

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

ITEM 3

SUBJECT

CONSIDERATION OF A RESOLUTION DELEGATING AUTHORITY TO APPROVE REPLACING, REMOVING, OR UPGRADING UNDERGROUND STORAGE TANKS (RUST) LOANS AND GRANTS, AND TO EXECUTE 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

DISCUSSION

From time to time, the State Water Resources Control Board (State Water Board) delegates certain routine and non-controversial duties to the Executive Director, Deputy Directors, and designees. Under current authority, the Deputy Director for the Division of Financial Assistance (Division), or a designee, is authorized to execute certain financial assistance agreements and amendments for financial assistance programs. The proposed delegation would update the authorities delegated in State Water Board [Resolution No. 2014-0014](#).

Chapter 6.76 of Division 20 of the Health and Safety Code (Chapter 6.76) establishes the PUSTFA and authorizes the State Water Board to administer the PUSTFA to conduct the RUST program to provide low-interest loans and grants to small businesses to replace, remove, and repair underground storage tanks (USTs) to meet required standards. 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). 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.

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 \$70,000, with the exception in specifically identified circumstances, a grant amount up to \$140,000 may be approved for the removal and replacement of a remotely located UST. Approval of RUST program loans and grants is routine and does not raise significant issues requiring consideration at State Water Board meetings.

State Water Board Resolution No. 2014-0014 delegates authority to the Deputy Director of the Division, or designee, to approve or deny RUST program 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. Resolution No. 2014-0014 also delegates authority to the Deputy Director, or designee, to execute, for and on behalf of the State Water Board, loan agreements, grant agreements, and amendments to disburse funds from the PUSTFA for approved RUST grants and loans, and to, with the concurrence of the Chief Counsel, to refer any cost recovery action to the State of California Attorney General (Attorney General) to recover RUST grant moneys paid but to which the grantee is not entitled.

The proposed resolution would replace the delegations in Resolution No. 2104-0014 in order to be consistent with the increased grant amounts that currently are authorized by Chapter 6.76, and would include future adjustments in grant or loan amounts that may be enacted by the Legislature of the State of California.

For efficient administration of the RUST program, the proposed resolution revises the delegation to authorize the Deputy Director of the Division to: 1) approve or deny RUST program loan agreements and grant agreements in amounts authorized by the statute, 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 State Water Board's Office of 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 ratifies RUST grant agreements executed by the Deputy Director of the Division after September 25, 2014, for amounts between \$50,000 and \$140,000, and 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 No. 2014-0014.

POLICY ISSUE

Should the State Water Board approve the resolution to adopt an updated delegation for the RUST grant and loan programs?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed resolution.

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. State Water Board action on this item will also assist the State Water Board 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.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

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 (Chapter 6.76) 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. Chapter 6.76, as currently enacted, authorizes the State Water Board 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 \$140,000; in 2014 the Legislature of the State of California (Legislature) amended Chapter 6.76 to adjust the grant amounts available to eligible applicants, and in the future the Legislature may make additional adjustments to loan or grant amounts available under Chapter 6.76;
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 (Division) 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 Division 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 State of California Attorney General (Attorney General). It is desirable to delegate to designated staff the authority to refer any such matter to the Attorney General.

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THEREFORE BE IT RESOLVED THAT:

1. The State Water Board authorizes the Deputy Director of the Division, or designee, to approve or deny, consistent with statutory and regulatory requirements, loan agreements and grant agreements for eligible applicants to the RUST program in amounts authorized by Chapter 6.76, including subsequent adjustments to the amounts authorized by Chapter 6.76 should that chapter be amended by the Legislature, and to do all things necessary and convenient to implement such agreements;
2. The State Water Board authorizes the Deputy Director of the Division, or designee, to execute, for and on behalf of the State Water Board, loan agreements, grant agreements, and amendments to disburse funds from the PUSTFA for approved RUST program loans and grants;
3. The State Water Board ratifies grant agreements and amendments executed by the Deputy Director of the Division, or designee, for amounts that exceed \$50,000 but do not exceed \$140,000, and that were executed on or after September 25, 2014.
4. The State Water Board authorizes the Deputy Director of the Division, with the concurrence of the State Water Board's Office 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;
5. 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;
6. The Executive Director and the Deputy Director of the Division 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
7. This resolution supersedes and rescinds [Resolution No. 2014-0014](#).

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 7, 2017.

Jeanine Townsend
Clerk to the Board