

MEMORANDUM

TO: All State Surface Water Managers

FROM: State of Louisiana, Office of the Attorney General and
Secretary, Department of Natural Resources

RE: Management and Sale of State Surface Waters

DATE: February 5, 2010

It has come to the attention of the Office of the Attorney General and the Department of Natural Resources that running water and water in naturally navigable water bodies owned by the State is being removed for private use. In some cases the removal of State surface water is being accomplished pursuant to negotiated agreements between private entities and the public entities statutorily charged with the management of the water body. In other cases the removal of State surface water is being accomplished without the knowledge or consent of the appropriate public entity.

Under Louisiana Law persons, with the possible exception of riparian landowners, are not authorized to remove State owned surface water without obtaining the prior written approval of the State and without paying fair value. The Office of the Attorney General is currently drafting four separate Attorney General's Opinions related to the legal authority to manage and sell State owned surface water. Pending the final approval and release of these opinions, the Office of the Attorney General and the Department of Natural Resources offers the following guidance to State water managers who have been or who may be approached with an offer to buy the State owned surface waters that they manage.

In the event that a State agency or State political subdivision is presented with a request to transfer or sell State owned surface waters within its statutory jurisdiction the State agency or political subdivision should first review its statutory authority to determine if it is in fact authorized to sell the State owned surface waters. If it is so statutorily-authorized, the State agency or political subdivision may enter into negotiations with the private entity for the sale of State owned surface water with the understanding that any such sale must be for fair value and that any agreement must be reduced to writing in the form of a contract or cooperative endeavor agreement and that any such agreement is subject to **prior** approval by the Office of the Attorney General and the Department of Natural Resources.

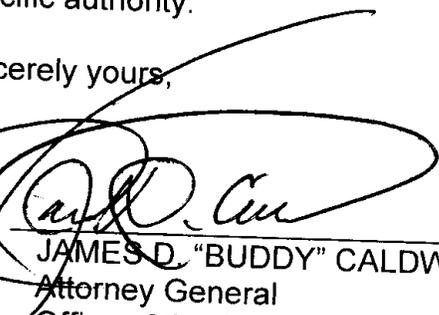
The **prior** written approval of the Attorney General and the Department of Natural Resources of any such agreement is mandated pursuant to the State constitutional

obligations and mandates set forth in LA Const. Art. IX and which directs and requires these offices protect the natural resources and the environment of the State.

Finally, until such time as the Legislature specifically provides for the allocation of any sums received from the sale of such waters (unless specific direction already exists), any agreement for the sale of State owned surface water must include a provision that provides that all monies paid shall be placed in escrow and not released or expended without the written approval and consent of the Office of the Attorney General and the Department of Natural Resources. If such "specific direction already exists", the public entity claiming same should promptly notify in writing the Office of the Attorney General and the Department of Natural Resources of the statutory authority supporting this specific authority.

Sincerely yours,

BY



JAMES D. "BUDDY" CALDWELL
Attorney General
Office of the Attorney General



SCOTT A. ANGELLE, Secretary
Department of Natural Resources

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