

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

ITEM 8

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING AN EMERGENCY REGULATION AMENDING WATER RIGHTS FEE SCHEDULES IN TITLE 23, DIVISION 3, CHAPTER 5, SECTIONS 1062, 1064, AND 1066 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 September 16, 2015.

Financial Condition of the Water Rights Fund

[Attachment 1](#) shows an analysis of the fund condition for the WRF. The beginning balance for Fiscal Year (FY) 2015-16 was \$5 million. Total estimated revenue is approximately \$17.6 million and total expenditures are approximately \$17.7 million, resulting in a \$107,000 decrease in the fund with an ending balance of \$4.9 million and a fund reserve of 27.7 percent. Since FY 2011-12, the fund reserve has been drawn down to offset the fee increases that would otherwise be necessary to meet budgetary expenditures.

Proposed Changes

For FY 2016-17, staff propose to increase the Permit, License, and Pending Application Annual Fees by 5 percent, resulting in fees increasing from \$150 plus \$0.063 per each acre-foot greater than 10 acre-feet, to \$150 plus \$0.066 per each acre-foot greater than 10 acre-feet. This increase conforms to the amounts appropriated by the Legislature, including generating sufficient revenue, along with the reserve, to partially absorb the costs of an approved Water Rights Permitting and Licensing Backlog Budget Change Proposal (BCP) which added 7 positions and \$851,000 in budgetary expenditures to the Water Rights Fund for FY 2016-17. [Attachment 1](#) shows the impact of the recommended fee increase to the Water Rights Fund and [Attachment 2](#) outlines the impact of the fee increase for fee payers currently paying over \$41,100. Although the Water Rights Fund is projected to end FY 2016-17 with a reserve of approximately 20.5%, this increase will help reduce the likelihood of large fee increases in future budget years and ensures the fund will maintain a prudent fund reserve of at least 10 percent going forward. However, staff anticipate the need for incremental fee increases over the next two years, in the range of 3-6 percent, to cover standard budgetary expenditure increases related to employee compensation, retirement and pro-rata expenditures.

Additionally, staff recommends the caps on petition filing fees as well as other change petitions be adjusted by the Consumer Price Index (a 1.5% increase):

- Application Fee: increases the maximum allowable fee from \$498,665 to \$506,145
- Change Petition: increases the maximum allowable fee from \$6,264 to \$6,358
- Change Petition involving a transfer of water pursuant to Water Code section 382, 1435, 1701, 1725, or 1735: increases the maximum allowable fee from \$498,665 to \$506,145

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 for Permits, Licenses, and Pending Applications by 5% to conform to the amounts appropriated by the Legislature, including a BCP (Water Rights Permitting and Licensing Backlog) for 7 positions and \$851,000, for FY 2016-17.
- 2) Adjust the caps on water right application and petition filing fees based on the consumer price index.

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.

<p>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.</p>

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

ADOPTING AN EMERGENCY REGULATION AMENDING WATER RIGHTS FEE SCHEDULES IN TITLE 23, DIVISION 3, CHAPTER 5, SECTIONS 1062, 1064, AND 1066 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 State Water Board finds that, in accordance with section 1552 of the Water Code, the funds collected from water right fees and deposited in the Water Rights Fund will be used for administration of the water rights program, while maintaining a prudent reserve. These administrative costs, including the State Water Board's costs of administering the water right program and the costs of the Board of Equalization in collecting and paying refunds of water right fees, constitute costs of state operations, plus costs of purchasing and leasing of supplies, equipment and material, and maintaining financial reserves. Because the fees are used for these purposes, they are exempt from the California Environmental Quality Act as provided in section 21080, subdivision (b)(8) of the Public Resources Code.
5. The Budget Act of 2016 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.
6. 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.
7. 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.
8. 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 and 1066 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 20, 2016.

Jeanine Townsend
Clerk to the Board