

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
APRIL 21, 2009**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT FUNDS INTO THE CLEANUP AND ABATEMENT ACCOUNT (CAA) AND TO SET ASIDE AND APPROVE THESE FUNDS FOR A SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

DISCUSSION

The CAA was established by Water Code §§ 13440-13443 and is administered through the State Water Resources Control Board's (State Water Board) Division of Financial Assistance. The CAA is funded through court judgments, administrative civil liabilities and other specified sources that are deposited into the account. The State Water Board has discretion to approve the expenditure of these funds if the requirements in Water Code § 13442 or 13443 are met, subject to the limitations in Water Code § 13441.

In lieu of administrative penalties, the Regional Water Quality Control Boards (Regional Water Boards) may address water quality protection needs through the use of SEPs. This resolution would allow the Executive Director to accept settlement funds into the CAA, set aside those funds, and allocate those funds towards completion of an SEP as outlined in a settlement agreement between a Regional Water Board and discharger. Authorizing the Executive Director to accept funds for SEPs into the CAA will expedite the assurances that are needed for parties to finalize settlement agreements that include SEPs. Use of the CAA in this manner is preferable to having dischargers maintain private escrow accounts that would hold and administer settlement funds for an SEP, as the Regional Water Boards would have little control or oversight over these private accounts.

This resolution is consistent with the delegation authority granted to the Executive Director in [Resolution 2002-0104](#). Notwithstanding [Resolution 2002-0105](#), which limits the authority of the Executive Director to enter into agreements which do not exceed \$500,000 or are greater than three years in duration, this resolution authorizes the Executive Director to agree to accept, set aside and allocate funds within the CAA for SEPs.

This resolution is consistent with the Policy on Supplemental Environmental Projects adopted by the State Water Board on February 3, 2009.

POLICY ISSUE

Should the State Water Board:

Approve the resolution granting authority to the Executive Director to approve the use of the CAA funds for SEP projects?

FISCAL IMPACT

None

REGIONAL WATER BOARD IMPACT

Yes, all Regional Water Boards.

STAFF RECOMMENDATION

The State Water Board should:

Approve the proposed resolution authorizing the Executive Director to accept, set aside, and approve the use of funds within the CAA for SEP projects.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT FUNDS INTO THE CLEANUP AND ABATEMENT ACCOUNT (CAA) AND TO SET ASIDE AND APPROVE THESE FUNDS FOR A SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

WHEREAS:

1. In lieu of administrative penalties, Regional Water Quality Control Boards (Regional Water Boards) may address water quality protection needs through the use of SEPs;
2. When a discharger agrees to complete an SEP pursuant to a settlement agreement with a Regional Water Board, the State Water Resources Control Board (State Water Board) and the Regional Water Boards benefit from maintaining settlement funds in a centralized account;
3. Authorizing the Executive Director to accept and set aside SEP funds within the CAA expedites the negotiation and resolution of settlements between Regional Water Boards and dischargers;
4. SEP funds accepted into the CAA must be used for purposes consistent with Water Code §§ 13440-13443;
5. Although it appears that the actions discussed in this resolution are covered under [Resolution 2002-0104](#), which delegates to the Executive Director the authority to conduct the activities of the State Water Board subject to specified conditions, parties to settlement agreements that include SEPs may want more explicit assurance that such approval actions are within the Executive Director's authority; and
6. To the extent it is applicable, section 2.2 of [Resolution 2002-0105](#), which limits the authority of the Executive Director to enter into agreements that exceed \$500,000 or are greater than three years in duration, does not apply to the actions authorized in this resolution.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Executive Director to accept, set aside, and approve the use of the CAA funds for SEP projects that are consistent with the purposes for which the CAA was established;
2. In exercising the authority herein granted, directs the Executive Director, without restricting the authority specified, to bring the following matters to the attention of the members of the State Water Board by workshop or by other appropriate communication:
 - 2.1 Matters of a unique or unusual nature;
 - 2.2 Matters that appear to depart from the policies of the Board;
 - 2.3 Matters involving highly significant policy questions;

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- 2.4 Highly controversial matters;
 - 2.5 Matters that involve a substantial risk of litigation;
 - 2.6 Any matter that a Board Member requests be brought to the attention of the Board;
 - 2.7 Any matter that, in the judgment of the Executive Director, should be brought to the attention of the Board; and
3. May revoke in whole or in part any specific or implied authority from the Executive Director.

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 April 21, 2009.

Jeanine Townsend
Clerk to the Board