

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
APRIL 21, 2015**

ITEM 8

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO ONE OR MORE CONTRACTS TO HIRE ENVIRONMENTAL CONSULTANTS TO COMPLETE WORK REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR WATER RIGHTS-RELATED ACTIVITIES

DISCUSSION

The California Environmental Quality Act (CEQA) requires a public agency with discretionary authority to issue a certification, permit or other approval to evaluate the environmental impacts of its action. Accordingly, the State Water Resources Control Board (State Water Board) must comply with CEQA when it takes discretionary action related to its Division of Water Rights authorities, including acting upon requests for water quality certification (certification) or an application or permit for a water right.

As CEQA Lead Agency, the State Water Board ordinarily directs water rights or certification applicants and petitioners to enter into a Memorandum of Understanding (MOU) for payment and completion of CEQA activities and documentation. Under the MOU, the applicant or petitioner selects a consultant, who then works under the direction of State Water Board staff. The applicant or petitioner is responsible for payment for the consultant's work pursuant to the MOU. At times, State Water Board staff experience delays executing these MOU or encounter difficulties directing the CEQA consultants. In some cases, consultants halt work on CEQA activities over work disagreements or because the applicant or petitioner has ceased making payments. In other cases, CEQA consultants provide State Water Board staff with unsatisfactory work products. These situations unnecessarily delay the Division of Water Rights' processing of water rights or certification applications and petitions.

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. In October 2010, the State Water Board received \$1 million in cost recovery authority for CEQA activities through approval of a budget change proposal. Funds are anticipated to be available for expenditure in the fiscal year (FY) 2015-2016 budget, yet the Executive Director does not have the delegated contract authority to execute a new contract for the full \$1 million appropriated. Per [Resolution No. 2002-0105](#), the Executive Director is authorized to execute contracts and amendments with public and private entities that individually involve no more than \$500,000 or three years duration.

[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: (1) 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; (2) to make direct payment for such work from the Water Rights Fund; and (3) to pursue cost recovery from the applicant and/or petitioner in order to reimburse the Water Rights

Fund. On October 3, 2011, the Department of General Services approved a CEQA reimbursement contract with Impact Sciences, Inc. On June 19, 2012, the contract was amended to add certification-related CEQA work to the contract's scope of work. The contract will expire on September 15, 2015. Approval of the proposed resolution will allow the State Water Board to enter into a new contract so that one or more CEQA consultants are "on call" and ready to proceed with CEQA work related to water rights activities. This contract provides an important tool that allows the State Water Board to complete timely CEQA work without delay.

The proposed resolution would authorize the Executive Director to execute one or more contracts for a total amount not to exceed \$1 million per year for a duration not to exceed five years to administer funds from the Water Rights Fund to hire environmental consultants to complete work required by CEQA for projects processed by the Division of Water Rights, make direct payments for such work from the Water Rights Fund, and pursue cost recovery from the applicant and/or petitioner in order to reimburse the Water Rights Fund.

POLICY ISSUE

Should the State Water Board authorize the Executive Director to execute one or more contracts for a total amount not to exceed \$1 million per year for a duration not to exceed five years to administer funds from the Water Rights Fund to hire environmental consultants to complete work required by CEQA for projects processed by the Division of Water Rights, make direct payments for such work from the Water Rights Fund, and pursue cost recovery from the applicant and/or petitioner in order to reimburse the Water Rights Fund?

FISCAL IMPACT

None. This contract will grant the Executive Director the contract authority to make and manage payments from the Water Rights Fund and pursue cost recovery in order to ensure the funds budgeted for this purpose remain in the Water Rights Fund.

REGIONAL WATER BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

<p>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.</p>
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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO ONE OR MORE CONTRACTS TO HIRE ENVIRONMENTAL CONSULTANTS TO COMPLETE WORK REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR WATER RIGHTS-RELATED ACTIVITIES

WHEREAS:

1. The State Water Resources Control Board (State Water Board) must comply with the California Environmental Quality Act (CEQA) when it takes discretionary actions related to its authorities, including acting upon requests for water quality certification or an application or permit for a water right;
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. The State Water Board's Division of Water Rights has faced delays in developing and executing Memoranda of Understanding (MOUs) for the payment and completion of CEQA activities and documentation when the State Water Board is the lead agency, and has had processing delays under existing MOUs 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. Delegation of this authority to the Executive Director will allow the Executive Director to compensate consultants from the Water Rights Fund for the completion of environmental activities and documentation, and pursue cost recovery from the applicant and/or petitioner of the payments to reimburse the Water Rights Fund.

THEREFORE BE IT RESOLVED THAT:

The State Water Board authorizes the Executive Director to do the following:

1. Execute one or more contracts for a total amount not to exceed \$1 million per year for a duration not to exceed five years to administer funds from the Water Rights Fund to hire environmental consultants to complete work required by CEQA for projects processed by the Division of Water Rights;
2. Make direct payments for such work from the Water Rights Fund for a total amount not to exceed \$1 million per year; and

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3. Pursue cost recovery from the applicant and/or petitioner in order to reimburse the Water Rights Fund.

This authority may be redelegated.

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 April 21, 2015.

Jeanine Townsend
Clerk to the Board