

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
MARCH 7, 2017**

ITEM 2

SUBJECT

CONSIDERATION OF A RESOLUTION DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO APPROVE OR DENY THE EXPENDITURE OF FUNDS FROM THE EMERGENCY, ABANDONED, AND RECALCITRANT (EAR) ACCOUNT; TO EXECUTE GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS FOR THE EXPENDITURE OF EAR ACCOUNT FUNDS; AND TO PERFORM OTHER ACTIONS NECESSARY TO ADMINISTER THE EAR ACCOUNT PROGRAM

DISCUSSION

Subdivisions (c), (e), and (h) of section 25299.51 of the Health and Safety Code authorize the State Water Resources Control Board (State Water Board) to expend funds from the Underground Storage Tank Cleanup Fund (USTCF) for corrective action undertaken or contracted for or by the State Water Board, a Regional Water Quality Control Board (Regional Water Board), or a certified Local Oversight Program (LOP) agency at sites that have had an unauthorized release of petroleum from a UST, if one or more of the following conditions applies:

- a. prompt action is required to protect human health, safety, or the environment (emergency site);
- b. no responsible party (RP) has been identified or located (abandoned site); or
- c. the RP is either unable or unwilling to take the required corrective action in response to a Regional Water Board or LOP agency corrective action order or directive (recalcitrant site).

The State Water Board has established the EAR Account as a subaccount within the USTCF for the above purposes, and has historically designated \$5 million from the USTCF annual appropriation for the EAR Account. In [Resolution No. 92-83](#), the State Water Board delegated authority for approving EAR Account funds up to \$100,000 per occurrence for emergency UST cleanup projects. In [Resolution No. 99-049](#), the State Water Board delegated authority to take actions on several matters, including to refer actions to the Attorney General to recover overpayments from the USTCF, recover corrective action costs expended from the EAR Account, and prosecute false claims submitted to the USTCF.

In previous years, the State Water Board approved the expenditure of EAR Account funds by resolutions adopting Annual Site Lists and, when necessary, adopting a resolution to approve funding for individual sites. To improve efficiency, it is desirable to delegate authority to the Deputy Director of the Division, or designee, to approve or deny EAR Account expenditures for Underground Storage Tank (UST) sites on an ongoing basis, consistent with applicable law and available funding, and to perform other actions necessary to administer the EAR Account. It is also desirable to delegate to the Deputy Director of the Division, or designee, the authority to execute grant agreements, contracts, and amendments for the expenditure of EAR Account

funds, or to request the Department of General Services (DGS) to enter into and administer EAR Account contracts on behalf of the State Water Board or a Regional Water Board.

To improve transparency, the Division will periodically report to the State Water Board members on the funding and status of EAR Account sites.

This resolution is not intended to supersede, limit, or modify the authorities delegated in State Water Board [Resolution No. 92-83](#) and [Resolution No. 99-049](#).

POLICY ISSUE

Should the State Water Board:

1. Authorize the Deputy Director of the Division, or designee, to approve or deny requests for funding and expenditures from the EAR Account, consistent with applicable law, in amounts that cumulatively do not exceed \$5 million per fiscal year;
2. Authorize the Deputy Director of the Division, or designee, to negotiate and execute, for and on behalf of the State Water Board, grant agreements, contracts, and amendments to disburse approved EAR Account expenditures;
3. Authorize the Deputy Director of the Division, or designee, to request DGS to enter into contracts on behalf of the State Water Board or a Regional Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of approved EAR Account funds;
4. Authorize the Deputy Director of the Division, or designee, to perform other actions necessary to administer the EAR Account; and
5. Request the Division to periodically report to the State Water Board members on the funding and status of EAR Account sites?

FISCAL IMPACT

Funding for the EAR Account is available in annual USTCF appropriations. Adoption of the resolution does not impose any additional fiscal impacts.

REGIONAL BOARD IMPACT

Yes. Working closely with State Water Board and, as applicable, DGS staff, Regional Water Boards will continue to be able to nominate sites within their region and to propose scopes of work for corrective action at Regional Water Board-regulated sites. Some stagnant Regional Water Board-regulated petroleum UST cases are expected to proceed toward resolution. EAR Account funding of projects is expected to lead to more site cleanups, a reduction in the number of inactive cleanup cases, and more sites ready for case closure.

HUMAN RIGHT TO WATER

The activities contemplated under this proposed resolution are consistent with the established policy of the state recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes (human right to water; Water Code section 106.3). The activities contemplated under this proposed resolution are also consistent with [Resolution No. 2016-0010](#), in which the State Water Board adopted the human right to water as a core value and top priority. As directed by the State Water Board in Resolution 2016-0010, staff has determined that the EAR Account funding of projects under this

proposed resolution will support the human right to water by providing funds to abate emergency situations or to cleanup abandoned or recalcitrant sites that pose threats to human health, safety, and the environment, as a result of a petroleum release from a UST.

STAFF RECOMMENDATION

That the State Water Board adopt the proposed resolution delegating authority to the Deputy Director of the Division, or designee, to approve the expenditure of funds from the EAR Account, to approve EAR Account projects and grants, to execute EAR Account grant agreements, contracts, and amendments, to refer actions to the Attorney General to recover moneys due to the EAR Account, and to perform other actions necessary to administer the EAR Account.

State Water Board action on this item will assist the State Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes. It will also assist the State Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012, to improve transparency and accountability by ensuring that State Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, by enhancing and improving accessibility of data and information, and by encouraging the creation of organizations or cooperative agreements that advance this goal, such as establishment of a statewide water data institute. Finally, action on this item will assist the State Water Boards in reaching Goal 7 of the Strategic Plan Update: 2008-2012, to ensure that the State Water Boards have access to information and expertise, including employees with appropriate knowledge and skills, needed to effectively and efficiently carry out the State Water Boards' mission.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO APPROVE OR DENY THE EXPENDITURE OF FUNDS FROM THE EMERGENCY, ABANDONED, AND RECALCITRANT (EAR) ACCOUNT; TO EXECUTE GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS FOR THE EXPENDITURE OF EAR ACCOUNT FUNDS; AND TO PERFORM OTHER ACTIONS NECESSARY TO ADMINISTER THE EAR ACCOUNT PROGRAM

WHEREAS:

1. Subdivisions (c), (e), and (h) of section 25299.51 of the Health and Safety Code authorize the State Water Resources Control Board (State Water Board) to expend funds from the Underground Storage Tank Cleanup Fund (USTCF) for corrective action undertaken or contracted for by the State Water Board, a Regional Water Quality Control Board (Regional Water Board), or a certified Local Oversight Program (LOP) agency at sites that have had an unauthorized release of petroleum from a Underground Storage Tank (UST), if one or more of the following conditions applies:
 - a. prompt action is required to protect human health, safety, or the environment (emergency site);
 - b. no responsible party (RP) has been identified or located (abandoned site); and/or
 - c. the RP is either unable or unwilling to take the required corrective action in response to a Regional Water Board or LOP agency corrective action order or directive (recalcitrant site).
2. The State Water Board has established the EAR Account as a subaccount within the USTCF for the above purposes, and has historically designated \$5 million from the USTCF annual appropriation for the EAR Account;
3. In previous years, the State Water Board approved the expenditure of EAR Account funds by resolutions adopting Annual Site Lists and, when necessary, adopting a resolution to approve funding for individual sites;
4. To improve efficiency, it is desirable to delegate authority to the Deputy Director of the Division, or designee, to approve or deny EAR Account expenditures for UST sites on an ongoing basis, consistent with applicable law and available funding, and to perform other actions necessary to administer the EAR Account. It is also desirable to delegate to the Deputy Director of the Division, or designee, the authority to execute grant agreements, contracts, and amendments for the expenditure of EAR Account funds, or to request the Department of General Services (DGS) to enter into and administer EAR Account contracts on behalf of the State Water Board or a Regional Water Board;
5. To improve transparency, the Division will periodically report to the State Water Board members on the funding and status of the EAR Account sites; and

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6. This resolution is not intended to supersede, limit, or modify State Water Board [Resolution No. 92-83](#), which delegates authority for approving EAR Account Funds up to \$100,000 per occurrence for emergency UST cleanup projects, and State Water Board [Resolution No. 99-049](#), which delegates authority for referring certain actions related to the USTCF and EAR Account to the Attorney General.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division, or designee, to approve or deny requests for funding and expenditures from the EAR Account, consistent with applicable law, in amounts that cumulatively do not exceed \$5 million per fiscal year;
2. Authorizes the Deputy Director of the Division, or designee, to negotiate and execute, for and on behalf of the State Water Board, grant agreements, contracts, and amendments to disburse approved EAR Account expenditures;
3. Authorizes the Deputy Director of the Division, or designee, to request DGS to enter into contracts on behalf of the State Water Board or a Regional Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of approved EAR Account funds;
4. Authorizes the Deputy Director of the Division, or designee, to perform other actions necessary to administer the EAR Account; and
5. Requests the Division to periodically report to the State Water Board members on the funding and status of EAR Account sites.

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 March 7, 2017.

Jeanine Townsend
Clerk to the Board