

Consolidated Grants: Litigation Language

Item #7

February 1, 2006

Option #1-January Language

F. WAIVER OF LITIGATION RIGHTS

Grant agreements funded by the State Water Board will specify the following:

“As a material condition of this Agreement, the Grantee agrees that acceptance of any disbursements under this Grant Agreement shall effect a waiver of any right of action (including pending actions) against the State Water Resources Control Board (State Water Board) or any Regional Water Quality Control Board (Regional Water Board) to challenge any regulation or order of the State Water Board or the Regional Water Board in place or pending as of the date this Agreement is signed by the State Water Board, which either requires performance of the Project, or though not required, whose terms or conditions would be satisfied in whole or in part by performance of the Project. This waiver shall not apply to internal administrative review by the State Water Board of its own or a Regional Water Board’s regulation or order, but it shall apply to judicial review thereof. This paragraph shall not apply to litigation arising due to disputes related to the performance of this Agreement. In the context of this section, “pending” means any draft regulation or order that has either been publicly circulated or for which a public meeting or hearing has been convened by the State Water Board or a Regional Water Board.”

Option #2-Narrow Language

F. WAIVER OF LITIGATION RIGHTS

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“As a material condition of this Agreement, the Grantee agrees that acceptance of any disbursements under this Grant Agreement shall effect a waiver of any right of action (including pending actions) against the State Water Resources Control Board (State Water Board) or any Regional Water Quality Control Board (Regional Water Board) to challenge any regulation or order of the State Water Board or the Regional Water Board in effect on the date this Agreement is signed by the State Water Board if either (1) the Project is required by the regulation or order or (2) the Project’s primary purpose, as stated in the grant issuance, is to achieve compliance with the water quality requirements of the regulation or order. This waiver shall not apply to internal administrative review by the State Water Board of its own or a Regional Water Board’s regulation or order, but it shall apply to judicial review thereof. This paragraph shall not apply to litigation arising due to disputes related to the performance of this Agreement.”

Option #2-Narrow Language

- Narrows to eliminate “pending” orders
- Narrows to limit to either:
 - Project required by water board order; or
 - grant agreement specifying that the Project’s “primary” purpose is to comply with water board order

Option #2-Revisions

F. WAIVER OF LITIGATION RIGHTS

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Option #2-Revisions

- Narrows to clarify applies only to challenged provisions—not an unrelated challenge
- Further clarifies the document where “primary purpose” is identified

Option #3: Related Litigation

F. RELATED LITIGATION

Grant agreements funded by the State Water Board will specify the following:

Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Resources Control Board or any Regional Water Quality Control Board.

Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this agreement, the grantee agrees to complete the project funded by this agreement or to repay all of the grant funds plus interest.

Board Options

- Clarify that today's decision applies generally
- Adopt:
 - Option #1 Language from January
 - Option #2 “Narrow Language” as further revised
 - Option #3 Related language clarifying limitation on grant language
 - Remove litigation waiver language

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