

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DELTA WATERMASTER
OCTOBER 5, 2010**

ITEM 8

SUBJECT

CONSIDERATION OF A RESOLUTION DELEGATING AUTHORITY TO THE DELTA WATERMASTER.

DISCUSSION

Water Code Section 85230 authorizes the appointment of the Delta Watermaster and provides that the State Water Resources Control Board (State Water Board) shall delegate authority to the Delta Watermaster.

The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the State Water Board by terms of a water right permit or license, authority to approve temporary urgency charges, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The draft resolution delegates these authorities and also provides for redelegation of specified duties to staff of the Division of Water Rights.

Water Code Section 85230 authorizes the State Water Board to delegate additional duties to the Delta Watermaster. The draft resolution delegates the following additional duties: the authority to conduct informal fact-finding or informal investigation hearings, the authority to convene settlement conferences, the authority to formulate and issue decisions by settlement, and the authority to refer matters to the Attorney General.

POLICY ISSUE

Should the State Water Board adopt a resolution delegating authority to the Delta Watermaster?

FISCAL IMPACT

State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

That the State Board adopt the draft resolution delegating authority to the Delta Watermaster.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Updated: 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, regulatory, policies, and procedures.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

DELEGATION OF AUTHORITY TO THE DELTA WATERMASTER

WHEREAS:

1. Pursuant to Water Code section 85230 subdivision (a), the State Water Resources Control Board (Board) appoints a special master for the Delta, whose title is “the Delta Watermaster.”
2. Pursuant to Water Code section 7, the Board is empowered to delegate authority to authorized persons.
3. Water Code section 85230 subdivision (b) provides that the Delta Watermaster shall exercise specified delegated authorities.
4. Water Code Section 85230 subdivision (b) states that the Delta Watermaster’s authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta.
5. Water Code section 85230 subdivision (c) provides that the Board may delegate additional duties to the Delta Watermaster as necessary for effective day-to-day enforcement of its decisions.
6. Water Code section 1051 authorizes the Board to investigate streams, lakes, and other bodies of water.
7. Government Code section 11415.50 states that an adjudicative proceeding is not required for informal fact-finding, an informal investigatory hearing, or a decision to initiate or not initiate an adjudicatory proceeding.
8. Government Code section 11415.60 authorizes the Board to delegate the power to formulate and issue decisions by settlement.

THEREFORE BE IT RESOLVED THAT:

1. The Board delegates to the Delta Watermaster the following duties related to water diversion within the Delta and the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, as defined in Water Code section 12220:
 - 1.1 Require monitoring and reporting by holders of Board-issued water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.

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- 1.2 Issue approvals delegated to an officer or employee of the Board by the terms of water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.3 Act on petitions or requests to approve or renew temporary urgency changes pursuant to chapter 6.6 (commencing with section 1435) of Part 2 of Division 2 of the Water Code. If no objections to a petition for a temporary urgency change are received, this authority may be re-delegated to the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights. This delegation includes the authority to:
 - 1.3.1 Hold a hearing on any petition or request for renewal made pursuant to Chapter 6.6.
 - 1.3.2 Make the findings required by Chapter 6.6 as conditions precedent to the issuance or renewal of a temporary change order.
 - 1.3.3 Make any findings required by CEQA as conditions precedent to the issuance or renewal of a temporary change order.
 - 1.4 At the preadjudicative stage, conduct informal fact-finding or informal investigatory hearings regarding alleged unlawful diversions of water, violations of water right permits or licenses, or waste and unreasonable use.
 - 1.5 Issue notices of proposed cease and desist orders, and, when a hearing has not been timely requested, issue cease and desist orders in accordance with Water Code section 1831 et seq.
 - 1.6 Issue proposed administrative civil liability complaints, and, when a hearing has not been requested, issue an order imposing administrative civil liability in accordance with Water Code section 1055 et seq.
 - 1.7 Convene settlement conferences up until the time a formal adjudication has commenced by the noticing of a hearing.
 - 1.8 Formulate and issue decisions by settlement under Government Code section 11415.60 in matters raised by investigations or complaints, or where notices of proposed cease and desist orders or administrative civil liability have been issued but a hearing has not been noticed.
 - 1.9 Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code section 1052 (unlawful diversions) or Water Code section 1845 (violation of cease and desist orders).
2. Adjudicative orders and decisions issued by the Delta Watermaster, including but not limited to decisions by settlement, are subject to reconsideration by the Board pursuant to Water Code section 1122 et seq.

D R A F T

3. The enumeration of delegated authorities in this resolution shall not be interpreted as revoking authorities already delegated, except as specified below. This resolution augments [Resolution No. 2007-0057](#), Delegation of Authority to State Water Resources Control Board Members Individually and to the Deputy Director for Water Rights, and supersedes it only to the extent of any inconsistency. Specifically, the delegation to the Deputy Director to issue notices of proposed cease and desist orders and administrative civil liability complaints is revoked as applied to diversions in the Delta and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, except to the extent the Delta Watermaster expressly authorizes the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights to proceed.
4. This resolution will be brought back before the Board within two years for reconsideration of its terms.

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 October 5, 2010.

Jeanine Townsend
Clerk to the Board