



**A Pilot Project on the Effectiveness of  
Directly Contracting with Environmental Consultants to  
Prepare Documents  
Required by the California Environmental Quality Act**

**Submitted In Accordance with the Requirements of  
Chapter 718, Statutes of 2010  
(SB 855, Committee on Budget and Fiscal Review)**

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## **Introduction**

Chapter 718, Statutes of 2010 (SB 855, Committee on Budget and Fiscal Review) requires the State Water Resources Control Board (State Water Board) to submit, by July 1, 2013, a report to the Legislature that evaluates the effectiveness of directly contracting with environmental consultants to prepare documents required pursuant to the California Environmental Quality Act (CEQA), and the effectiveness of recovering the costs of preparing those documents from water rights applicants and petitioners (Pilot Project). The bill specifically requires that the report include information on the number and types of documents completed, the effects of directly contracting with environmental consultants on application and petition processing times, staff resources devoted to the direct contracting program, and the effectiveness of obtaining reimbursement from water rights applicants and petitioners.

## **Background**

The State Water Board and Regional Water Quality Control Boards (collectively referred to as "the Water Boards") are responsible for preserving, enhancing and restoring the quality of California's water resources, and ensuring their proper allocation and efficient use for the benefit of present and future generations. Created in 1967, the five-member State Water Board protects water quality by setting statewide policy, coordinating and supporting Regional Water Boards' efforts, and reviewing petitions that contest Regional Water Board actions. The State Water Board also is solely responsible for allocating surface water rights. The joint authority of water allocation and water quality protection enables the State Water Board to provide comprehensive protection for California's waters.

The California Environmental Quality Act (CEQA) requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. State and local agencies must comply with CEQA when they undertake an activity defined by CEQA as a "project." A project is an activity undertaken by a public agency or a private activity which must receive some discretionary approval from a government agency (meaning that the agency has the authority to deny or approve the requested permit) which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. Most proposals for physical development in California are subject to the provisions of CEQA, as are many governmental decisions which do not immediately result in physical development (such as adoption of a general or community plan). Every development project which requires a discretionary governmental approval will require at least some environmental review pursuant to CEQA, unless an exemption applies.

In carrying out its Water Rights Program responsibilities, the State Water Board may be the lead agency under CEQA for activities related to water rights permitting, water quality certification, water quality control planning, and hearings.

Typically, review of projects is initiated by submittal of an application or petition. The State Water Board conducts a preliminary review of the project and establishes baseline conditions. Unless the project qualifies for a CEQA exemption, the State Water Board typically completes an Initial Study to determine if the project may have a significant effect on the environment. Once the Initial Study, if initiated, is complete, the State Water Board may choose to prepare a

negative declaration (ND), a mitigated negative declaration (MND), or an Environmental Impact Report (EIR).

California Code of Regulations, title 14, section 15084 allows state agencies, including the State Water Board, to use the following methods, or combinations of methods for preparing CEQA documents:

- (1) Prepare the draft CEQA document directly with its own staff.
- (2) Contract with another entity, public or private, to prepare the draft CEQA document.
- (3) Accept a draft prepared by the applicant, a consultant retained by the applicant, or any other person.
- (4) Execute a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft CEQA document by an independent contractor.
- (5) Use a previously prepared CEQA document.

Typically, when the State Water Board is the CEQA lead agency for Water Rights Program activities, the State Water Board uses the fourth option, and establishes a three-party Memorandum of Agreement (MOU), between the applicant or petitioner, the consultant, and the State Water Board for preparation of the CEQA document. In this case, the applicant or petitioner typically executes a contract with the consultant outlining the method of funding and payment and the work to be performed under the MOU. However, State Water Board staff direct the consultant's work in preparing the environmental document, including associated analyses and project alternatives, because under CEQA, the environmental document must reflect the State Water Board's independent judgment.

Over the years, State Water Board staff have encountered several problems with using this process. These problems often have delayed the timely development of CEQA documents. At times, State Water Board staff have experienced difficulties with applicants or petitioners stopping or withholding payment to the consultants in situations where the applicant or petitioner disagrees with State Water Board staff's direction to the consultant. This delays the preparation of the CEQA document and confuses the consultant as to whether to take direction from the applicant or State Water Board staff in developing the CEQA documents. In addition, it can be time consuming to develop and execute an MOU between the three parties. In some cases, consultants provide State Water Board staff with unsatisfactory work projects, but nevertheless are paid by the applicant or petitioner. These situations can unnecessarily delay the processing of water right applications and petitions, and water quality certifications.

As a result, the State Water Board decided to implement a pilot project using its authority under current law to charge and collect reasonable fees for the cost of CEQA work from an applicant or petitioner and to directly contract with a consultant for the preparation of the CEQA documents. The State Water Board adopted Resolution No. 2011-0005 which implemented the Pilot Project, delegated the Executive Director the authority to enter into contracts for the Pilot Project, and allowed the funds to be applied to the Pilot Project. Under the Pilot Project, the State Water Board would pay the consultant's invoices from the Water Rights Fund and seek reimbursement directly from the applicant or petitioner.

State Water Board staff subsequently solicited a proposal for the scope of work for the preparation of CEQA documents required under the Pilot Project, which was awarded to Impact Sciences Inc. under contract 11-026-300 with an original term from October 3, 2011, to September 15, 2012. The contract was amended on November 8, 2012, to extend the term of the contract to September 15, 2015, and allow for the development of environmental documents for water quality certification projects under the Water Rights Program, in addition to the development of environmental documents for traditional water right application and petition work.

## **Results**

Initially the State Water Board created the Pilot Project as a voluntary program that would be offered to applicants or petitioners with a new water right application or petition. However, the majority of the State Water Board's water rights applications and petitions are for existing projects which often are exempt from the CEQA requirements or for projects where CEQA document preparation was already underway. As a result, opportunities for utilization of the Pilot Project are limited. As of February 2014, the contract with Impact Sciences, Inc. has been utilized once thus far to develop CEQA documents related to an ongoing project.

State Water Board staff note that while the contract has not been extensively used, the quality of CEQA documents developed by consultants for water right applications and petitions has improved since the implementation of the Pilot Project. It is thought that this may be the result of the knowledge that the State Water Board can proceed with its own contractor.

## **Next Steps**

The amendment of the contract on November 8, 2012, allows three additional years (through September 15, 2015) to assess the feasibility of the Pilot Project, especially as the scope of work has been expanded to include water quality certification projects in the Water Rights Program. The State Water Board staff also will continue to examine new or upcoming projects that could be applied to the Pilot Project with the consent of the applicant or petitioner. There is also the possibility that the State Water Board will use the contract for a project in which the previous environmental documentation was substandard or where unusual delays on the part of the applicant or petitioner have prevented the State Water Board from proceeding with a project. Any such use would be on a case-by-case basis with the consent of the Executive Director.

The State Water Board has received requests from water rights applicants and petitioners for assistance with water rights related activities unrelated to CEQA. To make the best use of the authority granted under the Pilot Project, State Water Board staff also will explore using a portion of the funds for other such authorized cost recovery purposes.

## **Conclusion**

The State Water Board believes that more time should be allowed to evaluate the feasibility of contracting directly with an environmental consultant for the development of CEQA documentation for water development projects in the Division.