

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
MARCH 4, 2014**

ITEM 6

SUBJECT

CONSIDERATION OF TWO RESOLUTIONS AMENDING DELEGATIONS OF AUTHORITY TO EXECUTE AGREEMENTS AND AMENDMENTS FOR THE UNDERGROUND STORAGE TANK PETROLEUM CONTAMINATION ORPHAN SITE CLEANUP FUND (ORPHAN SITE CLEANUP FUND) AND THE REPLACING, REMOVING OR UPGRADING UNDERGROUND STORAGE TANKS (RUST) GRANT AND LOAN PROGRAMS

DISCUSSION

1) [State Water Board Resolution 2010-0001](#) adopts the Priority List for the Orphan Site Cleanup Fund. Resolution 2010-0001 also authorizes the Deputy Director of the Division of Financial Assistance (DFA) to enter into Orphan Site Cleanup Fund grant agreements and any amendments to those grant agreements with eligible Orphan Site Cleanup Fund applicants. The Deputy Director of the Division of Administrative Services (DAS) executes Orphan Site Cleanup Fund grant agreements and any amendments to those grant agreements that have been approved by the Deputy Director of DFA. For efficient administration of the Orphan Site Cleanup Fund program, the proposed resolution revises the delegation in Resolution 2010-0001 to authorize the Deputy Director of the Division of Financial Assistance to: 1) approve or deny Orphan Site Cleanup Fund grant commitments; 2) amend the Priority List for the Orphan Site Cleanup Fund; 3) execute Orphan Site Cleanup Fund grant agreements and grant agreement amendments; and 4) with the concurrence of the Chief Counsel, refer any cost recovery action to the Attorney General to recover Orphan Site Cleanup Fund grant moneys paid but to which the grantee is not entitled. To the extent that the proposed resolution is inconsistent with Resolution 2010-0001, the proposed resolution supersedes Resolution 2010-0001.

2) [State Water Board Resolution 2004-0074](#) delegates authority to the Executive Director, the Chief Deputy Director, or the Deputy Director of the DFA to approve or deny RUST program loan agreements and grant agreements. [Resolution 2002-0074](#) also delegates authority to the Executive Director, the Chief Deputy Director, or the Deputy Director of the DAS to execute RUST program loan agreements, grants agreements, and any amendments to loan or grant agreements. For efficient administration of the RUST program, the proposed resolution revises the delegation to authorize the Deputy Director of the DFA to: 1) approve or deny RUST program loan agreements and grant agreements and to do all things necessary and convenient to implement such agreements; 2) execute RUST program loan agreements, grant agreements, and amendments to loans and grants; and 3) with the concurrence of the Chief Counsel, refer any cost recovery action to the Attorney General to recover defaulted RUST loan moneys due to the State Water Board or to recover RUST grant moneys paid but to which the grantee is not entitled. The proposed resolution also delegates to the Executive Director the authority to make a final determination of any dispute arising under or relating to the performance of any RUST loan agreements and grant agreements. The proposed resolution will supersede and rescind Resolution 2004-0074.

POLICY ISSUE

Should the State Water Board adopt the proposed resolutions revising the delegations for the Orphan Site Cleanup Fund and RUST grant and loan programs?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed resolutions.

State Water Board action on this item will assist the Water Boards in reaching Goal 2 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030.
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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

DELEGATION OF AUTHORITY TO APPROVE UNDERGROUND STORAGE TANK PETROLEUM CONTAMINATION ORPHAN SITE CLEANUP FUND (ORPHAN SITE CLEANUP FUND) GRANTS, TO AMEND THE ORPHAN SITE CLEANUP FUND PRIORITY LIST, TO EXECUTE GRANT AGREEMENTS AND AMENDMENTS FROM THE ORPHAN SITE CLEANUP FUND, AND TO REFER ACTIONS TO THE ATTORNEY GENERAL TO RECOVER MONEYS DUE TO THE ORPHAN SITE CLEANUP FUND

WHEREAS:

1. Section 25299.50.2 of Chapter 6.75 of Division 20 of the Health and Safety Code establishes the Orphan Site Cleanup Fund and authorizes the State Water Resources Control Board (State Water Board) to administer the Orphan Site Cleanup Fund to conduct a grant program to assist eligible applicants with the cost of response actions to remediate the harm caused by petroleum contamination at sites that meet specified conditions;
2. To implement Health and Safety Code section 25299.50.2, the State Water Board adopted regulations. These regulations became effective on October 16, 2009, and are contained in title 23 of the California Code of Regulations, division 3, chapter 18, article 7 (Orphan Site Cleanup Fund regulations);
3. The State Water Board is authorized to approve Orphan Site Cleanup Fund grants for amounts up to \$1,500,000;
4. Section 2814.29 of the Orphan Site Cleanup Fund regulations provides that within 60 days of receipt of a complete Orphan Site Cleanup Fund application, the State Water Board will review the application for eligibility. If the applicant is eligible, the State Water Board will issue a Notice of Eligibility and place the application on the Priority List. After that, the State Water Board and the applicant shall enter into a grant agreement for Orphan Site Cleanup Fund funding (Orphan Site Cleanup Fund regulations, § 2814.30);
5. Section 2814.27 of the Orphan Site Cleanup Fund regulations governs the priority ranking of Orphan Site Cleanup Fund applications;
6. [Resolution 2010-0001](#) established the Orphan Site Cleanup Fund Priority List in accordance with Section 2814.27 of the Orphan Site Cleanup Fund regulations. The Orphan Site Cleanup Fund Priority List was last amended on January 27, 2014;
7. For efficient administration of the Orphan Site Cleanup Fund, it is appropriate and desirable to delegate to the Deputy Director of the Division of Financial Assistance the authority to approve or deny Orphan Site Cleanup Fund grants and to place approved applications on the Orphan Site Cleanup Fund Priority List. It likewise is appropriate and desirable to delegate to the Deputy Director of the Division of Financial Assistance the authority to execute grant agreements and amendments with approved Orphan Site Cleanup Fund recipients; and

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8. The State Water Board has authority to pursue any cost recovery action or any other collection process to recover Orphan Site Cleanup Fund grant moneys paid but to which the grantee is not entitled, including, but not limited to, referring such matters to the California Attorney General. It is desirable to delegate to designated staff the authority to refer any such matter to the California Attorney General.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division of Financial Assistance, or designee, to approve or deny, consistent with statutory and regulatory requirements, grant commitments up to \$1,500,000 for eligible applicants to the Orphan Site Cleanup Fund;
2. Authorizes the Deputy Director of the Division of Financial Assistance, or designee, to amend the Priority List for the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, consistent with statutory and regulatory requirements;
3. Authorizes the Deputy Director of the Division of Financial Assistance, or designee, to execute, for and on behalf of the State Water Board, grant agreements and amendments to disburse funds for the Orphan Site Cleanup Fund for approved grants;
4. The State Water Board authorizes the Deputy Director of the DFA, with the concurrence of the Chief Counsel, to refer any cost recovery action to the Attorney General to recover Orphan Site Cleanup Fund grant moneys paid but to which the grantee is not entitled; and
5. To the extent this resolution is inconsistent with Resolution 2010-0001, this resolution supersedes Resolution 2010-0001.

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 March 4, 2014.

Jeanine Townsend
Clerk to the Board

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

DELEGATION OF AUTHORITY TO APPROVE REPLACING, REMOVING , OR UPGRADING UNDERGROUND STORAGE TANKS (RUST) LOANS AND GRANTS AND TO EXECUTE LOAN AGREEMENTS, GRANT AGREEMENTS, AND AMENDMENTS TO DISBURSE LOAN AND GRANT FUNDS FROM THE PETROLEUM UNDERGROUND STORAGE TANK FINANCING ACCOUNT (PUSTFA) AND TO REFER ACTIONS TO THE ATTORNEY GENERAL TO RECOVER MONEYS DUE TO THE PUSTFA

WHEREAS:

1. Chapter 6.76 of Division 20 of the Health and Safety Code establishes the PUSTFA and authorizes the State Water Resources Control Board (State Water Board) to administer the account to conduct the RUST program to provide low-interest loans and grants to small businesses to replace, remove, and repair underground storage tanks to meet required standards;
2. To implement Chapter 6.76, the State Water Board adopted regulations. These regulations became effective on December 3, 2004, and are contained in title 23 of the California Code of Regulations, division 3, chapter 24, article 2 (RUST Regulations);
3. Chapter 6.76 and the RUST Regulations require the State Water Board to approve RUST program loans and grants only for applicants who meet specified eligibility requirements, for specified purposes, upon certain specified terms, and with specific limitations;
4. The State Water Board is authorized to approve RUST program loans for amounts between \$10,000 and \$750,000, and to approve RUST program grants for amounts between \$3,000 and \$50,000;
5. Approval of RUST program loans and grants is routine and does not raise significant issues requiring consideration at State Water Board meetings;
6. For efficient administration of the RUST program, it is appropriate and desirable to delegate to the Deputy Director of the Division of Financial Assistance (DFA) the authority to approve or deny RUST program loans and grants. It likewise is appropriate and desirable to delegate to the Deputy Director of the DFA the authority to execute loan agreements, grant agreements, and amendments with approved recipients of RUST program loans and grants; and
7. The State Water Board has authority to pursue any cost recovery action or any other collection process to recover defaulted RUST loan moneys due to the State Water Board or to recover RUST grant moneys paid but to which the grantee is not entitled, including, but not limited to, referring such matter to the California Attorney General. It is desirable to delegate to designated staff the authority to refer any such matter to the California Attorney General.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. The State Water Board authorizes the Deputy Director of the DFA, or designee, to approve or deny, consistent with statutory and regulatory requirements, loan agreements up to \$750,000 and grant agreements up to \$50,000 for eligible applicants to the RUST program, and to do all things necessary and convenient to implement such agreements;
2. The State Water Board authorizes the Deputy Director of the DFA, or designee, to execute, for and on behalf of the State Water Board, loan agreements, grant agreements, and amendments to disburse funds for the PUSTFA for approved RUST program loans and grants;
3. The State Water Board authorizes the Deputy Director of the DFA, with the concurrence of the Chief Counsel, to refer any cost recovery action to the Attorney General to recover defaulted RUST loan moneys due to the State Water Board or to recover RUST grant moneys paid but to which the grantee is not entitled;
4. Except as otherwise specifically provided by the State Water Board, the Executive Director, or the Executive Director's designee, shall be the duly authorized representative of the State Water Board for the purpose of making a final determination of any dispute arising under or relating to the performance of any loan agreements and grant agreements to which the State Water Board is a party;
5. The Executive Director and the Deputy Director of the DFA are directed in exercising the authority vested in them by this resolution, without restricting the authority specified, to bring to the attention of the Board Members at a board meeting or by other appropriate communication, any matters that are of a unique, controversial, or unusual nature or that appear to depart from the policies of the State Water Board; and
6. This resolution supersedes and rescinds [Resolution 2004-0074](#).

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 March 4, 2014.

Jeanine Townsend
Clerk to the Board