

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION NO. R2-2021-XXXX

DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER

WHEREAS:

1. The Porter-Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7, section 13223) allows the Regional Water Boards to delegate to their Executive Officers any of their powers and duties under the Porter-Cologne Act, except for the following:
 - a. The promulgation of any regulations;
 - b. The issuance, modification, or revocation of any water quality control plan, water quality objective, or waste discharge requirement;
 - c. The issuance, modification, or revocation of any cease and desist order;
 - d. The holding of any hearing on water quality control plans; and
 - e. The application to the Attorney General for judicial enforcement, but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13302, 13304, and 13340.
2. On January 29, 1970, the California Regional Water Quality Control Board, San Francisco Bay Region ("Board"), adopted Resolution No. 70-11, delegating to its Executive Officer the powers and duties of the Board except those specified in Water Code § 13223(a) and those the Board has previously reserved to itself or any of its members by formal action.
3. Resolution No. 70-11 implicitly delegated to the Executive Officer the authority to issue administrative civil liability orders, but the Executive Officer had not historically exercised this delegated authority. Therefore, on July 8, 2008, the Board adopted Resolution No. 2008-0055 and expressly delegated to its Executive Officer, under the general direction and control of the Board, the authority to issue final administrative civil liability orders where no hearing is required, such as when a discharger does not contest the administrative civil liability and waives its right to a hearing or there has been a settlement.
4. The Board now desires to expressly delegate to the Executive Officer authority to issue other types of administrative civil liability orders not historically exercised by the Executive Officer.

5. Certain types of administrative civil liability or penalty actions, such as mandatory minimum penalties sought pursuant to Water Code sections 13385 (h) and (i) and 13399.33, typically generate minimal public interest, have a standard rather than complex penalty assessment, and individually tend to present a minor threat to beneficial uses or a minor potential for harm. The Board has little discretion to reject mandatory minimum penalties in cases where the Water Code requires them.
6. To conduct the business of the Board in a timely and efficient manner, the Board desires to expressly delegate to its Executive Officer authority to hold evidentiary hearings and issue final administrative civil liability orders under Water Code sections 13385(h) and (i) and 13399.33. While the Board has previously delegated to the Executive Officer its powers and duties to the maximum extent allowed by Water Code section 13223, it is nonetheless appropriate to expressly delegate this authority to reaffirm the Board's intent.
7. Nothing in this delegation is intended to diminish the force, effect, or validity of any action the Executive Officer has previously taken in the name of the Board.

THEREFORE, BE IT RESOLVED THAT:

1. The delegation of authority to the Executive Officer set forth in Resolution No. 70-11 and Resolution No. 2008-0055 are unaffected by this Resolution and remain in effect.
2. Effective March 10, 2021, the Board hereby expressly delegates to its Executive Officer, under the general direction and control of the Board, the authority to hold evidentiary hearings for administrative civil liability complaints brought under Water Code sections 13385(h) and (i) and 13399.33 and to issue administrative civil liability orders for these complaints under Water Code section 13323. The Executive Officer is authorized to increase the civil liability above the minimum amount as warranted under Water Code section 13327. For penalties under Water Code section 13399.33, the Executive Officer is also authorized to reduce the civil liability to less than the minimum amount pursuant to subsection (a)(1) and (a)(2).
3. For administrative civil liability complaints brought under Water Code sections 13385(h) and (i) and 13399.33, the Executive Officer is authorized to allow supplemental environmental projects and compliance projects pursuant Water Code sections 13385(k) and (l) and 13399.35.
4. The Board's express delegation of authority pursuant to this Resolution does not diminish or alter the Board's own power to act in the first instance, regardless of the reason.

5. Without affecting the scope of the delegation of authority in Resolution Nos. 70-11 and 2008-0055, or the specific authorities recognized in this Resolution, the Board nevertheless directs the Executive Officer, in the exercise of these authorities, to bring the following types of civil liability matters to the attention of the Board at a public board meeting or by other appropriate communication:
 - a. Matters of a unique or unusual nature;
 - b. Matters involving significant policy questions;
 - c. Highly controversial matters;
 - d. Matters known or believed to involve a substantial risk of litigation; and
 - e. Any matter that a Board member requests be brought to the attention of the Board.

I do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 10, 2021.

Michael Montgomery
Executive Officer