Texas Commission On Environmental Quality
AGENDA ITEM REQUEST

AGENDA REQUESTED: June 22, 2011
DATE OF REQUEST:
NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Barbara Mayer at 239-4739

CAPTION: Docket No. 2011-0540-RES. Reauthorizing the Executive Director to enter and manage all contracts (including grant agreements) and to delegate authority to the staff. [Elizabeth West]

Chief Clerk must send Notice of Application/Hearing:

Type of Matter:

County:

Uncontested:

Contested:

David Timberger, Director
General Law Division

TCEQ Interoffice Memorandum

To: Bryan W. Shaw, Ph.D., Chairman
Buddy Garcia, Commissioner
Carlos Rubinstein, Commissioner

Thru: Mark R. Vickery, P.G., Executive Director

From: Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services

David Timberger
Director, General Law Division

Elizabeth West
Senior Attorney, Contracts, Employment Law and Ethics, General Law Division

Date: May 23, 2011

Subject: **Docket No. 2011-0540-RES. Consideration of Authorization for the Executive Director to Enter and Manage All Contracts (including Grant Agreements) and to Delegate Authority to the Staff.**

Authority

Chapter 5 of the Texas Water Code authorizes the Executive Director to manage the administrative affairs of the Commission under the general supervision and direction of the Commission. Specifically, Section 5.229 authorizes the Executive Director to negotiate and enter contracts and other agreements with the United States or any of its agencies, with state and political subdivisions of the state, or with any other entity for the purpose of carrying out the power, duties and responsibilities of the Commission. Additionally, Section 5.124 authorizes the agency to award grants for any resource conservation or environmental protection purpose.

The Texas Comptroller of Public Accounts requires that the governing body of a state agency authorize the agency's executive director to designate one or more individuals to approve the agency's payment documents. 34 Texas Administrative Code § 5.61(h)(1).

Current Practice

On August 31, 2011, the Commission's current delegation of authority consenting for the Executive Director (ED) to enter and manage contracts, and process invoices for payment expires. The proposed resolution renews the Commission's delegation and consent for an additional two years until August 31, 2013. *See Attachment A.*

Commission Oversight

The proposed resolution provides that the Commission delegate all contract authority to the Executive Director. The Commission maintains oversight through regularly-scheduled written reports and verbal briefings as requested, from the Executive Director's staff, including but not limited to program and technical staff, the Financial Administration Division, and the General Law Division. Individual Commissioners and OGC attorneys have an opportunity to provide timely input, direction, or even direct control if necessary.

Criteria for Selecting Contracts for Briefings

The criteria used for identifying contracts of special interest are: contract amount anticipated to exceed Three Million Dollars; significant risk for injuries, property damage, or failure of performance; significant impacts on agency resources, especially those with legislative limits; or significant financial, legal or public policy issues. The term "contracts" includes all agreements which obligate the TCEQ to act, defer or refrain from acting or to pay or receive funds, goods or in-kind services. This includes, without limitation, agreements for procurements, receivable or in-coming grants (prior to submittal of TCEQ's application), payable or out-going grants, gifts, exchanges, memoranda of agreement, and memoranda of understanding (other than those required to be adopted by rule).

Attachment

cc: Liz Day, Chief Financial Officer
Eddie Molina, Director, Financial Administration Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

A *RESOLUTION*

Reauthorizing the Executive Director to enter and manage all contracts (including grant agreements) and to delegate authority to the staff. Docket No. 2011-0540-RES

WHEREAS, on **June 22, 2011,** the Texas Commission on Environmental Quality (Commission) considered the Executive Director's request to authorize the Executive Director to enter contracts and other agency agreements on behalf of the agency, to manage such contracts and other agreements and perform all contractual actions on behalf of the agency, to delegate such authority to staff, designate individuals to approve the agency's payment documents; and

WHEREAS, Section 5.221 of the Texas Water Code provides that the Executive Director shall manage the administrative affairs of the Commission under the general supervision and direction of the Commission; and

WHEREAS, Section 5.229 of the Texas Water Code provides that the Executive Director, on behalf of the Commission, may negotiate with, and with the consent of the Commission enter into contracts or other agreements with, the United States or any of its agencies, with states and political subdivisions of the state, or with any other entity for the purpose of carrying out the powers, duties, and responsibilities of the Commission; and

WHEREAS, the Texas Water Code Section 5.124 authorizes the agency to award grants for any resource conservation or environmental protection purpose; and

WHEREAS, the Executive Director can manage the administrative affairs of the Commission with greater efficiency and effectiveness if authorized to enter into contracts or other agency agreements without formal Commission consent on each such contract; and

WHEREAS, the Executive Director can manage the administrative affairs of the Commission with greater efficiency and effectiveness if authorized to designate agency personnel to approve the agency's expenditures; and

WHEREAS, 34 Texas Administrative Code Section 5.61 provides that the governing body of a state agency may authorize the agency's executive director to designate one or more individuals to approve the agency's payment documents, as long as the authorization is effective according to 34 Texas Administrative Code, Subchapter F, Section 5.61(h)(1); and

WHEREAS, the Executive Director will provide each Commissioner and Office of the General Counsel with regular briefings and offer to provide verbal briefings regarding contract activities of particular interest, which will include: contracts anticipated to exceed One Million dollars; contracts with significant risk of injuries, property damage, or failure of performance; and contracts anticipated to have significant impacts on agency resources, especially those with legislative limits, or significant financial, legal or public policy issues;

NOW, THEREFORE, BE IT RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present date until August 31, 2013, for the Executive Director to enter into all contracts and other agency agreements (including grant agreements) on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Texas Commission on Environmental Quality authorizes and gives consent from the present to August 31, 2013, for the Executive Director to manage, administer, amend, renew, terminate, and perform all other contractual actions related to contracts or other agreements (including grant agreements) entered into on behalf of the Commission; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that from the present date until August 31, 2013, the Executive Director may delegate all such contract authority to agency staff; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Executive Director in his discretion, may refer particular contracts or other agreements to the Commission for formal action; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Texas Commission on Environmental Quality authorized the Executive Director to designate individuals to approve payment documents as defined by 34 TAC 5.61(a) requesting the comptroller to make payments to vendors and other appropriate parties, pursuant to authorized contracts and other expenditures lawfully made.

This Resolution, upon becoming effective, supersedes and replaces Resolution No. 2009-0645-RES, issued by the Commission on June 26, 2009.

Issue date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D. Chairman