

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
SEPTEMBER 19, 2012**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO INTERAGENCY AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF JUSTICE (DOJ) FOR INVESTIGATION AND PROSECUTION OF CRIMINAL AND/OR CIVIL ACTIVITY ASSOCIATED WITH THE UNDERGROUND STORAGE TANK (UST) CLEANUP FUND.

DISCUSSION

Federal and state laws require every owner and operator of a petroleum underground storage tank (UST) to maintain financial responsibility to pay for costs to clean up soil and groundwater contamination resulting from the unauthorized release of petroleum from their USTs. In order for owners and operators to meet the federal requirements, the UST Cleanup Fund reimburses eligible owners and operators of petroleum USTs for unexpected and catastrophic expenses associated with the cleanup of leaking petroleum USTs. The State Water Resources Control Board (State Water Board) administers the UST Cleanup Fund program. In addition, the UST Cleanup Fund provides funds regulatory oversight by the Regional Water Quality Control Boards and local regulatory agencies of corrective actions of petroleum releases from USTs.

The UST Cleanup Fund has reimbursed approximately \$3.1 billion since its inception in 1992, and over \$200 million annually. Over 11,000 claims have been found eligible over that time. Of these, over 3000 claims have received reimbursement for corrective action and are closed. Of the remaining approximately 7800 claims, there are currently over 3200 active claims; and 4600 are on the Priority List awaiting activation for funding.

Estimates of fraud of public funds nationwide are high. If fraud against the UST Cleanup Fund were as low as even one percent, this amounts to over \$2 million annually. Cases of fraud against the UST Cleanup Fund have recovered more than \$1.6 million to date and future prosecution of fraud is expected to recover damages greater than this amount annually. The E2C Remediation case that settled in 2010 returned \$1.1 million to the UST Cleanup Fund in recovered damages. Subsequent fraud cases are continuing to show similar damage amounts.

The State Water Board does not have the authority to take all actions necessary to investigate and prosecute fraudulent claims against the UST Cleanup Fund and relies on the California Department of Justice (DOJ) to take these actions. The State Water Board is being asked to authorize execution of contracts with the DOJ for the investigation and criminal and/or civil prosecution of fraudulent claims against the UST Cleanup Fund.

The State Water Board and the DOJ recognize the importance of protecting the UST Cleanup Fund against fraudulent claims submitted by owners and operators of USTs and by their cleanup contractors, and the need to work cooperatively toward this common goal. The State Water Board will provide funding to the DOJ through two interagency agreements for the investigation of criminal and/or civil prosecution of fraudulent claims against the UST Cleanup Fund. Together the two interagency agreements will not exceed \$900,000 annually.

Recovered damages are expected to exceed the annual contract amount. In addition to recovered damages, press releases are issued at the completion of enforcement actions. The deterrent effect of these efforts is substantial, but hard to measure.

The DOJ will provide the State Water Board with quarterly progress reports summarizing its investigative and prosecution efforts as they relate to criminal and/or civil activity associated with the UST Cleanup Fund. These reports will include the status of any cases pending, completed prosecutions, and an up-to-date overview as to the status of the budget governed by the interagency agreements.

POLICY ISSUE

Should the State Water Board authorize the Executive Director or designee to enter into interagency agreements, and any amendments thereto, with the California Department of Justice to investigate and prosecute criminal and/or civil activity associated with the UST Cleanup Fund in an amount not exceed \$900,000 annually?

FISCAL IMPACT

The Water Board has sufficient budget authority for the UST Cleanup Fund to execute these interagency agreements. In addition, damages recovery should average about \$1 million annually as a result of execution of the interagency agreements with the DOJ.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should authorize the Executive Director or designee to enter into interagency agreements, and any amendments thereto, with the California Department of Justice to investigate and prosecute criminal and/or civil activity associated with the UST Cleanup Fund in an amount not exceed \$900,000 annually.

State Water Board action on this item will assist the Water Boards in reaching Goals 6 and 7 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures and ensure that the Water Boards have access to information and expertise, including employees with appropriate knowledge and skills, needed to effectively and efficiently carry out the Water Boards' mission..

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO INTERAGENCY AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF JUSTICE (DOJ) FOR INVESTIGATION AND PROSECUTION OF CRIMINAL AND/OR CIVIL ACTIVITY ASSOCIATED WITH THE UNDERGROUND STORAGE TANK (UST) CLEANUP FUND.

WHEREAS:

1. The UST Cleanup Fund reimburses eligible owners and operators of petroleum USTs for unexpected and catastrophic expenses associated with the cleanup of leaking petroleum USTs;
2. The UST Cleanup Fund has reimbursed approximately \$3.1 billion since its inception in 1992, and over \$200 million annually;
3. Cases of fraud against the UST Cleanup Fund have recovered more than \$1.6 million to date and future prosecution of fraud is expected to recover damages greater than this amount annually;
4. The deterrent effect of criminal and/or civil prosecution is substantial and hard to measure.

THEREFORE BE IT RESOLVED THAT:

The State Water Board authorizes the Executive Director or designee to enter into interagency agreements, and any amendments thereto, with the California Department of Justice to investigate and prosecute criminal and/or civil activity associated with the UST Cleanup Fund in an amount not to exceed \$900,000 annually.

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 Resources Control Board held on September 19, 2012.

Jeanine Townsend
Clerk to the Board