

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
APRIL 21, 2009**

ITEM 6

SUBJECT

CONSIDERATION OF A RESOLUTION TO DELEGATE AUTHORITY (1) TO APPROVE CERTAIN GRANTS FOR UNDERGROUND STORAGE TANK (UST) RESPONSE ACTION OR CORRECTIVE ACTION, (2) TO APPROVE GRANT AGREEMENTS AND AMENDMENTS TO DISBURSE FEDERAL ECONOMIC RECOVERY GRANT FUNDS AND (3) TO ISSUE LETTERS OF AWARD OR EXECUTE CONTRACTS AND AMENDMENTS FOR THE EXPENDITURE OF FEDERAL ECONOMIC RECOVERY GRANT FUNDS

DISCUSSION

California's and the nation's economy are in a significant recession. The federal economic recovery package provides a combination of tax and spending measures designed to create jobs, stimulate the economic recovery, and invest in technology and infrastructure for long-term benefit. The State Water Resources Control Board (State Water Board) is eligible to receive funds from the federal economic recovery package that must be committed quickly to eligible projects. This resolution will help implement federal economic recovery efforts while maximizing the benefit to California's infrastructure and water quality needs.

The Division of Financial Assistance (Division) provides moneys to assess and cleanup petroleum contamination from leaking USTs through the UST Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund) and the Petroleum UST Cleanup Fund (Cleanup Fund), including the Cleanup Fund's Emergency, Abandoned and Recalcitrant Account (EAR Account). The Orphan Site Cleanup Fund provides financial assistance for the cost of response actions to remediate the harm caused by petroleum contamination at project sites that meet the conditions contained in § 25299.50.2 of the Health and Safety Code. The EAR Account provides funding to the State Water Board, Regional Water Quality Control Boards (Regional Water Boards), or local agencies for costs of corrective action at project sites contaminated by leaking petroleum USTs. Project sites eligible for the EAR Account may receive funding pursuant to a contract with or letter of award from the State Water Board. The State Water Board may request the Department of General Services (DGS) to enter into a contract on behalf of the State Water Board or a Regional Water Board. Economic recovery funds are available for these project sites.

California expects to receive approximately \$15 million in Federal Economic Recovery Grants from the Leaking Underground Storage Tank (LUST) Trust Fund in federal Fiscal Year 2009 for assessing and cleaning up petroleum contamination from leaking USTs. California may receive Federal Economic Recovery Grants from the LUST Trust Fund in federal Fiscal Year 2010 for assessing and cleaning up petroleum contamination from leaking USTs.

POLICY ISSUE

Should the State Water Board:

1. Authorize the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division to approve or deny, consistent with statutory requirements, grant commitments for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds?
2. Authorize the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Administrative Services (DAS) to execute, for and on behalf of the State Water Board, grant agreements and amendments to disburse funds for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds?
3. Authorize the Executive Director, or designee, to increase approved corrective action costs for sites on the EAR Account Fiscal Year 2008-2009 Annual Site List (ASL) and, consistent with statutory requirements, to add eligible sites to the EAR Account Fiscal Year 2008-2009 ASL?
4. Authorize the Executive Director, or designee, to issue letters of award or negotiate and execute contracts and amendments for the expenditure of funds for corrective action at petroleum UST sites that have had unauthorized releases and that are eligible for Federal Economic Recovery Grant funds?
5. Authorize the Executive Director, or designee, to request DGS, pursuant to § 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board and act as the agent of the State Water Board or a Regional Water Board for the expenditure of Federal Economic Recovery Grant funds?
6. Authorize the Deputy Directors of DAS and the Division to further delegate their responsibilities herein, in writing, as they deem appropriate?
7. Authorize, except as otherwise specifically provided by the State Water Board, the Executive Director, or the Executive Director's designee, to be the duly authorized representative of the State Water Board for the purpose of making a final determination of any dispute arising under or relating to the performance of any contracts and grant agreements to which the State Water Board is a party?
8. Direct the Executive Director, Chief Deputy Director, the Deputy Director of DAS, and the Deputy Director of the Division in exercising the authority vested in them by this resolution, without restricting the authority specified, to bring to the attention of the Board Members at workshop or by other appropriate communication any matters that are of unique, controversial, or unusual nature or that appear to depart from the policies of the State Water Board?

FISCAL IMPACT

The Federal Economic Grant funds will provide additional capital to assess and cleanup petroleum contamination from leaking USTs. The Federal Economic Grant funds will supplement other sources of state funding for assessing and cleaning up petroleum contamination from leaking USTs.

REGIONAL WATER BOARD IMPACT

The additional funds from U.S. Environmental Protection Agency will help Regional Water Boards cleanup contaminated sites.

STAFF RECOMMENDATION

The State Water Board should:

1. Authorize the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division to approve or deny, consistent with statutory requirements, grant commitments for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds;
2. Authorize the Executive Director, the Chief Deputy Director, or the Deputy Director of DAS to execute, for and on behalf of the State Water Board, grant agreements and amendments to disburse funds for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds;
3. Authorize the Executive Director, or designee, to increase approved corrective action costs for sites on the EAR Account Fiscal Year 2008-2009 ASL and, consistent with statutory requirements, to add eligible sites to the EAR Account Fiscal Year 2008-2009 ASL;
4. Authorize the Executive Director, or designee, to issue letters of award or negotiate and execute contracts and amendments for the expenditure of funds for corrective action at petroleum UST sites that have had unauthorized releases and that are eligible for Federal Economic Recovery Grant funds;
5. Authorize the Executive Director, or designee, to request DGS, pursuant to § 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board and act as the agent of the State Water Board or a Regional Water Board for the expenditure of Federal Economic Recovery Grant funds;
6. Authorize the Deputy Directors of DAS and the Division to further delegate their responsibilities herein, in writing, as they deem appropriate;
7. Authorize, except as otherwise specifically provided by the State Water Board, the Executive Director, or the Executive Director's designee, to be the duly authorized representative of the State Water Board for the purpose of making a final determination of any dispute arising under or relating to the performance of any contracts and grant agreements to which the State Water Board is a party;

8. Direct the Executive Director, Chief Deputy Director, the Deputy Director of DAS, and the Deputy Director of the Division in exercising the authority vested in them by this resolution, without restricting the authority specified, to bring to the attention of the Board Members at workshop or by other appropriate communication any matters that are of unique, controversial, or unusual nature or that appear to depart from the policies of the State Water Board; and

State Water Board action on this item will assist the Water Boards in reaching Goal 2 of the Strategic Plan Update: 2008-2012 to improve and protect ground water quality in high-use basins by 2030. In particular, approval of this item will assist in fulfilling Objective 2, Action 2.1 to provide financial resources for corrective action activities at leaking petroleum UST sites to improve and protect ground water quality.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

DELEGATE AUTHORITY (1) TO APPROVE CERTAIN GRANTS FOR UNDERGROUND STORAGE TANK (UST) RESPONSE ACTION OR CORRECTIVE ACTION, (2) TO APPROVE GRANT AGREEMENTS AND AMENDMENTS TO DISBURSE FEDERAL ECONOMIC RECOVERY GRANT FUNDS AND (3) TO ISSUE LETTERS OF AWARD OR EXECUTE CONTRACTS AND AMENDMENTS FOR THE EXPENDITURE OF FEDERAL ECONOMIC RECOVERY GRANT FUNDS

WHEREAS:

1. California expects to receive Federal Economic Recovery Grants from the Leaking UST Trust Fund estimated at \$15 million for federal Fiscal Year 2009 for assessing and cleaning up petroleum contamination from leaking USTs;
2. California may receive Federal Economic Recovery Grants from the Leaking UST Trust Fund for federal Fiscal Year 2010 for assessing and cleaning up petroleum contamination from leaking USTs;
3. The State Water Resources Control Board (State Water Board) funds assessments and cleanups of petroleum contamination from leaking USTs at eligible sites through its UST Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund) and the Petroleum USTs Cleanup Fund (Cleanup Fund), including the Cleanup Fund's Emergency, Abandoned or Recalcitrant Account (EAR Account);
4. Section 25299.50.2 of the Health and Safety Code authorizes the State Water Board to expend funds in the Orphan Site Cleanup Fund for the cost of response actions to remediate the harm caused by petroleum contamination at a site that meets specified conditions;
5. Chapter 6.75 of division 20 of the Health and Safety Code authorizes the State Water Board to provide funding to eligible claimants, the State Water Board, Regional Water Quality Control Boards (Regional Water Boards), or local agencies for costs of corrective action at certain petroleum UST sites that have had unauthorized releases;
6. Section 25299.36 of the Health and Safety Code authorizes the State Water Board, a Regional Water Board, or a local agency to undertake or contract for corrective action at specified sites. The State Water Board or a Regional Water Board may request the Department of General Services (DGS) to act as the agent of and enter into contracts on behalf of the State Water Board or a Regional Water Board for corrective action at those sites;
7. The State Water Board has established administrative procedures for providing cleanup funds to the State Water Board, Regional Water Boards, and local agencies, which include adoption of an EAR Account Annual Site List (ASL);

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8. For efficient and timely management of the Federal Economic Recovery Grants, it is appropriate and desirable to delegate to the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Financial Assistance (Division) the authority to approve or deny certain grants for UST response action or corrective action, grant agreements, and amendments to disburse Federal Economic Recovery Grant funds. It is likewise appropriate and desirable to delegate to the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Administrative Services (DAS) the authority to execute grant agreements and amendments with approved recipients of Federal Economic Recovery Grant funds;
9. For efficient and timely management of the Federal Economic Recovery Grants, it is also appropriate and desirable to delegate to the Executive Director, or designee, authority to increase approved corrective action costs for sites on the EAR Account Fiscal Year 2008-2009 ASL and to add eligible sites to the EAR Account Fiscal Year 2008-2009 ASL. Additionally, it is appropriate and desirable to delegate to the Executive Director, or designee, authority to issue letters of award or execute contracts and amendments for the expenditure of Federal Economic Recovery Grant funds or to request DGS to enter into contracts on behalf of the State Water Board or a Regional Water Board for the expenditure of Federal Economic Recovery Grant funds; and
10. For the orderly and efficient administration of such grants and contracts, it is desirable to designate appropriate staff to make a final agency determination concerning any dispute arising out of such contracts or relating to the performance thereof.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division to approve or deny, consistent with statutory requirements, grant commitments for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds;
2. Authorizes the Executive Director, the Chief Deputy Director, or the Deputy Director of DAS to execute, for and on behalf of the State Water Board, grant agreements and amendments to disburse funds for UST response action or corrective action at sites with petroleum contamination from leaking USTs that are eligible for Federal Economic Recovery Grant funds;
3. Authorizes the Executive Director, or designee, to increase approved corrective action costs for sites on the EAR Account fiscal Year 2008-2009 ASL and, consistent with statutory requirements, to add eligible sites to the EAR Account fiscal Year 2008-2009 ASL;
4. Authorizes the Executive Director, or designee, to issue letters of award or negotiate and execute contracts and amendments for the expenditure of funds for corrective action at petroleum UST sites that have had unauthorized releases and are eligible for Federal Economic Recovery Grant funds;

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5. Authorizes the Executive Director, or designee, to request DGS, pursuant to § 25299.36 of the Health and Safety Code, to enter into contracts on behalf of the State Water Board or a Regional Water Board and act as the agent of the State Water Board or a Regional Water Board for the expenditure of Federal Economic Recovery Grant funds.
6. Authorizes the Deputy Directors of DAS and the Division to further delegate their responsibilities herein, in writing, as they deem appropriate;
7. Authorizes, except as otherwise specifically provided by the State Water Board, the Executive Director, or the Executive Director's designee, to be the duly authorized representative of the State Water Board for the purpose of making a final determination of any dispute arising under or relating to the performance of any contracts and grant agreements to which the State Water Board is a party; and
8. Directs the Executive Director, Chief Deputy Director, the Deputy Director of DAS, and the Deputy Director of the Division, in exercising the authority vested in them by this resolution, without restricting the authority specified, to bring to the attention of the Board Members at workshop or by other appropriate communication any matters that are of unique, controversial, or unusual nature or that appear to depart from the policies of the State Water Board.

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 Board held on April 21, 2009.

Jeanine Townsend
Clerk to the Board