

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
FEBRUARY 3, 2009**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION (USBR) UNDER WHICH THE STATE WATER BOARD WILL BE REIMBURSED FOR ADMINISTERING THE WATER RIGHTS OF THE USBR

DISCUSSION

The United States Bureau of Reclamation (USBR) holds extensive water rights in California, but as a federal agency does not pay fees to the State of California. Instead, for many years, the USBR has negotiated a separate agreement with the State Water Board to reimburse the State Water Board, on an hourly basis, for a portion of the costs to administer water rights held by the USBR. The existing contract was executed in April 2005 for an amount not to exceed \$130,000 per year, and expires on June 30, 2009.

The Legislature has directed that the State Water Board's water right program be funded, in part, from regulatory fees deposited in the Water Rights Fund in the state treasury. Accordingly, the State Water Board assesses annual water right permit and license fees to holders of water rights permits or licenses. If, however, the State Water Board determines that a fee payer such as the USBR is likely to decline to pay a fee or expense based on a claim of sovereign immunity, then the Board may take any of several actions, including allocating the fees due to that fee payer's water supply contractors. The USBR is unlikely to pay any water right fees for this fiscal year or for other fiscal years during the proposed contract term. Thus, the annual water right fees will be passed through to the USBR's contractors.

State Water Board activities covered by annual water right permit and license fees include most of the costs of processing petitions or other requests involving oversight or proposed modifications of permits and licenses. The State Water Board also charges one-time filing fees for actions such as processing proposed changes in point of diversion, place of use or purpose of use under a permit or license. However, the filing fees only cover a portion of the cost of administering those actions, and annual fees generally cover the rest. The annual permit and license fees assessed are based, in part, on the annual amount the Legislature directs be funded by regulatory fees deposited in the Water Rights Fund. Monies obtained through the State Water Board's reimbursement or federal funding allocations are deposited into funding sources other than the Water Rights Fund.

In order to avoid "double billing" the USBR's contractors, the State Water Board has not sought reimbursement from the USBR to the extent that activities involving review of USBR's water rights are intended to be covered by the annual permit and license fees passed through to the USBR's contractors.

In recognition of this situation, the State Water Board only charges the time spent handling a petition or application against the current USBR contract up to the amount of the one-time filing fee. To the extent that time spent on handling matters exceed the one-time fee, and the petitions involve permits or licenses for which the permit and license fees are passed through to the USBR water contractors, the State Water Board will not charge the USBR for this work. Instead, all fee payers of the annual permit and license fees pay for this additional water right administration cost. For petitions involving permits and licenses for which no permit or license fees are passed through to USBR contractors, the State Water Board charges the USBR under the current USBR contract for all time spent on handling such petitions without regard to what the petition fees would be under the State Water Board's fee regulations.

Based upon the current fee regulations and anticipated USBR water right projects, the Division of Water Rights and USBR staff estimate a future reimbursement account need of \$130,000 per year.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT

This contract will continue the existing practice of USBR reimbursement for certain regulatory services performed by staff of the State Water Board. Funds received through this contract will be placed in the Statewide Cost Allocation Plan (SWCAP) account for federal trust fund cost recoveries.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

That the State Water Board adopt the proposed resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to 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; and Goal 7 to ensure that the Water Boards have access to information and expertise, including employees with knowledge and skills, needed to effectively and efficiently carry out the Water Board's mission. In particular, approval of this item will assist in fulfilling Objective 7.4 by leveraging federal resources to enhance existing workforce capacity.

D R A F T

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION (USBR) UNDER WHICH THE STATE WATER BOARD WILL BE REIMBURSED FOR ADMINISTERING THE WATER RIGHTS OF THE USBR

WHEREAS:

1. The United States Bureau of Reclamation (USBR) holds extensive water rights in California.
2. As a federal agency, the USBR has declined to pay water right fees to the State.
3. For many years, the USBR has negotiated a separate agreement to reimburse the State Water Board for costs to administer water rights held by the USBR.
4. The existing agreement will expire on June 30, 2009.
5. Approval of this contract will ensure continued reimbursement by the USBR to the State Water Board for a portion of the administration of water rights for USBR projects.

THEREFORE BE IT RESOLVED:

That the State Water Board authorizes the Executive Director to execute a \$650,000 five-year contract (\$130,000 per year) with the USBR for reimbursement of State Water Board staff costs for administration of the USBR's water rights during Fiscal Years 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 3, 2009.

Jeanine Townsend
Clerk to the Board