

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
SEPTEMBER 20, 2016**

ITEM 6

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, 2200.1, 2200.2, 2200.3, 2200.5, 2200.6, 2200.7, 2200.8 AND 2200.9 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 10-year analysis of the fund condition of the WDPF. The FY 2015-16 beginning balance is approximately \$15.7 million. Total revenue is approximately \$116.3 million and total expenditures are approximately \$120.0 million, resulting in a \$3.7 million loss with a balance of \$14.6 million and a fund reserve of approximately 12.0 percent.

The FY 2016-17 beginning balance is approximately \$14.6 million. Under the current fee schedule, total revenue is anticipated to be approximately \$124.6 million and total expenditures are anticipated to be approximately \$127.5 million, resulting in a loss of \$2.9 million and an ending balance of approximately \$11.7 million with a fund reserve of approximately 9.1 percent.

Program Expenditures

[Attachment 2](#) shows the FY 2016-17 projected revenue based on the existing fee schedule, the budget for FY 2016-17, the projected revenue adjustments and the cost drivers, including staff cost and program adjustments. This chart also shows any revenue increases or reductions by program for maintaining a minimum five percent fund reserve. Except as noted below, staff is proposing to use the fund reserve to offset the minimal fee increases required due to insufficient revenue, allowing the State Water Board to keep fees at the FY 2015-16 levels, meet budgetary expenditures and maintain a prudent fund reserve.

Resource Reallocation

In FY 2015-16, the State Water Board transitioned from assessing fees based on historical budget allocations (Historical Budget) to assessing fees based on the actual staff work that is projected to be performed (Adjusted Budget). The transition was initiated after an analysis of the link between the alignment of resources and fees collected and expenditures revealed that

funds in the WDPF did not necessarily align with historical budget allocations. After FY 2016-17, the State Water Board will be fully transitioned from using the Historical Budget to using the Adjusted Budget to assess fees. Any future shifts will be at the direction of executive management and will be identified separately from Staff Cost Adjustments, which typically include pro rata, health care and retirement.

Proposed Fee Schedule Changes

Oil & Gas Surcharge

As a result of stakeholder feedback and more accurate data after one year of assessing this surcharge, staff is proposing to modify the fee schedule to move from a tiered surcharge based on three ranges of the number of barrels of waste water produced to a fee based on the actual number of barrels of waste water produced. Staff is proposing a fee of \$0.00083 multiplied by the number of barrels produced and a minimum surcharge of \$500.

Confined Animal Facilities (CAF)

The FY 2015-16 fee schedule includes a category for facilities with 0-49 mature dairy cattle to pay only an application fee as these facilities, in general, tend to require less oversight. Staff is proposing to create similar categories for smaller sized facilities for all other animal types in section 2200(c).

Storm Water

As a result of anticipating collecting more revenue than is necessary to meet the FY 2016-17 budget, an average one-time reduction of 6.4 percent will be applied to the following Storm Water fee categories: Sections 2200(b)(1)(A) – municipal separate storm sewer system (MS4), 2200(b)(3) – industrial activities, and 2200(b)(4)(A) – construction activities.

Water Quality Certification (WQC)

For FY 2014-15, the State Water Board changed the fee structure for a majority of the Water Quality Certification (WQC) program (formerly referred to as 401 Certification) to move from assessing only an application fee to assessing an application fee and annual fee for the duration of the project. This change was made to address staff costs involved in regulating permits throughout the entire duration of the project that were previously not entirely captured through only an application fee, and to assist staff in accurately tracking payments and maximizing collection efforts. Staff has evaluated the new fee structure annually since it was adopted and determined that it has been effective at making fees more consistent with the staff time involved in regulating these projects than the previous application-only structure, and is assisting program staff in better tracking projects. Staff will continue to evaluate the fee structure annually as new projects are permitted and multi-year projects are tracked to determine the overall effectiveness.

The WQC budget for FY 2016-17 is approximately \$10.3 million and projected revenue is approximately \$7.8 million. The program needs to generate an additional \$2.5 million in revenue to meet the FY 2016-17 budget, which translates to an average 32.4 percent increase to all fee categories. This shortfall is a combination of permitted activity in FY 2015-2016 being less than staff projected leading to lower revenue, as well as the addition of 10 new positions added to the program through the budget change proposal process in FY 2014-15, a salary increase for professional engineers (Pay Letter 14-17 issued August 20, 2014) and a change to assessing fees based on actual staff time projected to be worked (see Resource Reallocation section above), all of which contributed to increasing the program's budgeted expenditures. To better evaluate the effectiveness of the new fee structure without a significant fee increase, staff proposed to allow the WDPF fund reserve to absorb the revenue shortfall in FY 2015-16 that

otherwise would have resulted in a fee increase. Instead of implementing the 32.4 percent fee increase needed to meet FY 2016-17 budgetary expenditures, staff is proposing to spread the fee increase over two years, with an average 20 percent increase to all fee categories for FY 2016-17 with the fund reserve absorbing the additional revenue shortfall, except for the sections noted below.

- The cap for fill and excavation discharge projects in section 2200(a)(3)(A) and dredging discharge projects in section 2200(a)(3)(B) will be increased by 33 percent, from \$90,000 to \$120,000 per project. This will require a small number of large projects that would exceed the cap if increased by 20 percent to pay a fee closer in line with their staffing costs.
- Staff is proposing to increase the acre fee and decrease the linear fee in section 2200(a)(3)(A) to minimize the disparity between the two types of mechanisms for calculating fill and excavation permit fees involving similar amounts of staff time.
- Staff is proposing to implement an annual fee structure for low impact discharge projects in section 2200(a)(3)(E) and emergency projects in section 2200(a)(3)(G). Staff projected minimal workload beyond processing the initial application, however, these projects are requiring consistent staff work throughout the life 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 and will assist staff in tracking these projects.
- No fee rate changes will be made to sections 2200(a)(3)(D) – Ecological Restoration and Enhancement Projects, 2200(a)(3)(F) – General Orders for CEQA Exempt Projects, and 2200(a)(3)(H) – Amended Orders.

Staff is also proposing non-substantive edits to sections 2200.1, 2200.2, 2200.3, 2200.5 (No Exposure Certification), 2200.6 (Agricultural Lands), 2200.7 (Marijuana Cultivation), 2200.8 (Recycled Water), and 2200.9 (Waivers of Waste Discharge Requirements).

POLICY ISSUE

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

FISCAL IMPACT

The FY 2016-17 Budget Act includes expenditure authority for the Waste Discharge Permit Fund of \$126.7 million. The proposed fee schedule changes will ensure the projected revenue for the WDPF meets the FY 2016-17 budget expenditure authority and maintains a prudent fund reserve.

REGIONAL BOARD IMPACT

The proposed fee schedule changes would allow the State Water Board to initiate the gradual transition of assessing fees that reflect projected regional board priorities.

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. 2016-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.1, 2200.2, 2200.3, 2200.5, 2200.6, 2200.7, 2200.8 AND 2200.9 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:

1. The State Water Board adopts emergency regulations approving the revisions to Title 23, Division 3, Chapter 9, Article 1, Sections 2200, 2200.1, 2200.2, 2200.3, 2200.5, 2200.6, 2200.7, 2200.8 and 2200.9 of the California Code of Regulations to implement the provisions of the 2016 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 20, 2016.

Jeanine Townsend
Clerk to the Board