

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF RESEARCH PLANNING AND PERFORMANCE  
DECEMBER 6, 2011**

**ITEM 11**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE, ON BEHALF OF CAL/EPA AND ALL OTHER AGENCY DEPARTMENTS, BOARDS AND OFFICES, TO ENTER INTO A CONTRACT WITH THE REGENTS OF UC BERKELEY FOR MANDATED SCIENTIFIC PEER REVIEW AND OTHER EXPERT REVIEW AND CURRICULUM REVIEW SERVICES.

**DISCUSSION**

State law (Health and Safety Code Section 57004, 115365, et al.) sets minimum requirements for external scientific peer review. Notably, Health and Safety Code Section 57004 requires all Cal/EPA boards, departments, or office to submit for external scientific peer review the “scientific basis” and “scientific portions” of proposed rules. For rules subject to this requirement, the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, must be submitted for peer review. Under the law, the scientific basis and scientific portions of any proposed regulations, Basin Plan Amendments, and State polices for water quality control must undergo peer review prior to final action. The law further specifies that the agency, or a board, department, or office within the agency, must enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning to conduct external scientific peer review of the scientific basis for any rule proposed.

The State Water Board currently manages an Interagency Agreement, on behalf of Cal/EPA and its constituent boards, departments, or office, with the Regents of the UC (Berkeley) for the conduct of scientific peer review in accordance Health and Safety Code Section 57004. The existing agreement is set to expire on or about December 15, 2011. The proposed Resolution seeks authority to enter into a new Interagency Agreement to allow UC Berkeley to continue providing peer review services. The new Interagency Agreement will also provide for expert scientific and/or economic review of other work products, and for Cal/EPA curriculum review. The proposed Resolution authorizes the Executive Director or designee to enter into 5-year Interagency Agreement with the Regents of the UC (Berkeley) with a total cost to Cal/EPA and all agency boards, departments, or office not to exceed \$2,000,000. The Water Boards’ share of these costs will not exceed \$700,000 over five years.

**POLICY ISSUE**

Authority is requested to enter into a contract for peer review services, including services mandated by Health and Safety Code Section 57004, 115365, et al. If the Resolution is not approved the State Water Board may not be unable to adopt proposed rules as defined under the law.

**FISCAL IMPACT**

This Resolution will authorize up to \$2,000,000 dollars over five years. The State Water Board's portion of this funding will not exceed \$700,000 over five years.

**REGIONAL BOARD IMPACT**

If the Resolution is not adopted Regional Boards may not be unable to adopt proposed rules as defined under State law (Health and Safety Code Section 57004.)

**STAFF RECOMMENDATION**

That the State Water Board authorizes the Executive Director or designee to enter into a new Interagency Agreement with the Regents of the University of CA, Berkeley for peer review and other related services.

State Water Board action on this item will assist the Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012 to improve transparency and accountability and in reaching Goal 7, to ensure that the Water Boards have access to information and expertise including employees with appropriate knowledge and skills, needed to effectively and efficiently carry out the Water Boards' mission.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE, ON BEHALF OF CAL/EPA AND ALL OTHER AGENCY DEPARTMENTS, BOARDS AND OFFICES, TO ENTER INTO A CONTRACT WITH THE REGENTS OF UC BERKELEY FOR MANDATED SCIENTIFIC PEER REVIEW AND OTHER EXPERT REVIEW AND CURRICULUM REVIEW SERVICES.

### WHEREAS:

1. State law (Health and Safety Code Section 57004, 115365, et al.) sets minimum requirements for external scientific peer review. Notably, Health and Safety Code Section 57004 requires all Cal/EPA boards, departments, or offices to submit for external scientific peer review the “scientific basis” and “scientific portions” of proposed rules, consistent with the statutory definition of these two terms. For rules subject to this requirement, the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, must be submitted for peer review. The law further specifies that the agency, or a board, department, or office within the agency, must enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning to conduct external scientific peer review of the scientific basis for any rule proposed.
2. In addition to the work products for which external scientific peer review is statutorily required (as noted above), Cal/EPA may seek expert review of the scientific/economic basis and scientific/economic portions of other work products—for example, major and/or controversial new initiatives that are not otherwise subject to statutory peer review requirements—as it deems prudent;
3. State law (Public Resources Code Section 71300, et seq.) required the development of a model environmental curriculum. Cal/EPA developed a curriculum that was approved by the State Board of Education; however, review services may be needed from time to time to address questions regarding the accuracy of discrete facts contained within that curriculum;
4. The State Water Board previously contracted mandated external expert peer review services with the Regents of the UC Berkeley and have determined that UC Berkeley remains the best resource for these services;
5. The proposed FY 2011-16 Interagency Agreement with the University of California, and future amendments will continue to ensure that mandated scientific peer review and other types of reviews will be performed by qualified reviewers in manner consistent with State law.

### THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Authorizes the Executive Director or designee to enter into new and amended interagency agreements and contracts with the Regents of the University of CA, Berkeley using up to

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\$700,000 in Water Board funds. In addition to the \$700,000 authorized above, the Executive Director or designee is authorized to include California Environmental Protection Agency, California Department of Toxic Substances Control, California Air Resources Board, Department of Pesticide Regulation, and Office of Environmental Health Hazard Assessment funding in the amount of up to \$1,300,000 for a total contract amount not to exceed \$2,000,000 for peer review services. This authorization is for a 5-year period beginning on or after the date of this resolution.

## **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 December 6, 2011.

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Jeanine Townsend  
Clerk to the Board