Fund to hire environmental consultants for CEQA activities for water rights applications and petitions where the State Water Board is the lead agency; to make direct payments for such work from the Water Rights Fund; and to pursue cost recovery from the applicant and/or petitioner in order to reimburse the Water Rights Funds. On October 3, 2011, the Department of General Services approved such a CEQA reimbursement contract under Resolution 2011-0005. The proposed resolution modifies Resolution No. 2011-0005 to allow funds available under Resolution 2011-0005 to be available for funding CEQA activities necessary for issuance of water quality certification, either by amending the existing CEQA reimbursement contract, or by entering into a new contract(s) for CEQA work for water quality certification related actions.

POLICY ISSUE

Should the State Water Board amend Resolution No. 2011-0005 to allow Water Rights Funds under Resolution 2011-0005 to be used for the completion of CEQA review for water quality certification-related actions?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

State Water Board staff recommends that the State Water Board amend Resolution No. 2011-0005 to allow Water Rights Funds available under Resolution 2011-0005 to be used for the completion of CEQA review for water quality certification-related actions.

State Water Board action on this item will assist the Water Boards in reaching Goal 3 of the Strategic Plan Update: 2008-2012 to increase sustainable local water supplies available for meeting existing and future beneficial uses by 1, 725,000 acre-feet per year, in excess of 2002 levels, by 2015, and ensure adequate flows for fish and wildlife habitat.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

AMEND RESOLUTION NO. 2011-0005 TO ALLOW CALIFORNIA ENVIRONMENTAL QUALITY ACT COST RECOVERY AUTHORITY TO BE USED FOR WATER QUALITY CERTIFICATION-RELATED ACTIONS

WHEREAS:

1. The State Water Resources Control Board (State Water Board) must comply with the California Environmental Quality Act (CEQA) when it approves a water rights application, petition, or water quality certification;
2. California Code of Regulations, title 14, section 15045, subdivision (a) provides legal authority for the CEQA lead agency to charge and collect reasonable fees for the cost of completing environmental activities and documentation;
3. In using a three-party Memorandum of Understanding with the applicant, State Water Board and a CEQA consultant, the State Water Board has faced delays in processing water rights applications, petitions, and water quality certifications due to disagreements with CEQA consultants, the refusal of applicants or petitioners to provide payment to consultants for the completion of environmental activities and documentation required by CEQA, or unsatisfactory work products; and
4. The State Water Board desires to add water quality certifications to the types of activities that the CEQA cost recovery authority may be used for, allowing Division of Water Rights staff to more effectively and efficiently complete environmental compliance processing by contracting directly with environmental consultants.

THEREFORE BE IT RESOLVED THAT:

The State Water Board amends [Resolution No. 2011-0005](#) to allow the Water Rights Fund and CEQA cost recovery authority to be used for water quality certification-related actions.

CERTIFICATION

The undersigned 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 Board held on June 19, 2012.

Jeanine Townsend
Clerk to the Board