

**STATE WATER RESOURCES CONTROL BOARD MEETING
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
SEPTEMBER 23, 2014**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING EMERGENCY REGULATION AMENDING WATER RIGHTS AND FEDERAL ENERGY REGULATORY COMMISSION FEE SCHEDULES IN TITLE 23, DIVISION 3, CHAPTER 5, SECTIONS 1062, 1064, 1066 AND CHAPTER 28, ARTICLE 1, SECTION 3833.1 OF THE CALIFORNIA CODE OF REGULATIONS.

DISCUSSION

Water Code section 1525 requires the State Water Resources Control Board (State Water Board) to adopt, by emergency regulation, a schedule of fees to recover the costs incurred in connection with the State Water Board's Water Rights Program. Water Code section 1525 further requires the State Water Board to adjust the fees annually to conform to the amounts appropriated by the Legislature. Water Code section 1551 requires that all water rights fee revenue be deposited in the Water Rights Fund (WRF). Similar provisions in Water Code section 13160.1 govern water quality certification fees. The current fee schedules were adopted on October 8, 2013.

Financial Condition of the Water Rights Fund

[Attachment 1](#) shows an analysis of the fund condition for the WRF. The adjusted beginning balance for Fiscal Year (FY) 2013-14 was \$5.1 million. Total estimated revenue is approximately \$16.1 million and total expenditures are approximately \$17.4 million, resulting in a \$1.3 million decrease in the fund with an ending balance of \$3.9 million and a fund reserve of 22.1 percent. Since FY 2010-11, the fund reserve has been drawn down to offset the fee increases necessary to meet budgetary expenditures.

Federal Energy Regulatory Commission (FERC) License-Associated Clean Water Act Section 401 Water Quality Certification Fee Adjustment

In order to support the FERC License-associated 401 certification portion of the Water Rights budget, State Water Board staff proposes to adjust the certification program fees to account for changes in workload associated with projects undergoing FERC licensing. The changes will generate the necessary revenues of \$2.1 million to support the State Water Board's FERC License-associated 401 certification activities. [Attachment 2](#) shows a comparison of these fees for FYs 2013-14 and 2014-15 for projects undergoing licensing.

Staff is in the process of reviewing the FERC License-associated 401 certification work distribution between the "undergoing licensing" and "licensed" (maintenance) portions of the program. Many recently licensed or re-licensed projects have significant ongoing workload that may not have been captured in the initial assessment of the relative workloads. Staff will evaluate the time spent on the two portions of FERC License-associated 401 certification work this year to see if an adjustment is warranted. The review may result in changes to the fee structures in the FY 2015-16 fee schedules.

Proposed Changes

At the August 12, 2014 Water Rights Stakeholder Meeting, staff presented two options for maintaining a positive ending balance and prudent fund reserve. The first option was to not increase fees for FY 2014-15 and then increase fees by approximately 17 percent for FY 2015-16. The second option was to implement a gradual fee increase over the next three years, from FY 2014-15 through FY 2016-17. The majority of the stakeholders, both present and those who later submitted written comments, requested that staff propose the first option at the September 23, 2014 Board Meeting. However, a Pay Letter was approved by the California Department of Human Resources on August 20, 2014 implementing a pay increase for several classifications of employees utilized by the State Water Board, which will result in an additional \$712,000 in expenditures for the WRF for FY 2014-15. As a result of the increase in staff salary expenditures, the first option, to not increase fees for FY 2014-15 is now less prudent than previously thought.

State Water Board staff proposes to implement a gradual fee increase over the next three years, from FY 2014-15 through FY 2016-17. As Attachment 1 shows, this requires partial fee increases in FY 2014-15 and FY 2015-16 made possible by drawing down the fund reserve and an increase in FY 2016-17 to raise sufficient revenue to meet projected budgetary expenditures and maintain a prudent fund reserve. This proposal reduces the need for a one-time large fee increase for any given fiscal year.

State Water Board staff proposes to increase the annual water right permit and license per acre-foot charge for FY 2014-15 from the current rate of \$0.053 to \$0.058 for each acre-foot in excess of 10 acre-feet to conform to the amounts appropriated by the Legislature. [Attachment 3](#) shows the impact of the gradual fee increases for fee payers currently paying over \$37,500.

State Water Board staff proposes to increase fees for applicants for water quality certification associated with a FERC license by increasing the per kilowatt charge from \$0.342 to \$0.430. This increase will generate the necessary revenues to support staff work on those activities.

State Water Board staff proposes to adjust the caps on water right application and petition filing fees based on the consumer price index. Currently, the caps for water right application and petition filing fees are set at \$482,609 for applications and for change petitions involving water transfers, and \$6,062 for most other change petitions. The adjustment will increase the current water right application and change petition fee cap of \$482,609 by the increase in the consumer price index of 1.5 percent to \$489,848 and increase the current cap for other change petitions by an increase in the consumer price index of 1.5 percent, from \$6,062 to \$6,153.

POLICY ISSUE

Should the State Water Board approve a resolution to adopt an emergency regulation to change the current water right fee schedules as proposed by staff?

FISCAL IMPACT

- 1) Increase annual Water Rights fees to conform to the amounts appropriated by the Legislature: Under the current fee schedules, if fees are not raised for FY 2014-15, the fund is projected to have a negative fund balance and would require a 28% fee increase for FY 2015-16 to maintain the desired 10 to 14 percent fund reserve.

- Increase the per acre-foot charge from \$0.053 to \$0.058 per acre-foot in excess of 10 acre-feet.

- 2) Increase annual FERC License-associated 401 certification fee: Under the current fee schedules, total revenue would be approximately \$1.9 million, approximately \$500,000 short of projected staff expenditures. The increase in the per-kilowatt charge will maintain the \$2.1 million needed to support this portion of the program.
 - Increase annual FERC License-associated 401 certification per-kilowatt fee from \$0.342 to \$0.430.

- 3) Adjust the caps on water right application and petition filing fees based on the consumer price index: Currently, the caps for water right application and petition filing fees are set at \$482,609 for applications and for change petitions involving water transfers, and \$6,062 for most other change petitions. The adjustments will:
 - Increase the current application cap of \$482,609 by the increase in the consumer price index of 1.5 percent to \$489,848.
 - Increase the current change petition cap of \$6,062 by the increase in the consumer price index of 1.5 percent to \$6,153.

REGIONAL BOARD IMPACT

No.

STAFF RECOMMENDATION

That the State Water Board approves the resolution to adopt an emergency regulation to change the current water right fee schedules as proposed by staff.

State Water Board action on this item will assist the Water Boards in reaching Goals 3 and 5 of the Strategic Plan Update: 2008-2012 to increase sustainable local water supplies available and ensure adequate water flows for fish and wildlife habitat, and to improve transparency and accountability.

D R A F T

STATE WATER RESOURCES CONTROL BOARD RESOLUTION 2014-

ADOPTING AN EMERGENCY REGULATION AMENDING WATER RIGHTS AND FEDERAL ENERGY REGULATORY COMMISSION RELATED WATER QUALITY CERTIFICATION FEE SCHEDULES IN TITLE 23, DIVISION 3, CHAPTER 5, SECTIONS 1062, 1064, 1066 AND CHAPTER 28, ARTICLE 1, SECTION 3833.1 OF THE CALIFORNIA CODE OF REGULATIONS.

WHEREAS:

1. Pursuant to Water Code section 1058, the State Water Resources Control Board (State Water Board) has the authority to adopt regulations to carry out its powers and duties under the Water Code.
2. The Water Code further delegates authority to the State Water Board to adopt emergency regulations establishing and revising fees to be deposited in the Water Rights Fund in the State Treasury. (Wat. Code, §§ 1525, 1530, 1551, 13160.1.) The emergency regulations may include provisions concerning the administration and collection of the fees.
3. The State Water Board must set a fee schedule that will generate revenues necessary to conform to the amounts appropriated by the Legislature for specified regulatory activities. (See Cal. Code Regs., tit. 23, § 1525, subd. (d)(3).)
4. The Budget Act of 2014 delegates to the Department of Finance the authority to make specified adjustments to the amounts appropriated by the Legislature. The State Water Board has considered the anticipated adjustments that the Department of Finance will make under its delegated authority in determining the amount of fee revenues, consistent with amounts appropriated by the Legislature, that are required to support the water right program.
5. State Water Board staff prepared recommended revisions to the State Water Board's water right fee regulations in accordance with the Water Code and the fee revenue requirements as appropriated by the Legislature.
6. The water right fee regulations and schedules will be contained in title 23, division 3, chapter 5 (commencing with, section 1062) and chapter 28 article 1, section 3833.1 of the California Code of Regulations.
7. These [emergency regulations](#) will take effect upon filing with the Secretary of State.

D R A F T

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts an emergency regulation revising title 23, division 3, chapter 5, sections 1062, 1064, 1066 and chapter 28, article 1, section 3833.1 of the California Code of Regulations as recommended by staff.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 23, 2014.

Jeanine Townsend
Clerk to the Board