

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
SEPTEMBER 19, 2011**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING DESIGNATED STAFF TO ENTER INTO AGREEMENTS FOR OUTSIDE LEGAL SERVICES WHEN THE ATTORNEY GENERAL AUTHORIZES THE STATE WATER RESOURCES CONTROL BOARD OR A REGIONAL WATER QUALITY CONTROL BOARD TO HIRE OUTSIDE COUNSEL

DISCUSSION

The State Water Resources Control Board (State Water Board) periodically retains outside counsel to represent the water boards in judicial proceedings. Pursuant to the Water Code and the Government Code, the Attorney General must provide written consent if the outside counsel is retained to appear in a judicial proceeding. In complex and expensive litigation, the State Water Board also receives budget augmentations to cover the costs of outside counsel. The State Water Board retains outside counsel to represent the water boards, but the counsel may also represent other state agencies or the State of California.

Under the existing delegation resolutions the Executive Director, Chief Deputy Director, or the Chief of the Division of Administrative Services (now Deputy Director) may contract for the outside legal services (like any other contract), provided the amount of the contract is less than \$500,000. While the \$500,000 contract amount may make sense in certain circumstances, staff believes it to be unnecessary in the legal services context. First, any contract in excess of \$500,000 would have already been budgeted for through the state's budgetary process. As a result, Board members would already be aware of the need for the contract and its budgetary implications. Second, the Attorney General would have already approved retaining outside counsel, so the need for outside counsel would have been vetted by a responsible, independent agency. Third, discussing the amount of the contract in a public meeting may provide opposing counsel an unfair advantage by exposing the board's specific, anticipated costs for outside counsel.

The proposed resolution utilizes the existing delegation authority, but authorizes a narrow class of legal services contract to exceed the \$500,000 delegation threshold. Specifically, the proposed resolution authorizes the specified staff to enter into legal services contracts if: (i) the amount is within the Water Board's budget authority for external legal services (which includes both the Attorney General's Office and outside counsel); and (ii) the Attorney General has provided written consent for the Water Boards to retain outside counsel.

In addition, the proposed resolution contains a clause ratifying contract amendments that otherwise comply with the new resolution. The Office of Chief Counsel has proposed this additional provision to streamline the processing of a contract amendment that while not final when the resolution was proposed is nonetheless anticipated to be final before the State Water Board acts on the proposed resolution.

POLICY ISSUE

Should the Board authorize the specified staff to enter into legal services contracts, regardless of amount, provided the contact is within the State Water Board's budgeted resources for external legal services and the consent of the Attorney General has been obtained?

FISCAL IMPACT

The contracts authorized will be within existing budgetary authority, or will be within amounts subsequently authorized by the Legislature.

REGIONAL BOARD IMPACT

N/A

STAFF RECOMMENDATION

Adopt the proposed resolution.

This item does not directly support any of the Strategic Plan goals. However, State Water Board action on this item will assist the Water Boards in reaching Goals 1 and 2 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030 and improve and protect groundwater quality in high-use basins by 2030. In particular, approval of this item will assist in streamlining the process of defending water board regulatory actions designed to protect and restore surface and ground waters generally.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

AUTHORIZING DESIGNATED STAFF TO ENTER INTO AGREEMENTS FOR OUTSIDE LEGAL SERVICES WHEN THE ATTORNEY GENERAL AUTHORIZES THE STATE WATER RESOURCES CONTROL BOARD OR A REGIONAL WATER QUALITY CONTROL BOARD TO HIRE OUTSIDE COUNSEL

WHEREAS:

1. The Attorney General's Office customarily represents the State Water Resources Control Board and the California Regional Water Quality Control Boards (collectively, Water Boards) in judicial proceedings.
2. The Water Boards periodically retain the services of outside counsel as authorized by Water Code section 186, including obtaining the consent of the Attorney General pursuant to Government Code section 11040 to employ outside counsel to appear in a judicial proceeding.
3. The State Water Board's Office of Chief Counsel makes the final decision as to outside counsel to retain and manages the Water Boards' contracts for outside counsel.
4. Existing legal services contracts have been entered under delegated authority pursuant to State Water Board [Resolution 2002-0105](#), Resolved Paragraphs 2-3, which delegate to the Executive Director, the Chief Deputy Director, or the Chief of the Division of Administrative Services the authority to execute contracts of \$500,000 or less.
5. From time to time, the Water Boards receive budgetary authority to defend judicial proceedings against the Water Boards, as well as other state agencies and the State of California, that requires the services of outside counsel and that exceeds the \$500,000 threshold in State Water Board Resolution 2002-0105.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Executive Director, the Chief Deputy Director, or the Chief (now known as the Deputy Director) of the Division of Administrative Services to enter into agreements for outside legal services in a judicial proceeding, regardless of amount, provided (i) the amount is within the Water Board's budget authority for external legal services (which includes both the Attorney General's Office and outside counsel); and (ii) the Attorney General has provided written consent for the Water Boards to retain outside counsel;
2. Directs that any authority conferred by the authorization contained in paragraph 1 otherwise conform to the authority delegated by Resolution 2002-0105 or a successor delegation resolution.

D R A F T

3. Ratifies amendments made to existing legal services contracts that satisfy the conditions of paragraph 1.

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 September 19, 2011.

Jeanine Townsend
Clerk to the Board