

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
JUNE 17, 2014**

**ITEM 7**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION ON CONDITIONAL DELEGATION OF AUTHORITY PERTAINING TO THE POTENTIAL TRANSFER OF THE DRINKING WATER PROGRAM

**DISCUSSION**

The Governor's budget proposes to transfer the Drinking Water Program from the California Department of Public Health (Department) to the State Water Board through budget trailer language. The funding associated with the Drinking Water Program transfer has been approved by the Assembly and Senate budget committees and, assuming a budget is timely passed, the Drinking Water Program would be a component of the State Water Board's budget on July 1, 2014.

The budget trailer bill to amend the California Code and effect the transfer is currently in conference committee. Under the proposed trailer bill, a new Division of Drinking Water (Division) at the State Water Board would be overseen by a Deputy Director reporting directly to the Executive Director of the State Water Board. The Deputy Director would have the authority to grant or deny water system permit applications, pursuant to the trailer bill. These decisions would not be subject to Board review. Enforcement decisions would be subject to State Water Board review.

For the orderly and efficient management of all programs transferred from the Department to the State Water Board, it would be appropriate and desirable to have conditional delegations in place prior to July 1, 2014. The delegations would assure continuity of services and protection of public health if the Legislature ultimately approves the program transfer effective July 1, 2014. This resolution delegates to the Deputy Director of the Division the authority to carry out the day-to-day activities of the Division related to the drinking water regulatory program. A companion resolution on the board's agenda provides a conditional delegation of authority for certain drinking water financing programs to the Deputy Director for the Division of Financial Assistance.

The authority contemplated in the resolution will only be necessary if a budget trailer bill transferring the Drinking Water Program from the Department to the State Water Board is chaptered. Therefore, the resolution is conditioned on the Legislature and the Governor approving the transfer. If the transfer is not approved, then the existing delegations regarding the approval of financial assistance agreements will remain effective.

**POLICY ISSUE**

Should the State Water Board approve the Resolution delegating authority to the Deputy Director of the Division of Drinking Water, or a designee, to carry out day to day activities of the Division?

**FISCAL IMPACT**

No fiscal impact.

**REGIONAL BOARD IMPACT**

None.

**STAFF RECOMMENDATION**

Staff recommends adopting the proposed Resolution delegating to the Deputy Director the authority to carry out day to day activities of the Division of Drinking Water.

State Water Board action on this item will assist the Water Boards in fulfilling the goals of the Strategic Plan Update: 2008-2012. In particular, approval of this item will help fulfill Goal 4 – Comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California’s water planning processes, and Goal 6 - 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.

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

### CONDITIONAL DELEGATION OF AUTHORITY PERTAINING TO THE POTENTIAL TRANSFER OF THE DRINKING WATER PROGRAM

#### WHEREAS:

1. The Governor's budget proposes to transfer the Drinking Water Program from the California Department of Public Health to the State Water Resources Control Board (State Water Board) through budget trailer language;
2. The funding associated with the Drinking Water Program transfer has been approved by the Assembly and Senate budget committees and, assuming a budget is timely passed, the Drinking Water Program would be a component of the State Water Board's budget on July 1, 2014;
3. The budget trailer bill language to amend the California Code and effect the transfer is posted on the Department of Finance's website and is currently in conference committee;
4. The proposed budget trailer bill language would create a new Deputy Director position at the State Water Board to oversee the new Division of Drinking Water, reporting directly to the Executive Director;
5. The proposed budget trailer language would specifically delegate a number of activities to the Deputy Director of the Division of Drinking Water, including the following:
  - a. Provide notice, approve notice content, approve emergency notification plans, and take other action pursuant to Article 5 (commencing with Section 116450) of Chapter 4 of Part 12 of Division 104 of the Health and Safety Code. Decisions and actions of the Deputy Director taken pursuant to this Article are deemed decisions and actions taken, but are not subject to reconsideration, by the State Water Board;
  - b. Issue, renew, reissue, revise, amend, or deny any public water system permits pursuant to Article 7 (commencing with Section 116525) of Chapter 4 of Part 12 of Division 104 of the Health and Safety Code. Decisions and actions of the Deputy Director taken pursuant to this Article are deemed decisions and actions taken, but are not subject to reconsideration, by the State Water Board;
  - c. Suspend or revoke any public water system permit pursuant to Article 8 (commencing with Section 116625) of Chapter 4 of Part 12 of Division 104 of the Health and Safety Code. Decisions and actions of the Deputy Director taken pursuant to this Article are deemed decisions and actions taken, but any aggrieved person may petition the State Water Board for reconsideration;
  - d. Issue citations, assess penalties, or issue orders pursuant of Article 9 (commencing with Section 116650) of Chapter 4 of Part 12 of Division 104 of the Health and Safety Code. Decisions and actions of the Deputy Director taken pursuant to this Article are deemed decisions and actions taken, but any aggrieved person may petition the State Water Board for reconsideration;

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6. The proposed budget trailer language would also assign the Deputy Director “other duties as appropriate;”
7. The State Water Board finds that other “appropriate duties” include the day-to-day activities of the Division of Drinking Water, including but not limited to the following:
  - a. Delegation of permitting, enforcement, and emergency notification authorities to field district office staff;
  - b. Management of Division of Drinking Water staff, including field district office staff;
  - c. Meeting with other agency officials;
  - d. Implementing the State Water Board’s policies and regulations;
  - e. Issuing a decision or order by settlement of the parties under Government Code section 11415.60;
  - f. Act for, and on behalf of, the State Water Board in all matters and with all authority under California’s Safe Drinking Water Act, and under the Federal Safe Drinking Water Act and execute all documents necessary to carry out such authority;
  - g. Act for the State Water Board in all matters and with all authority under the Environmental Laboratory Accreditation Act, and execute all documents necessary to carry out such authority;
  - h. Conducting field inspections;
  - i. Supporting and promoting water system security;
  - j. Conducting source water assessments;
  - k. Evaluating projects utilizing recycled treated wastewater;
  - l. Promoting and assisting public water systems in drought preparation and water conservation;
  - m. Ensuring that individuals certified as drinking water treatment operators or distribution system operators meet the educational competencies required by law;
  - n. Maintaining state-of-the-art technology expertise;
  - o. Developing monitoring and drinking water regulations (including maximum contaminant levels), subject to the Administrative Procedures Act, although final approval of any regulations would require an act of the State Water Board;
  - p. Conducting special studies on contaminants in drinking water;
  - q. Developing water recycling criteria for use by regional water quality control boards;
  - r. Developing water recycling regulations subject to the Administrative Procedures Act, although final approval of any regulations would require an act of the State Water Board;
  - s. Reviewing and approving revisions/amendments to water recycling engineering reports;
  - t. Preparing the annual compliance report for U.S. Environmental Protection Agency (U.S. EPA);
  - u. Providing information and reports on fluoridation by public water systems;
  - v. Overseeing the Drinking Water Additives Program;
  - w. Maintaining the Backflow Prevention Assembly Approval List;
  - x. Reviewing and evaluating new treatment technologies or expansion of operations of existing treatment technologies in drinking water and recycled water applications
  - y. Assisting Field Operations Branch staff in assessing proposed treatment facilities;

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- z. Coordinating the Drinking Water Source Assessment and Protection Program of the Drinking Water State Revolving Fund Program in conjunction with the Deputy Director of the Division of Financial Assistance;
- aa. Assisting Field Operations Branch staff in implementing source water assessment and protection measures;
- bb. Providing technical, managerial, and financial capacity development assistance;
- cc. Administering the local primacy delegation program for small water systems;
- dd. Collecting analytical results from laboratories; compiling, evaluating and reporting drinking water quality data from labs that monitor drinking water for public water systems; and
- ee. Disseminating data to field office branches and other staff, preparing reports in findings and evaluations, meeting the U.S. EPA data reporting requirements under primacy requirements.

## THEREFORE BE IT RESOLVED THAT:

1. The State Water Board conditions the delegations of authority provided in this resolution upon a chaptered bill transferring the Drinking Water Program from the California Department of Public Health to the State Water Resources Control Board, and in that event, the delegations are operative on the effective date of the act transferring the Drinking Water Program.
2. The State Water Board acknowledges the statutory delegation provided through the proposed budget trailer language enumerated in Whereas No. 3 above, and recognizes that any enacted bill may include additional statutory delegations;
3. The State Water Board authorizes the Deputy Director of the Division of Drinking Water to undertake the other "appropriate duties," including those set forth in Whereas No. 5 above and other duties as reasonably appropriate for the day-to-day activities of the Division of Drinking Water;
4. The Deputy Director of the Division of Drinking Water may further delegate his or her responsibilities to Drinking Water Program staff, including field staff at the district or regional levels, but not to regional water quality control boards or their staff;
5. The Deputy Director of the Division of Drinking Water is specifically precluded from adopting regulations, adopting state policy for water quality control, or adopting or approving water quality control plans or plan amendments;
6. The Deputy Director of the Division of Drinking Water, or designee, is directed in exercising this vested authority, without restricting the authority specified, to bring to the attention of the Board members at Board meetings, or by other appropriate communication:
  - a. any matters that are of a unique, controversial, or unusual nature,
  - b. matters that appear to depart from the policies of the State Water Board,
  - c. matters involving significant policy questions,
  - d. highly controversial matters,
  - e. matters that involve a substantial risk of litigation,
  - f. any matter involving the execution of a contract or amendment thereto for which authority has not been expressly delegated by Board resolution,

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- g. any matter that a Board Member requests to be brought to the attention of the Board; and
  - h. any matter that, in the judgment of the Deputy Director, should be brought to the attention of the Board.
7. With respect to matters delegated by the Board, the Board may revoke in whole or in part any specified or implied delegation to the Deputy Director;
8. The State Water Board intends to revisit this delegation within 18 months of the Drinking Water Program transfer.

## **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 June 17, 2014.

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Jeanine Townsend  
Clerk to the Board