

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 3940	Department State Water Resources Control Board	Priority No. 4
Budget Request Name 3940-304-BCP-BR-2016-A1		Program 3560-WATER QUALITY	Subprogram

Budget Request Description
 High Speed Rail Authority – Expedited Permitting

Budget Request Summary
 The State Water Resources Control Board requests \$387,000 in annual reimbursement spending authority and 3.3 permanent positions to address federally required water quality 401 certification needs and oversight of the High Speed Rail project in order to meet the High Speed Rail Authority's requested permitting schedule.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR Project No. Date:		

If proposal affects another department, does other department concur with proposal? Yes No
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>Leah Vang</i>	Date 3/25/16	Reviewed By <i>Shirley M. Montez</i>	Date 3/25/2016
Department Director <i>Tam Howard</i>	Date 3/25/16	Agency Secretary <i>[Signature]</i>	Date 3/29/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature 4-1-16
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A. Budget Request Summary

The State Water Resources Control Board (State Water Board) requests \$387,000 in annual reimbursement spending authority and 3.3 permanent positions to address federally required water quality 401 certification needs and oversight of the High Speed Rail (HSR) project in order to meet the High Speed Rail Authority's (HSRA) requested permitting schedule.

B. Background/History

The 401 Certification Program at the State Water Board regulates discharges of fill and dredged material to all waters of the state, including waters of the U.S. under Clean Water Act (CWA) section 401 and the Porter-Cologne Water Quality Control Act. This Program provides additional protections for wetlands, special aquatic sites and headwaters because these water bodies have high resource value, are vulnerable to filling, and are not protected by other programs. The Program is involved with protection of special-status species and regulation of hydro modification impacts. The Program encourages watershed-level analysis and protection, because some functions of wetlands, riparian areas, and headwater streams—including pollutant removal, flood water retention, and habitat connectivity—are expressed at the watershed or landscape level. The core of the Program's protection strategies is demonstration of impact avoidance first, followed by minimization, and then mitigation to compensate for impacts and ensure no net loss of water resources.

The HSRA is responsible for planning, designing, building and operation of the first high-speed rail system in the nation. This project is a priority for the Governor and was highlighted in his 2012 State of the State Address. Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century includes funding directives that require the HSRA to pursue a regional, coordinated approach to expedite the permitting process for the HSR project statewide.

In the HSRA's 2014 Business Plan submitted to the California Legislature in May 2014, the HSRA has made a commitment to have high-speed rail service between San Francisco and Los Angeles/Anaheim by 2029. To accomplish this goal, the Authority is now preparing eight project-level environmental impact reports/environmental impact statements (EIR/EIS) for geographic areas that comprise this proposed 520-mile alignment. These environmental documents are to be completed no later than December 2017.

As a Responsible Agency under the California Environmental Quality Act and because of its permitting responsibilities under the federal CWA, the State Water Board has a legal obligation to review and comment on these documents as well as to develop and issue permits prior to project construction (e.g., a CWA section 401 Certification). Given the scope and complexity of the project, the number of environmental documents requiring review, and the number of permits to be issued, additional agency staff is needed to meet the HSR's project development deadlines. The intention, as expressed in the latest HSRA time schedule, released on January 12, 2016, is to obtain all necessary federal and state permits by FY 2018-19, three years from now.

The HSR project consists of 10 segments each requiring a CWA section 404 federal permit from the United States Army Corps of Engineers. Before the 404 permit can be obtained, a CWA section 401 Certification (i.e. permit) from the State Water Board must be issued. Development of a 401 Certification involves pre-application consultation, application review, certificate issuance, compliance inspection and review, and data management. A complete breakdown of these tasks is provided in the workload matrix. In all, the State Water Board estimates the 401 Certification needs of the HSR project amount to approximately 17,500 hours of work over the next 3 years, or 3.3 positions.

To conduct its usual 401 Certification activities (for projects other than HSR project activities), the 401 Certification Unit in the State Water Board currently allocates 4.5 positions to work on processing an average of 6 new applications each year. In addition to the 4.5 positions allocated to new application certification work, 2.5 positions work on certification related activities that include enforcement activities, policy development, and coordination of the statewide permitting program. The Unit's resource history of record is described in the table below. It is important to note that in the 2012-13 FY an internal

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resource re-alignment occurred that more accurately reflected the work being addressed by State Water Board staff. Therefore, only the numbers displayed since FY 2012-13 accurately reflect the State Water Board's technical 401 Certification resources and expenditures. The table only displays the technical resources and does not display the resources for legal support of 401 Certification issues. For the last several years, in addition to what the table displays, the State Water Board has allocated 0.7 of a position to address the legal workload driven by 401 Certification applications.

The workload that is the subject of this proposal is the HSRA workload surrounding new 401 Certification applications necessary to meet the HSRA permitting timeline and associated implementation oversight released on January 12, 2016. The number of base applications (excluding HSRA-related permit requests) received varies from year to year as indicated in the Workload History table below. On average, traditionally 6 new applications are received each year. However, in FY 2014-15 a spike of 14 applications was received. This spike has left the Unit with a significant certification backlog with a current inventory of 15 pending certification applications. In an attempt to meet applicants' needs, the 401 Certification Unit is addressing the existing backlog by working with applicants to determine time frame needs and prioritizing the workload. It currently takes approximately 10 months to issue a 401 Certification once the application is received. In an effort to address the current backlog and issue certifications more timely, the 401 Certification Unit is participating in a Lean Six Sigma project sponsored by the Governor's Office of Business and Economic Development to improve and streamline the certification process.

In addition to the existing resources described above, HSRA has supported 401 Certification work at the State Water Board through permit fees associated with initial segments of the HSR project and has loaned the State Water Board 1 position through a Memorandum of Agreement (MOA) currently in place. The loaned position was intended to allow the State Water Board to expedite the processing of HSRA water quality certification applications and storm water permit enrollment. This loaned position is intended to ensure that others seeking water quality certification, such as Pacific Gas and Electric Company and Southern California Gas Company do not suffer project delays in acquiring approvals for their linear transmission projects as a result of expediting processing of HSR project applications. However, given the necessary 401 certification workload that must be accomplished to meet HSRA's latest project schedule, it is now apparent that one loaned position is not enough to support the timely 401 Certification needs and associated oversight of the HSR project. Moving forward, HSRA is proposing to withdraw its loaned position and instead support this budget change proposal as the preferred means of supplementing State Water Board resources for this effort. To that end, the HSRA and the State Water Board are pursuing another MOA under which the HSRA will provide funds to reimburse the State Water Board for the 3.3 positions, given approval of this proposal.

Resource History (Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	106,875	113,308	112,801	500,389	\$621,052
Actual Expenditures	93,327	123,415	153,697	259,371	499,555
Revenues					
Authorized Positions	1.8	1.8	1.3	6.0	7.0
Filled Positions	1.6	2.0	1.8	3.1	5.6
Vacancies	0.2	-	-	2.9	1.4

Workload History

Workload Measure	PY - 4	PY - 3	PY - 2	PY - 1	PY	CY
401 Certification Applications	5	7	6	7	14	2

C. State Level Considerations

This proposal supports the following policy and plan directives for the State Water Board:

1. 1993 California Wetlands Policy (Executive Order W-59-93): Ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetland acreage and value in California.
2. 2000 Cal/EPA Strategic Vision for a "clean, healthy, sustainable environment":
 - Goal 2: Rivers, lakes, estuaries, and marine waters are fishable, swimmable, support healthy ecosystems and other beneficial uses.
 - Goal 7: Continuous improvement and application of science and technology.
3. 2008-2012 State Water Resources Control Board (State Water Board) Strategic Plan Update:
 - Goal 4: Comprehensively address water quality protection and restoration and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.

Finally, this proposal would favorably impact California's transportation system, economy and environment. The rail system is expected to relieve air and road congestion and, by so doing, increase California's economic productivity currently lost from transportation delays. HSR also is one of the projects identified to meet the greenhouse gas reduction targets of AB32. The rail system will be using 100 percent renewable energy for powering the system saving an estimated 2.0 to 3.2 million barrels of oil annually starting in 2030 and 12 billion pounds of greenhouse gas emissions annually.

D. Justification

As indicated in the workload matrix, the scheduled 401 Certification work requested by the HSRA will require approximately 17,500 hours of work over and above normal 401 Certification workload, and then oversight once project certification is completed, as construction continues. Given the current backlog of permitting activities caused by the previous year's increase in applications, the projected workload associated with the additional HSR applications would create an unacceptable backlog of approximately 27,000 hours of incomplete work by the end of the three year period ending in FY 2018-19. With the requested positions and reimbursement authority, the unit will still have a backlog, but that backlog will be equal to what it would be in absence of the HSR project work. Once the expedited permitting is completed, staff will need to oversee projects to ensure permitting requirements are met during the construction phases.

The following assumptions were made to formulate these projections:

1. The Division of Water Quality will maintain 7.0 positions in the 401 Certification Unit through FY 2018-19.
2. The position allocation for tasks assigned to the Unit will not change, i.e., 4.5 positions will be available through FY 2018-19 for review of new applications.
3. An average of 6 new (non-HSRA) applications will continue to be received each year. This estimate is based on historic levels of applications received as shown in the workload history table above, but with the assumption that the receipt of 14 applications last year was an anomaly.
4. The hours associated with issuing and implementing a 401 Certification total 1,644 hours as shown in the Workload Matrix, and include pre-application consultations, application review, developing and issuing the 401 Certification, monitoring project construction for permit compliance, and maintaining the administrative record for the project. This estimate does not include legal support.

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Two-thirds of the projects will go into active construction for the five year period shown. Therefore, total hours shown in the workload matrix will be discounted 33% each, to 1,391 hours.

PY ALLOCATION COMPARED TO APPLICATION WORKLOAD						
	PY	CY	2016-17	2017-18	2018-19	Accumulated Hours
Position ALLOCATION:						
401 Certifications	4.5	4.5	4.5	4.5	4.5	
Wetland Policy	1.0	1.0	1.0	1.0	1.0	
Data Management	0.6	0.6	0.6	0.6	0.6	
Mitigation Banking/Other Statewide	0.6	0.6	0.6	0.6	0.6	
Program Improvements-Audit	0.3	0.3	0.3	0.3	0.3	
Total PYs	7.0	7.0	7.0	7.0	7.0	
APPLICATION WORKLOAD	14	6	6	6	6	
Additional HSRA applications	0	1	1	6	2	
Total Hours (1,391 hours/project based on workload standard & assuming 66% for monitoring and data management)	19,474	9,737	9,737	16,692	11,128	
Hours allocated currently = 4.5 positions (see above 401 Certifications)	7,992	7,992	7,992	7,992	7,992	
Difference = balance of workload carried forward	11,482	1,745	1,745	8,700	3,136	26,808
Hours allocated plus 3.0 positions per this budget request = 7.5 PYs	7,992	7,992	13,320	13,320	13,320	
Difference = balance of workload carried forward	11,482	1,745	-3,583	3,372	-2,192	10,824

In addition to the increase in technical support discussed above, the increased workload will require additional legal support. Based on the complexity of the HSR applications, the State Water Board estimates that an additional 530 hours per year (0.3 position) of Attorney III time will be needed over and above the current 0.7 allocated attorney position to support the additional HSR-related legal workload.

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E. Outcomes and Accountability

This budget request specifically addresses HSRA's need to obtain agency approval of the environmental documents for all segments by FY 2017-18, obtain ten 401 Certifications by mid-FY 2018-19, and provide compliance inspections and data management after initial expedited permitting activities are completed. Shown below in the Projected Outcomes table is the number of total 401 Certifications to be issued each year inclusive of those in accordance with the HSRA master schedule. The issuance of the HSR project 401 Certifications will be tracked and prioritized to meet the dates in the HSRA's master schedule. A successful outcome will meet both the HSR project's needs and the needs of the other applicants seeking 401 Certifications.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
401 Certifications Applications	7	7	12	8	6	6

F. Analysis of All Feasible Alternatives

Alternative 1. Provide the requested 3.3 positions and reimbursement authority to support permit issuance work necessary for the HSR project. Under this alternative, the State Water Board would receive position and reimbursement authority to dedicate to the development of the required 401 Certifications and oversight related to the expedited planning schedule requested by the HSRA. The HSRA would provide funding for these positions as outlined in the MOA.

Pro: This alternative would provide adequate resources to fully address the 401 Certification and permitting, including necessary legal counsel, to develop and issue the permits for the ten rail segments. The requested resources would provide for meeting the master schedule which would allow the HSRA to meet the requirements for continued federal funding of the rail project.

Con: This alternative would be an increase in state government.

Alternative 2. No Action: Under this alternative, the State Water Board would address the HSR rail project and existing permitting workload with existing resources.

Pro: There would be no increase in state government.

Con: This alternative would jeopardize the HSRA's federal funding of the project since permitting delays would require extending the master schedule. The State Water Board would make every effort to meet the HSRA's master schedule for issuing 401 Certifications for the project segments; however, the needs of other applicants would not make this feasible in every case over the next three years.

Alternative 3. Outsourcing: Under this alternative, the HSRA authority would pay for the certifications to be written by a consultant under the oversight of State Water Board staff.

Pro: This alternative would address the needs specified through contracting annually without increasing state government.

Con: This alternative would result in contracting out for work that could be done by civil servants in violation of Government Code 19130(b). For this reason, it would be difficult to get such a contract approved by the Department of General Services. Moreover, the Water Board staff's direct knowledge of the project segments would be lost as a result of not having interaction with the HSRA and other agencies involved in the permitting and not being able to problem-solve the water quality issues these agencies face. It is reasonable to expect that this lack of familiarity by a contractor could increase the

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time and effort required to write the certification, in which case costs could be higher without providing assurance that the HSRA deadline would ultimately be met.

Alternative 4. Redirect Staff from Other Programs: This alternative would shift staff time from other programs to do water quality certification work in support of the HSR project.

Pro: This alternative would address the 401 Certification deficiencies in the short run.

Con. This alternative would shift staff from other water quality programs administered by the State Water Board. Diverting from these programs would adversely impact the associated permitting, compliance, assistance, inspections and enforcement activities related to waste discharges across the state. In addition, most of the Water Board's programs are fee funded and redirection would shift the burden of paying for the program off of the project applicants to other fee payers.

G. Implementation Plan

Effective July 1, 2016 the State Water Board will initiate recruitment efforts to hire three Environmental Scientists to work directly with HSR project counterparts to begin the process of issuing 401 Certifications required for construction. Also effective July 1, 2016, given the additional 0.3 attorney position requested in this proposal, the State Water Board will increase its legal support for 401 Certification workload from 0.7 positions to 1.0 position to be able to handle the increased workload generated by the HSR project.

A MOA will be executed with the HSRA in July of 2016 to provide the reimbursement funding for the State Water Board staff that are needed to meet the permitting deadlines in the recently revised HSR project schedule.

Significant pre-application consultation will begin as soon as the new staff is on board, however existing staff will fill interim roles. Staff will provide a technical review of the rail project's 401 Certification applications for each of the 10 segments over the next three fiscal years as outlined in the HSR project schedule.

The additional Water Board resources requested in this proposal are intended to ensure the State Water Board has the appropriate level of staffing to issue all HSR project 401 Certification permits by June 30, 2019 as called for in the HSR project schedule.

H. Supplemental Information

N/A

I. Recommendation

Alternative #1 – Provide \$387,000 in reimbursement spending authority and 3.3 permanent positions to address the 401 Certification needs of the HSR project.

**STATE WATER RESOURCES CONTROL BOARD
FISCAL YEAR 2016-17
BUDGET CHANGE PROPOSAL**

CERTIFICATION PERMIT ADMINISTRATION FOR THE HIGH SPEED TRAIN PROJECT

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
<p>3.0 Environmental Scientists (ES)</p>	<ul style="list-style-type: none"> • Pre-Application Consultation for HSRA Projects– Initiates coordination with other Divisions, affected Regional Boards, and agencies. Evaluates and provides detailed comments on CEQA analysis of proposed project’s potential water quality impacts. Reviews project alternatives and makes on-site field inspections to provide applicant with consultation on impact identification and quantification, avoidance and minimization measures, and BMPs. Attends pre-project coordination meetings with all agencies. Reviews and comments on applicant’s mitigation plans proposing compensation for unavoidable impacts to state waters, including wetlands. Assume 240 total hours/project and 10 remaining projects through mid-FY18/19. • Application Review for HSRA Projects – Review application materials and check for completeness as per regs. Review and check all calculations on impact amounts and fees. Application status meetings with applicant regarding missing or additional information requests. Conduct on-site field investigation as part of the application review of water quality impacts. Assume 150 total hours/project and 10 remaining projects through mid-FY18/19. • Regulatory Action on HSRA applications- Issue public notice and respond to public comments. Review project impacts and determine adequacy of avoidance and minimization measures. Determine 	<p>5,328 hours per year = 3.0 positions (workload hours are identified as total hours required and total hours required per year to accomplish task</p> <ul style="list-style-type: none"> • Activities associated with pre-application consultation can require a total of 800 hours per year • Activities associated with application review can require a total of 500 hours per year 	<ul style="list-style-type: none"> • Based on experience with the water quality certification program • Based on experience with the water quality certification program

**STATE WATER RESOURCES CONTROL BOARD
FISCAL YEAR 2016-17
BUDGET CHANGE PROPOSAL**

CERTIFICATION PERMIT ADMINISTRATION FOR THE HIGH SPEED TRAIN PROJECT

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
	<p>that proposed project meets applicable water quality control plans and policies and state and federal law. Consult with other agencies involved with permitting the project. Check final project design documents to assure that project proponents has taken agreed to measures to avoid and minimize water quality impacts. Project impact and mitigation site visits. Consult with the applicant. Review and approve the mitigation plan. Analyze and develop permit conditions necessary to protect water quality and finalize draft permit for management review. Facilitate management review of certification permit and address any Water Board comments concerning the permit. Assume 550 total hours/project and 10 remaining projects through mid-FY18/19.</p> <ul style="list-style-type: none"> • Compliance Monitoring for HSRA projects – Reviews, comments on and tracks inspection monitoring reports. Conducts on-site field inspections to verify that permit conditions are being implemented. This includes both the project and mitigation sites. Drafts inspection reports, enforcement letters, and compliance actions. Tracks compliance and takes any necessary follow-up action. Assume 500 total hours/project and 8 projects in active construction through mid-FY18/19. • Permit Data Tracking and Reporting – Maintain administrative record for all project documents. Maintains key project information in program database including reporting and inspections. Assures quality of data for program performance 	<ul style="list-style-type: none"> • Activities associated with the regulatory action can require a total of 1,615 hours per year • Activities associated with the compliance monitoring can require a total of 1,160 hours per year • Activities associated with the permit data tracking and reporting can require a total of 720 hours per year 	<ul style="list-style-type: none"> • Based on experience with the water quality certification program • Based on experience with the water quality certification program

**STATE WATER RESOURCES CONTROL BOARD
FISCAL YEAR 2016-17
BUDGET CHANGE PROPOSAL**

CERTIFICATION PERMIT ADMINISTRATION FOR THE HIGH SPEED TRAIN PROJECT

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
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reporting. Assume 250 total hours/project and 10 projects through mid-FY18/19

- Based on experience with the water quality certification program

**STATE WATER RESOURCES CONTROL BOARD
FISCAL YEAR 2016-17
BUDGET CHANGE PROPOSAL**

CERTIFICATION PERMIT ADMINISTRATION FOR THE HIGH SPEED TRAIN PROJECT

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
0.3 Attorney III	<p>Staff Counsel interprets applicable laws, regulations, court decisions, and other legal authorities to provide legal counsel to program staff on all aspects of 401 certification program including advising staff on permit application processing and review as well as the findings and conditions of the 401 certification. Represents the State Water Board in administrative actions and litigation related to applications. Prepares legal documents including memoranda and legal correspondence.</p>	<p>533 hours per year = 0.3 positions (workload hours are identified as total hours required and total hours required per year to accomplish tasks)</p>	<ul style="list-style-type: none"> Based on experience with the water quality certification program



**STATE WATER RESOURCES CONTROL BOARD
OFFICE OF CHIEF COUNSEL
STATE BOARD/WATER QUALITY/ADMINISTRATION BRANCH**

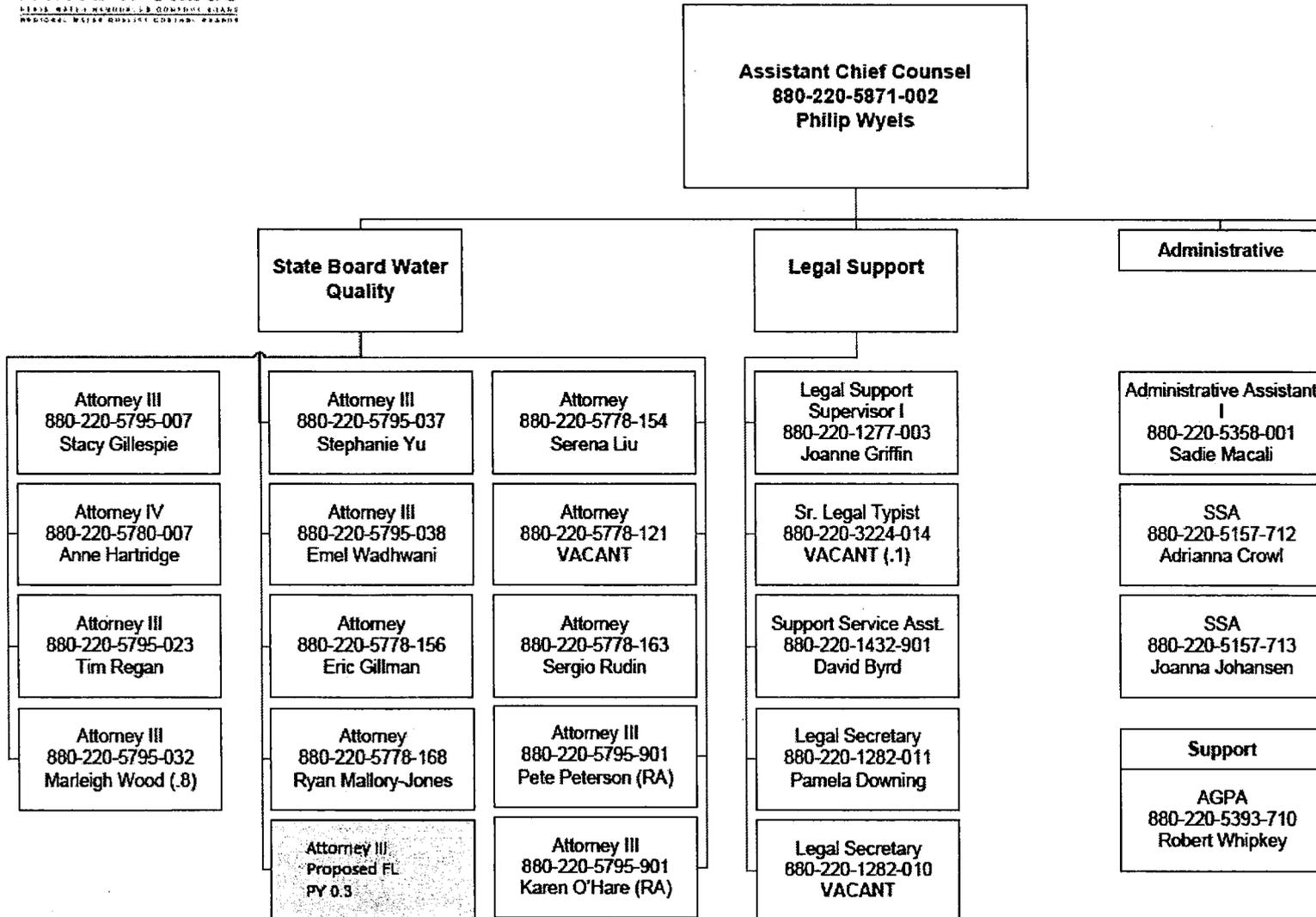


Edmund G. Brown, Jr.
Governor

Original signed by

*Michael A.M. Lauffer-Chief
January 1, 2016*

Proposed





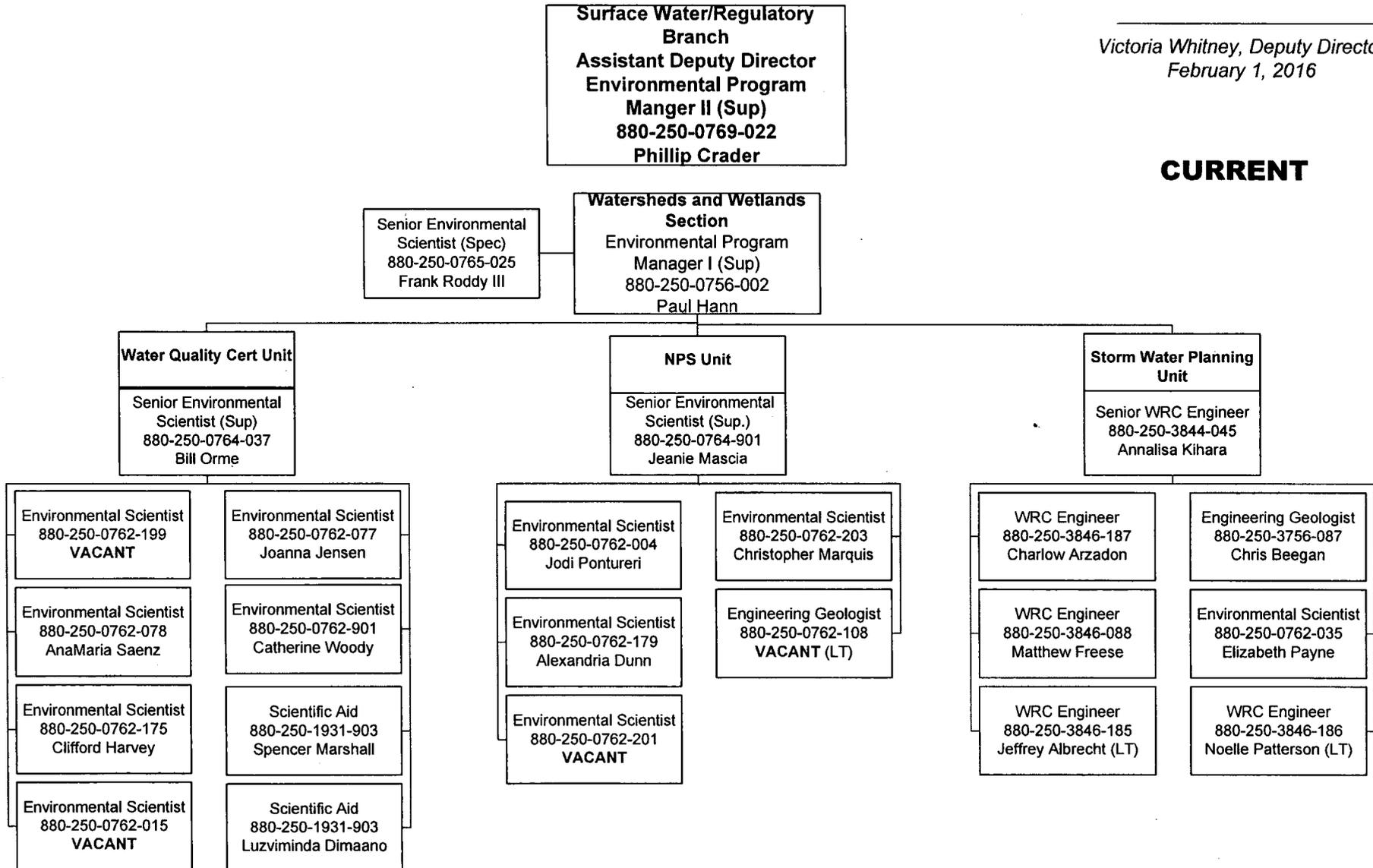
**STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER QUALITY
SURFACE WATER/REGULATORY BRANCH**



Edmund G. Brown, Jr.
Governor

*Victoria Whitney, Deputy Director
February 1, 2016*

CURRENT





**STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER QUALITY
SURFACE WATER/REGULATORY BRANCH**



Edmund G. Brown, Jr.
Governor

Original signed by

*Victoria Whitney, Deputy Director
January 1, 2016*

Proposed

