

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM**

Meeting Date: January 17, 2012

Resolution of the California Pollution Control Financing Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings

Prepared by: *Doreen Smith*

Summary. Staff is requesting Board approval of a resolution authorizing delegation authority to the Executive Director and Deputy Executive Director of California Pollution Control Financing Authority (CPCFA) for certain routine matters with respect to the Authority's bond program.

AB 1479, chaptered August 4, 2008, allows that, "The authority may, by resolution, delegate to one or more of its members, its executive director, or any other official or employee of the authority any powers and duties that it may deem proper, including, but not limited to, the power to enter into contracts on behalf of the authority."

The resolution recommended today differs from the prior delegation resolution by delegating some additional powers related to refunding actions and also includes other minor wording changes.

Background. From time to time borrowers participating in the Authority's bond program seek Authority consent relating to amendments to the bond documents; removing or replacing participants or agents in the transaction, delivering alternate credit facilities; the sale, encumbrance or transfer of project assets; or a merger or dissolution involving the borrower. Many of the bond document provisions for these transactions require that the Authority *shall* consent as long as certain delineated conditions in the bond documents are met.

In the past, official Board approval was necessary for the Authority to give its consent to many of these transactions. In the interest of streamlining the processes necessary to facilitate these dealings for all parties to the transactions, several authorities (including CPCFA) obtained legislation allowing the authorities to delegate "*any powers and duties that it may deem proper*" to the Executive Director and Deputy Executive Director. Before the legislation passed, the Attorney General's Office had advised that the CPCFA Board did not have the power to delegate these routine matters to the Executive Director. Since January 2009 the Board has been approving the delegation authority for one year terms. The current delegation of authority expires on January 31, 2012.

The purpose of this resolution is to define the various amendments, approvals and actions for which the Executive Director and Deputy Executive Director may give the Authority's consent without obtaining approval of the Board. When consent or approval by the Authority is sought, the resolution delegates to the Executive Director (and Deputy Executive Director upon the Executive Director's written authorization or when the

Agenda Item 4.C.

position of Executive Director is vacant) the power to perform the transactions listed below:

1. Sign and certify resolutions adopted by the Board.
2. Execute and deliver all bond documents previously or hereafter approved by the Board.
3. Execute, amend and deliver certain bond documents.
4. Appoint, consent to, approve, or remove same defined parties (e.g., trustees and paying agents, remarketing agents, etc.).
5. Approve or consent to the delivery of any substitute, alternate or replacement credit enhancement or liquidity facility.
6. Approve or consent to the sale, encumbrance or other transfer of all or a portion of a project.
7. Approve an arrangement of a redemption, prepayment or defeasance of Bonds.
8. Approve or consent to a merger, consolidation, affiliation, dissolution, or the sale of substantially all assets by a participating party.
9. Carry out any ministerial actions contemplated by any bond documents.
10. Waive any provision of any bond documents that is expressly for the benefit of the Authority and has not been assigned by the Authority (e.g., deadlines for delivery of notices, certificates, reports and other items to the Authority).
11. Respond to any audits, investigations, litigation or claim made against the Authority in connection with any bond issue, or any investigation or any bonds by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority, the bondholders, or to achieve the terms of the applicable resolution adopted by the Board.

Recommendation. Staff recommends adoption of a resolution authorizing delegation authority to the Executive Director and Deputy Executive Director of CPCFA for certain routine matters as described above with respect to the Authority's bond program. This resolution delegation authority will be in force through January 31, 2013.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING
CERTAIN ACTIONS RELATED TO BOND FINANCINGS**

January 17, 2012

WHEREAS, the California Pollution Control Financing Authority (the “Authority”), a public instrumentality of the State of California, is authorized and empowered by the provisions of the California Pollution Control Financing Authority Act (Division 27 (commencing with Section 44500) of the California Health and Safety Code) (the “Act”) to issue bonds to finance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of any Project as that term is defined in Section 44508 of the Act;

WHEREAS, the Authority has previously issued various series of bonds pursuant to separate Bond Documents (as defined herein) for each such series of bonds between the Authority and other parties to the transaction, for the benefit of Participating Parties, as that term is defined in Section 44506 of the Act;

WHEREAS, the Authority anticipates entering into future bond financed transactions for the benefit of Participating Parties;

WHEREAS, from time to time a Participating Party may desire to seek consent of the Authority relating to amendments to the Bond Documents; removing or replacing participants or agents in the transaction; the delivery of an alternate credit facility or alternate liquidity facility; the sale, encumbrance or transfer of project assets; arranging for the redemption, prepayment or defeasance of Bonds (as defined herein); or a merger, consolidation, affiliation or dissolution involving a Participating Party;

WHEREAS, the Authority desires to authorize the Chairperson, the Executive Director and Deputy Executive Director to consent to: amendments to Bond Documents; removing or replacing participants or agents in a transaction; the delivery of an alternate credit facility or liquidity facility; the sale, encumbrance or transfer of project assets; arrangements for redemption, prepayment or defeasance of Bonds; a merger, consolidation, affiliation or dissolution involving a Participating Party; and other related matters, including, without limitation, certifying resolutions; executing and delivering Bond Documents; waiving provisions of Bond Documents; redeeming, prepaying or defeasing Bonds; responding to audits, investigations, litigation or the threat of litigation; and other ministerial duties;

WHEREAS, approval of the Authority is now sought; and

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. Certification of Resolutions. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to sign and certify resolutions adopted by the Authority.

Section 2. Bond Documents, Disclosure Documents, etc. (a) The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver all documents previously or hereafter approved by the Authority in connection with the sale, issuance, delivery, credit enhancement, liquidity support, conversion, redemption, prepayment, defeasance, discharge, or remarketing of bonds, notes or other securities of or issued by the Authority (hereafter collectively referred to as "Bonds"), including, without limitation: (1) loan agreements, indentures, trust agreements, bond purchase agreements, lease agreements (whether as lessee or lessor), installment sale or purchase agreements, finance agreements, remarketing agreements, escrow agreements and continuing disclosure undertakings, credit enhancement or liquidity agreements, and contracts described in subdivision (a) of the section 5922 of the Government Code (herein collectively referred to as "Hedging Agreements"); (2) any official statement, reoffering memorandum or other disclosure document in connection with Bonds, and (3) all other documents, instructions, directions, identifications, requests or certificates in connection with (A) the sale, issuance or delivery of Bonds, (B) delivery of credit enhancement or liquidity agreements or Hedging Agreements in connection with Bonds, (C) conversion, redemption, prepayment, defeasance, discharge, or remarketing of Bonds, (D) the investment of bond proceeds or other funds pledged to the payment of Bonds or (E) the tax-exemption of interest on such Bonds (including without limitation tax certificates and agreements, subscriptions for escrow securities and declarations of intent to reimburse) (all of the foregoing items (1) through (3) referred to as "Bond Documents"). Approval by the Authority of any Bond Document described in clause (a)(1) of this Section (a "Primary Document") includes, without limitation, approval of any Bond Documents described in clause (a)(3) of this Section and contemplated or required to be delivered by the Authority pursuant to the Primary Document prior to or upon execution and delivery of the Primary Document.

(b) Bonds approved by the Authority may be executed by the manual or facsimile signature of the Chairperson and the seal of the Authority may be affixed thereon (or a facsimile reproduced thereon) by the Executive Director or the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, in the form set forth in and otherwise in accordance with, and to the extent required by, the indenture, trust agreement, resolution, financing agreement or other document pursuant to which the Bonds are issued.

(c) The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver in connection with any preliminary disclosure document for Bonds approved by the

Agenda Item 4.C.

Authority: (i) a certificate or certificates, in a form acceptable to the signatory thereof, to the effect that the portions of such preliminary disclosure document describing the Authority and litigation as it relates to the Authority and the Bonds are deemed final as of its date for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934; and (ii) a final disclosure document for the related Bonds in substantially the form of said preliminary disclosure document, with such insertions and changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof or other writing to such effect.

(d) The Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, are hereby authorized and directed to attest the signature of the Chairperson or any deputy to the Chairperson and to cause to be affixed (either manually or by facsimile) and attested the seal of the Authority as may be requested in connection with the execution and delivery of Bonds and Bond Documents approved by the Authority.

Section 3. Amendments and Supplements. (a) The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver (1) any amendment to any Bond Documents provided that such amendment (A) is made in accordance with the terms of the applicable agreement or other document being amended, (B)(i) does not require bondholder consent pursuant to the terms of the agreement or any other agreement to which the Authority is a party, if applicable, or (ii) any required consent has been acquired or (iii) such amendment, by its own terms, shall become effective only upon acquiring such consent, (C) does not provide for any additional material duties of or costs to the Authority, other than costs that will be reimbursed no later than the effective date of the amendment, (D) does not modify any provision for indemnification of the Authority or any members, directors, officers, employees or agents of the Authority, and (E) does not modify any provision for payment to the Authority except for payments that are assigned by the Authority to the trustee or any other third party pursuant to the Bond Documents and (2) any amendment or supplement to any disclosure document in connection with Bonds which is designed to state any material fact necessary to make the statements in the disclosure document then in effect not misleading, in light of the circumstances under which they were made, or to correct any misstatement.

(b) The delegation in subsection (a) of this Section shall not include the power to execute and deliver any amendment that (i) would modify provisions relating to: (A) the description of all or any portion of a project financed with Bonds if such amendment would (1) result in the project failing to satisfy the documentation requirements set forth in Section 44561 of the Act; (2) result in the project failing to be eligible for financing or refinancing pursuant to the Act; (3) change the location of the project to property not described in the original approval of the Authority; (4) in the case of tax-exempt Bonds, would in and of itself cause interest on the Bonds to be included in gross income for purposes of federal income taxation; (B) the sale or other transfer of all or any portion of a project financed with Bonds or all or any portion of the property pledged to secure Bonds; (C) merger, consolidation or affiliation by a Participating Party, the dissolution of

a Participating Party, or the sale or other transfer of substantially all of the assets of a Participating Party; or (ii) would result in provisions inconsistent with the Authority's bond issuance guidelines then in effect with respect to Bonds.

(c) All authorizations and delegations of power to execute and deliver any amendment of a Bond Document under any prior resolution of the Authority are hereby rescinded.

Section 4. Appointments. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to appoint or remove, or consent to or approve the appointment or removal of, any trustee, co-trustee, paying agent, issuing and paying agent, registrar, tender agent, fiscal agent, escrow agent, verification agent, auction agent, underwriter, placement agent, remarketing agent, commercial paper dealer, broker-dealer, credit enhancer, liquidity provider, investment provider, Hedging Agreement counterparty, securities depository, rating agency or counsel to any of the foregoing, including, without limitation, bond counsel, to the extent such appointment or removal, consent or approval by the Authority is required or permitted by the applicable Bond Document(s) and such appointment or removal (1) is made in accordance with the terms of the Bond Documents, if applicable, (2)(A) does not require bondholder consent pursuant to the terms of the Bond Documents or other agreement to which the Authority is a party, if applicable, or (B) any required consent has been acquired or (C) such consent or approval, by its own terms, shall become effective only upon acquiring such bondholder consent, (3) the Executive Director or Deputy Executive Director has consulted with the Public Finance Division of the State Treasurer's Office prior to such appointment, consent or approval, and (4) with respect to any underwriter, placement agent, remarketing agent, broker-dealer or commercial paper dealer, such firm is among the firms listed on the State Treasurer's pool of underwriters approved for negotiated offerings pursuant to California Government Code section 5703 to the extent participation in the State Treasurer's Office pool is required by the Bond Documents. Prior to removing, or consenting to or approving the removal of, any of the foregoing agents or entities, the Executive Director or the Deputy Executive Director shall consult with the Participating Party under the related Bond Documents.

The foregoing delegation does not include the power to replace or substitute any of the foregoing agents or entities named or approved in the final resolution or otherwise in connection with the original issuance of any issue of Bonds until after such Bonds are issued.

Section 5. Credit Enhancement and Liquidity Support. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or consent to the delivery of any substitute, alternate or replacement credit enhancement or liquidity facility for Bonds, and the power to terminate any credit enhancement or liquidity facility or eliminate any requirement that a credit enhancement or liquidity facility be maintained for Bonds, if

and to the extent such approval or consent by the Authority is required by the applicable Bond Documents and such approval or consent (1) is given in accordance with the terms of the applicable Bond Documents (including, without limitation, qualifications required by such Bond Documents for a provider of credit enhancement or liquidity support, if applicable), (2)(A) does not require bondholder consent pursuant to the terms of the Bond Documents or other agreement to which the Authority is a party, if applicable, or (B) any required consent has been acquired or (C) such approval or consent, by its own terms, shall become effective only upon acquiring such bondholder consent, (3) such substitute, alternate or replacement credit enhancement or liquidity facility and the provider thereof, the termination of the credit enhancement or liquidity facility or the elimination of the requirement therefore, as applicable, are such as to qualify and cause the Bonds to qualify under the Authority's bond issuance guidelines then in effect (if any) with respect to Bonds and (4) the Executive Director or Deputy Executive Director has consulted with the Public Finance Division of the State Treasurer's Office prior to such approval or consent.

Section 6. Sale, Encumbrance or Other Transfer of Projects. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or consent to the sale, encumbrance or other transfer of all or a portion of a project financed with Bonds when such approval or consent by the Authority is required by the applicable Bond Documents and is provided in compliance with the applicable Bond Documents.

Section 7. Merger, Dissolution, etc. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or consent to a merger, consolidation or affiliation by a Participating Party, the dissolution of a Participating Party, or the sale or other transfer of substantially all of the assets of a Participating Party when such approval or consent by the Authority is required by the applicable Bond Documents and is provided in compliance with the applicable Bond Documents.

Section 8. Refunding Actions. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver escrow agreements and escrow instructions providing for deposit, investment and application of amounts to be used in connection with the redemption, prepayment, defeasance or discharge of Bonds and related matters.

Section 9. Ministerial Actions. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, (i) the power to carry out any ministerial actions contemplated by any Bond Documents, including, but not limited to, publication or other dissemination of notices of redemption, prepayment, defeasance or tender, certifications or other documentation

to effect a substitution of credit enhancement or liquidity facility, publication or other dissemination of notices contemplated by the Bond Documents, filing of hedging identification certificates, and establishment of record dates or other arrangements to obtain or solicit bondholder consents.

Section 10. Waivers. (a) The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to waive on behalf of the Authority any provision of any Bond Document that is expressly for the benefit of the Authority and has not been assigned by the Authority, including, but not limited to, deadlines for delivery of notices, certificates, reports and other items to the Authority as well as the requirement for such documents to be provided to the Authority (other than upon request of the Authority).

(b) The delegation in subsection (a) of this Section shall not include the power to waive (1) any provision that could not be amended pursuant to the delegation under Section 3 of this Resolution, (2) any provision requiring delivery of an opinion of counsel, and (3) any provision, the waiver of which would, in and of itself, result in the inclusion of interest on Bonds in gross income for purposes of federal income taxation.

(c) All authorizations and delegations of power to waive any provision of a Bond Document under any prior resolution of the Authority are hereby rescinded.

Section 11. Litigation, etc. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to respond on behalf of the Authority to any audit, investigation, litigation or claim or threat of litigation or claim made to or against the Authority or any of its members, directors, officers, employees or agents in connection with any Bonds, or any investigation or audit or other review of any Bonds by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority or the bondholders (hereinafter "Claims Made"), or to effectuate the terms of the applicable resolution authorizing the Bonds adopted by the Authority. The Executive Director or the Deputy Executive Director, whenever the Executive Director is otherwise unavailable, shall provide immediate notice (within three working days) to each of the members of the board regarding any Claims Made, prior to taking any action as permitted by this section, to provide all members with the opportunity to convene a formal board meeting to discuss the Claims Made.

Section 12. Exercise of Delegations Discretionary. Nothing in this Resolution shall require the Executive Director or any Deputy Executive Director to exercise the powers delegated herein in any particular case, and the Executive Director and any Deputy Executive Director may in any instance instead bring a proposed action before the Authority for consideration.

Section 13. Delegations Supplemental. The Authority may in any future resolution delegate additional powers to the Executive Director, Deputy Executive

Director or other officers or employees of the Authority, or eliminate, modify or restrict any delegation granted in this Resolution. Except as expressly provided in Section 3 and Section 10, the powers delegated in this Resolution shall be deemed to be in addition to, and shall not limit, any prior delegation of power or authorization. The authorization contained in this Resolution shall apply to any issue of Bonds now or hereafter outstanding.

Section 14. Delivery. The power delegated under this Resolution to each of the Executive Director and the Deputy Executive Director to deliver executed documents extends to documents executed by either such officer or both such officers. Notwithstanding anything to the contrary in this Resolution, any document executed by the Executive Director in accordance with this Resolution may be delivered by the Deputy Executive Director, regardless of whether the Deputy Executive Director was authorized to execute such document.

Section 15. Reporting. Except as may be otherwise required within this Resolution, including as specified in Section 11, the Executive Director and the Deputy Executive Director, as applicable, shall report to the Authority monthly or, at a minimum, at the next scheduled meeting, all actions taken pursuant to the delegations of powers under this Resolution, unless such action is a subject for closed session pursuant to the Bagley-Keene Open Meeting Act, in which case the action will be reported in closed session or in writing to individual Authority members.

Section 16. Opinion of Counsel. The Executive Director or Deputy Executive Director, as the case may be, shall seek and rely upon a formal or informal opinion from the Authority's in-house legal counsel, who may then seek for the Authority a formal or informal opinion from the Attorney General's Office, to confirm compliance with one or more of the provisions of this Resolution.

Section 17. The Chairperson of the Authority is hereby authorized to execute and deliver any document which is executed by the Executive Director or the Deputy Executive Director pursuant to this Resolution. The Chairperson may act by and through a deputy in connection with the delegations and authorizations under this Resolution.

Section 18. The Resolution of the Authority entitled "RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS RELATED TO BOND FINANCINGS" adopted on December 15, 2010 is hereby rescinded, provided all actions previously taken pursuant to the powers delegated thereby or otherwise authorized thereby remain valid and are hereby confirmed and ratified.

Section 19. This resolution shall take effect from and after its adoption, and shall expire on January 31, 2013, unless extended by action of the Authority prior to that date; provided that Section 2 hereof shall remain in effect for all Bond

Agenda Item 4.C.

Documents approved by the Authority prior to such date (including any extension thereof); and provided further that Sections 3, 9, 12, 13, 14, 15, 16 and 17 hereof shall remain in effect until rescinded by action of the Authority.