

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS  
JANUARY 18, 2011**

**ITEM 5**

**SUBJECT**

CONSIDERATION OF A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT TO HIRE ENVIRONMENTAL CONSULTANTS TO COMPLETE WORK REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR WATER RIGHTS ACTIONS

**DISCUSSION**

The State Water Resources Control Board (State Water Board) must comply with CEQA when it approves a water right permit or a petition for change of an existing water right. As CEQA Lead Agency, the State Water Board ordinarily directs water right applicants and petitioners to enter into a Memorandum of Understanding (MOU) for payment and completion of CEQA activities and documentation. Under the MOU, the applicant or petitioner selects a consultant, who then works under the direction of State Water Board staff. The applicant or petitioner is responsible for payment for the consultant's work pursuant to the MOU. At times, State Water Board staff experience difficulties directing the CEQA consultants. In some cases, consultants halt work on CEQA activities over work disagreements or because the applicant or petitioner has ceased making payments. In other cases, CEQA consultants provide the State Water Board staff with unsatisfactory work products. These situations unnecessarily delay the Division of Water Rights' processing of water right applications and petitions.

In recognition of these difficulties, Budget Change Proposal 5 (BCP 5) for the Fiscal Year 2010/2011, seeking up to \$1 million per year in cost recovery authority for CEQA activities, was submitted for approval on January 4, 2010. California Code of Regulations, title 14, section 15045, subdivision (a) provides legal authority for the CEQA Lead Agency to charge and collect reasonable fees for the cost of CEQA work. The BCP, approved by the Fiscal Year (FY) 2010-11 Budget Act on October 8, 2010, provides cost recovery authority not previously available to the State Water Board. Funds are available for expenditure in the FY 2010-11 budget, yet the Executive Director does not have the delegated contract authority to execute a contract for the full amount appropriated.

The proposed Resolution would authorize the Executive Director contract authority of \$1 million to enter into contracts to conduct work on CEQA activities, including the authority to hire consultants, make payments for work from the Water Rights Fund and bill the applicant or petitioner for those costs, collect payments in order to reimburse the Water Rights Fund, and withhold payment for unsatisfactory CEQA work products.

**POLICY ISSUE**

Should the State Water Board authorize the Executive Director contract authority of \$1 million per year to enter into contracts to conduct work on CEQA activities, including the authority to hire consultants, make payments for work from the Water Rights Fund and bill the applicant or petitioner for those costs, collect payments in order to reimburse the Water Rights Fund, and withhold payment for poor performance of CEQA work products?

**FISCAL IMPACT**

None. This contract will grant the Executive Director the contract authority to make and manage payments from the Water Rights Fund and pursue cost recovery in order to ensure the \$1 million budgeted for this purpose remains in the Water Rights Fund.

**REGIONAL WATER BOARD IMPACT**

None

**STAFF RECOMMENDATION**

The State Water Board should authorize the Executive Director contract authority of \$1 million to enter into contracts to conduct work on CEQA activities, including the authority to hire consultants, make payments for work from the Water Rights Fund, and bill the applicant or petitioner for those costs and collect payments in order to reimburse the Water Rights Fund.

State Water Board action on this item will assist the Water Boards in reaching Goal 3 of the Strategic Plan Update: 2008-2012 to increase sustainable local water supplies available for meeting existing and future beneficial uses by 1,725,000 acre-feet per year, in excess of 2002 levels, by 2015, and ensure adequate flows for fish and wildlife habitat. In particular, approval of this item will assist in fulfilling Objective 3.1 to Promote implementation of best management practices, and improve compliance with requirements, for water conservation consistent with the Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and other relevant State and regional efforts.

# DRAFT

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

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT TO HIRE ENVIRONMENTAL CONSULTANTS TO COMPLETE WORK REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR WATER RIGHTS ACTIONS

### WHEREAS:

1. The State Water Resources Control Board (State Water Board) must comply with CEQA when it approves a water right permit or a petition for change of an existing water right, and, as Lead Agency, the State Water Board ordinarily directs water right applicants and petitioners to enter into a Memorandum of Understanding for payment and completion of environmental activities and documentation;
2. California Code of Regulations, title 14, section 15045, subdivision (a) provides legal authority for the CEQA Lead Agency to charge and collect reasonable fees for the cost of completing environmental activities and documentation;
3. The State Water Board has faced delays in processing water right applications and petitions due to disagreements with CEQA consultants, the refusal of water right applicants or petitioners to provide payment to consultants for the completion of environmental activities and documentation required by CEQA, or unsatisfactory work products; and
4. Approval of this contract will allow the Executive Director to compensate consultants from the Water Rights Fund for the completion of environmental activities and documentation, and pursue cost recovery from the water rights applicant and/or petitioner of the payments to reimburse the Water Rights Fund.

### THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Authorizes the Executive Director to execute a contract for an amount not to exceed \$1 million per year for a duration not to exceed five years to administer funds from the Water Rights Fund to hire environmental consultants to complete work required by CEQA, make direct payments for such work from the Water Rights Fund, and pursue cost recovery from the water rights applicant and/or petitioner in order to reimburse the Water Rights Fund.

### 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 January 18, 2011.

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Jeanine Townsend  
Clerk to the Board