

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF RESEARCH, PLANNING, AND PERFORMANCE
MARCH 15, 2016**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE, ON BEHALF OF CALEPA AND ALL OTHER AGENCY BOARDS, DEPARTMENTS, AND OFFICE, TO ENTER INTO A CONTRACT WITH THE REGENTS OF UC BERKELEY FOR MANDATED SCIENTIFIC PEER REVIEW AND OTHER EXPERT REVIEW AND CURRICULUM REVIEW SERVICES

DISCUSSION

State law (Health and Safety Code Section 57004, 115365, et al.) sets minimum requirements for external scientific peer review. Health and Safety Code Section 57004 requires all California Environmental Protection Agency (CalEPA) boards, departments, and office to submit for external scientific peer review the “scientific basis” and “scientific portions” of proposed rules. For rules subject to this requirement, the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based, and the supporting scientific data, studies, and other appropriate materials, must be submitted for peer review. Under the law, the scientific basis and scientific portions of any proposed regulations, water quality control plan amendments, and State policies for water quality control must undergo peer review prior to final action. The law further specifies that CalEPA, or a board, department, or office within CalEPA, must enter into an agreement with the National Academy of Sciences, the University of California (UC), the California State University, or any similar scientific institution of higher learning to conduct external scientific peer review of the scientific basis for any rule proposed.

The State Water Board currently manages an Interagency Agreement, on behalf of CalEPA and its constituent boards, departments, and office, with the Regents of the UC (Berkeley) for the conduct of scientific peer review in accordance Health and Safety Code Section 57004. In addition to providing scientific reviews for proposed rules, the existing Interagency Agreement provides for expert scientific and/or economic review of other work products, and for CalEPA curriculum review. The existing Interagency Agreement is set to expire on June 30, 2016. The proposed Resolution seeks authority to enter into a new Interagency Agreement to allow UC Berkeley to continue providing the external scientific peer review services. The proposed Resolution would authorize the Executive Director or designee to enter into a new 5-year Interagency Agreement with the Regents of the UC (Berkeley) to ensure that CalEPA and BDO peer reviews will be performed by qualified reviewers in a manner consistent with State laws. The total cost to CalEPA and all agency boards, departments, and office is not to exceed \$3,500,000. The Water Boards’ share of these costs will not exceed a total of \$1,325,000 over the 5-year term.

POLICY ISSUE

Authority is requested to enter into a contract for peer review services, including services mandated by Health and Safety Code Section 57004, 115365, et al. If the Resolution is not approved, the State and Regional Water Boards may not be able to adopt proposed rules as defined under the law.

FISCAL IMPACT

This Resolution will authorize up to \$3,500,000 dollars over five years. Each participating BDO will contribute funds to cover their own peer review costs, along with an apportioned cost of UC Berkeley personnel required to propose and select peer reviewers. The State Water Board's portion of the total funding will not exceed \$1,325,000 over five years.

REGIONAL BOARD IMPACT

If the Resolution is not adopted, the Regional Water Boards may not be able to adopt proposed rules as defined under State law (Health and Safety Code Section 57004).

STAFF RECOMMENDATION

That the State Water Board adopt the Resolution to authorize the Executive Director or designee to enter into a new Interagency Agreement with the Regents of the University of CA, Berkeley for external scientific peer review and related services.

State Water Board action on this item will assist the Water Boards in reaching the following goals of the Strategic Plan Update: 2008-2012: Goal 5 - Enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures; and Goal 5 - Improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved. This action is also consistent with the Water Boards' Strategic Plan principle for sound science in decision-making.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE, ON BEHALF OF CALEPA AND ALL OTHER AGENCY BOARDS, DEPARTMENTS, AND OFFICE, TO ENTER INTO A CONTRACT WITH THE REGENTS OF UC BERKELEY FOR MANDATED SCIENTIFIC PEER REVIEW AND OTHER EXPERT REVIEW AND CURRICULUM REVIEW SERVICES

WHEREAS:

1. State law (Health and Safety Code Section 57004, 115365, et al.) sets minimum requirements for external scientific peer review. Notably, Health and Safety Code Section 57004 requires all California Environmental Protection Agency (CalEPA) boards, departments, or office to submit for external scientific peer review the “scientific basis” and “scientific portions” of proposed rules, consistent with the statutory definition of these two terms. For rules subject to this requirement, the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, must be submitted for peer review. The law further specifies that the agency, or a board, department, or office within the agency, must enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning to conduct external scientific peer review of the scientific basis for any rule proposed.
2. In addition to the work products for which external scientific peer review is statutorily required (as noted above), CalEPA may seek peer review of the scientific/economic basis and scientific/economic portions of other work products—for example, major and/or controversial new initiatives that are not otherwise subject to statutory peer review requirements—as it deems prudent;
3. The State Water Resources Control Board (State Water Board) previously contracted mandated external expert peer review services with the Regents of UC Berkeley and have determined that UC Berkeley remains the best resource for these services;
4. The proposed FY 2016-21 Interagency Agreement with the Regents of the University of California, and future amendments will continue to ensure that mandated scientific peer review and other types of reviews will be performed by qualified reviewers in a manner consistent with State law.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Authorizes the Executive Director or designee to enter into new and amended interagency agreements and contracts with the Regents of the University of California, Berkeley using up to \$1,325,000 in Water Boards’ funds. In addition to the \$1,325,000 authorized for the Water Boards, the Executive Director or designee is authorized to include CalEPA, Air Resources Board, Department of Toxic Substances Control, Department of Pesticide Regulation, Department of Resources Recycling and Recovery (CalRecycle), and Office of Health Hazard

D R A F T

Assessment funding in the amount of up to \$2,175,000 for a total contract amount of up to \$3,500,000 to contract for peer review services currently and in future years. This authorization is for a 5-year period beginning with the adoption of this resolution.

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 15, 2016.

Jeanine Townsend
Clerk to the Board