

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

ITEM 8

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.2, 2200.6 AND 2200.7 AND TITLE 23, DIVISION 3, CHAPTER 28, ARTICLE 1, SECTION 3833 OF THE CALIFORNIA CODE OF REGULATIONS.

DISCUSSION

Water Code Section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the state to file a report of waste discharge with the appropriate regional water board and to pay an annual fee set by the State Water Board, the funds from which are deposited in the Waste Discharge Permit Fund (WDPF). Water Code Section 13260 requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees for persons discharging waste to the waters of the state. Water Code Section 13260 further requires the State Water Board to adjust the annual fees each fiscal year to conform to the revenue levels set forth in the Budget Act.

Financial Condition of the Waste Discharge Permit Fund

[Attachment 1](#) shows a ten-year analysis of the fund condition for the WDPF. The FY 2013-14 beginning balance is \$765,000. Total revenue is approximately \$116 million and total expenditures are approximately \$110.6 million, resulting in a \$5.4 million gain with a balance of \$6.1 million and a fund reserve of 5.6 percent.

The FY 2014-15 beginning balance is approximately \$8.9 million. Under the current fee schedule, total revenue is anticipated to be \$116.6 million and total expenditures are anticipated to be \$121.6 million, resulting in a loss of approximately \$5.0 million and a balance of \$3.9 million. In order to meet budgetary expenditures and end FY 2014-15 with a prudent reserve, total revenue needs to be \$118.3 million, resulting in an ending balance of approximately \$5.6 million and a 4.6 percent fund reserve.

Program Expenditures

[Attachment 2](#) shows the FY 2014-15 projected revenue based on the existing fee schedule, the budget for FY 2014-15 along with the projected fee revenue needed to meet anticipated budgetary expenditures by program, the cost drivers, and the revenue increases and reductions needed by program area to meet budgeted expenditures. The cost drivers include staff cost adjustments, a fund shift to replace expired bond funding for the Groundwater Ambient Monitoring Assessment (GAMA) program and a budget augmentation for the 401 Certification program.

Proposed Changes

Ambient Monitoring Surcharges

In an effort to simplify the fee program and make it easier to understand the total fee for each program, staff proposes to convert both the Surface Water Ambient Monitoring Program (SWAMP) and GAMA surcharges to redirected charges, similar to Enforcement, Basin Planning, TMDL, Health Care, Pro Rata, Beach Monitoring, etc. SWAMP and GAMA will continue to be assessed to only the programs that currently receive the corresponding surcharge.

Dredge and Fill and 401 Certification Fee Structure

Staff is proposing to revise the Dredge and Fill and 401 Certification program fee structure from assessing only an application fee to assessing an application fee and an annual fee for the length of the project. By assessing an annual fee, a project's cumulative fee will be related to the length of time the project is active, making fees more equitable among all projects. The dredging annual fee will be based on the volume actually dredged for that year, in order to avoid relying on estimated volumes. The proposed changes will aid the program's response to the California State Auditor's Report 2012-120 by accurately tracking payments, ensuring maximum collection efforts and verifying permit status.

Confined Animal Facilities (CAF) Fee Schedule Options

The CAF Program was projected to receive a 49.4 percent fee increase in FY 2013-14, but as requested by dairy industry representatives, this was reduced to a 27.4 percent increase for FY 2013-14 only by reducing the target reserve level of the WDPF. The \$560,000 shortfall in CAF FY 2013-14 revenue was covered by the WDPF fund reserve. Adding the revenue shortfall to the CAF budget for FY 2014-15 would require the average fee increase to go up from 31.6 percent to 56.6 percent. Staff is not proposing to add the \$560,000 shortfall in revenue from FY 2013-14 to the CAF budget for FY 2014-15.

Staff prepared two options that address the effects of the large fee increase needed for FY 2014-15. The different options shift the impacts of the needed increase to different CAF fee payer groups. Currently, CAF facilities certified under a Quality Assurance Program (QAP) or a County regulatory program approved by the appropriate Regional Board, receive a 50 percent fee reduction.

Option 1A is to keep the existing fee structure, including an unlimited 50 percent QAP fee reduction. This would result in a 33 percent fee increase for all dairies. Option 1B would also keep the existing fee structure, including an unlimited 50 percent QAP fee reduction, but include potential revenue from the proposed Dairy Waiver fee (see New Fees section below) in revenue projections for FY 2014-15. This would result in a 30 percent fee increase for all dairies.

Option 2A is to keep the QAP fee reduction at the current rate of 50 percent, but cap the maximum fee reduction at \$2,500. This would result in a 20 percent fee increase for all dairies except for the dairies with 1,500 or more mature dairy animals and a QAP fee reduction. Those dairies would receive a 60 percent (1,500 – 2,999 animals) or 90 percent (3,000 or more animals) fee increase, because their QAP fee reduction would be capped at \$2,500.

Option 2B would also keep the QAP fee reduction at the current rate of 50 percent and cap the maximum fee reduction at \$2,500, but add in potential revenue from the proposed Dairy Waiver fee in revenue projections for FY 2014-15. This would result in a 17 percent fee increase for all dairies except for dairies with 3,000 or more mature dairy animals and a QAP fee reduction. Those dairies would receive a 55 percent (1,500 – 2,999 animals) or 85 percent (3,000 or more animals) fee increase, because their QAP fee reduction would be capped at \$2,500.

[Attachment 3](#) shows the effect of all four options on CAF dairy facility fee payers, however, the option adopted by the Board would affect all CAF fee payers. There are currently only two non-dairy CAF fee payers that receive the QAP reduction, both under \$2,500, therefore, they will not be affected by the proposed \$2,500 cap.

Staff recommends adopting Option 2A. As support for the WDPF has shifted from General Fund to fee support over the past several years, fees have increased significantly and the QAP fee reduction amounts have increased proportionally. Setting a cap for the QAP fee reduction will help make fees more equitable across all CAF fee payer categories, including those receiving and those not receiving the QAP fee reduction.

Proposed Changes by Program

Waste Discharge Requirements (WDR)

The WDR program budget for FY 2014-15 is \$27.6 million and projected revenue is \$25.6 million. The WDR Program needs to generate an additional \$2.0 million in revenue to meet the FY 2014-15 Budget which translates to an average 7.9 percent increase to all WDR fee categories.

Land Disposal – No Tipping Fee

The Land Disposal – No Tipping Fee program budget for FY 2014-15 is \$11.3 million and projected revenue is \$10.4 million. The Land Disposal – No Tipping Fee Program needs to generate an additional \$985,000 in revenue to meet the FY 2014-15 Budget which translates to an average increase of 9.5 percent to all Land Disposal – No Tipping Fee categories.

Land Disposal – Tipping Fee

The Land Disposal – Tipping Fee program budget for FY 2014-15 is \$3.8 million and projected revenue is \$3.4 million. The Land Disposal – Tipping Fee Program needs to generate an additional \$363,000 in revenue to meet the FY 2014-15 Budget which translates to an average increase of 10.6 percent to all Land Disposal – Tipping Fee categories.

Dredge and Fill and 401 Certification

The Dredge and Fill and 401 Certification program budget for FY 2014-15 is \$7.1 million and projected revenue is \$6.0 million. The Dredge and Fill and 401 Certification Program needs to generate an additional \$1.2 million in revenue to meet the FY 2014-15 Budget which translates to an average increase of 19.7 percent to all Dredge and Fill and 401 Certification categories.

NPDES

The NPDES program budget for FY 2014-15 is \$29.6 million and projected revenue is \$30.5 million. As a result of anticipating collecting more revenue than is necessary to meet the FY 2014-15 Budget, an average one-time reduction of 3.2 percent will be applied to the following NPDES fee categories: Sections 2200(b)(7)(except surcharges) and 2200(b)(9). This reduction is being implemented on a one-year basis because the budgeted expenses are expected to increase in FY 2015-16.

Storm Water

The Storm Water program budget for FY 2014-15 is \$29.6 million and projected revenue is \$32.6 million. As a result of anticipating collecting more revenue than is necessary to meet the FY 2014-15 Budget, an average one-time reduction of 8.9 percent will be applied to the following Storm Water fee categories: Sections 2200(b)(1)(A)(except High Speed Rail Authority fee), 2200(b)(3) and 2200(b)(4)(A). This reduction is being implemented on a one-year basis because the budgeted expenses are expected to increase in FY 2015-16.

Confined Animal Facilities (CAF)

The CAF program budget for FY 2014-15 is \$4.6 million and projected revenue is \$3.5 million. The CAF Program needs to generate an additional \$1.1 million in revenue to meet the FY 2014-15 Budget which translates to an average increase of 31.6 percent to all CAF categories.

Irrigated Lands Regulatory Program (ILRP)

The ILRP program budget for FY 2014-15 is \$4.3 million and projected revenue is \$4.3 million. No change in fees is required for ILRP for FY 2014-15.

New Fees

Cannabis Cultivation

In FY 2014-15 the State Water Board will be implementing a pilot program to regulate cannabis cultivation facilities in Regions 1 and 5 and will therefore need to set a fee structure for permittees. Based on the estimated amount of disturbed acres from known facilities, staff is proposing a fee structure to assess an annual fee based on acres cultivated.

High Speed Rail Authority (HSRA)

For FY 2014-15, the HSRA will pay a storm water Non-Traditional MS4 fee for work being performed in multiple counties.

Drinking Water Purveyors

The Statewide General NPDES Permit for Drinking Water System Discharges is proposed to regulate discharges to Waters of the United States that result when water purveyors conduct mandated development and maintenance activities in accordance with federal and state law. The statewide permit will supersede existing overlapping regional water board low-threat permits for discharges from drinking water systems. The permit will provide regulatory coverage for planned and emergency discharges of raw, potable and treated drinking water from drinking water systems. Staff is proposing to assess only an application fee for water systems with between 15-999 service connections and an application and annual fee for water systems with 1,000 or more service connections.

Dairy Waiver

Staff is proposing to assess a new annual fee to dairy facilities currently enrolled under a waiver of waste discharge requirements (WDRs). The amount of the proposed fees is the same as the amount of the fees paid by dairies that have been issued WDRs, because the amount of State Water Board and regional water quality control board staff oversight for dairies is approximately the same, regardless of whether the dairy has been issued WDRs or a waiver of WDRs.

POLICY ISSUE

Should the State Water Board consider adopting a resolution amending the annual fee schedules as proposed by staff?

FISCAL IMPACT

The FY 2014-15 Budget Act includes expenditure authority for the Waste Discharge Permit Fund of \$117.9 million. The current fee schedules would result in some programs collecting less than their target budget amount while others would collect more. The proposed changes will use a combination of program fee increases and decreases to generate sufficient revenue to ensure the WDPF meets, but does not exceed, the FY 2014-15 budget expenditure authority and keep a prudent fund reserve.

REGIONAL BOARD IMPACT

Fee increases would allow program staffing and activities to remain at current budget levels.

STAFF RECOMMENDATION

That the State Water Board approves the resolution to adopt emergency regulations to change the current annual fee schedules as proposed by staff.

State Water Board action on this item will assist the Water Boards in reaching Goals 1-4 of the Strategic Plan Update: 2008-2012 to:

- Goal 1: Support beneficial uses
- Goal 2: Improve and protect groundwater equality
- Goal 3: Increase sustainable local water supplies
- Goal 4: Address water quality protection and restoration

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.2, 2200.6 AND 2200.7 AND TITLE 23, DIVISION 3, CHAPTER 28, ARTICLE 1, SECTION 3833 OF THE CALIFORNIA CODE OF REGULATIONS

WHEREAS:

1. Water Code Section 13260(d) requires each person for whom waste discharge requirements are issued to pay an annual fee to the State Water Board.
2. Water Code Section 13260(f) requires the State Water Board to adopt a schedule of fees by emergency regulation.
3. Water Code Section 13260(f) requires fees to be adjusted annually to conform to the revenue levels set forth in the State Budget Act for these activities.
4. State Water Board staff prepared recommended changes to the annual fee schedule contained in current regulation to implement the State Budget Act requirements.

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts emergency regulations approving the revisions to Title 23, Division 3, Chapter 9, Article 1, Sections 2200, 2200.2, 2200.6 and 2200.7 and [Title 23, Division 3, Chapter 28, Article 1, Section 3833](#) of the California Code of Regulations to implement the provisions of the 2014 State Budget Act pursuant to the provisions of Water Code Section 13260(f) ([annual fee schedule](#)).

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