

Frequently Asked Questions Regarding Water Right Fees

Why did I receive a notice of a workshop to be held by the State Water Resources Control Board (SWRCB or Board) regarding proposed emergency regulations revising water right fees?

You received a notice because one of the following is true: (1) the SWRCB's files indicate that you hold a water right permit or license, (2) you have a pending application for a water right permit, (3) you have registered a small domestic or stock pond use with the Division of Water Rights (Division), (4) you contract with the US Bureau of Reclamation for water, or (5) you have in the past filed a recordation of groundwater extraction and diversion.

Why are water right fees being increased?

In the past, the state's water right program was primarily supported by the General Fund. The General Fund is the predominant fund for financing state government programs. Revenues not specifically designated to any other fund are deposited in the General Fund. The primary sources of revenue for the General Fund are personal income tax, sales tax and bank and corporation taxes. In an effort to reduce the state's current budget deficit, the Legislature this year decreased General Fund support for the water right program by almost 30 percent. In addition, the Legislature determined that the funding source for almost half the remaining allocation in Fiscal Year 2003-2004 should be shifted from the General Fund to a special fund financed by water right holders. As a result, the Legislature has directed the SWRCB to implement fees to raise revenues of \$4.4 million. Currently, a *one-time* nominal application fee is assessed on all water right applications and nominal fees are assessed for certain other water right actions. The minimum application fee is \$100, but the fee varies depending on the amount of the water proposed for diversion. These fees raise an insignificant amount of revenue—currently less than \$50,000 per year on average—when compared to the costs of the program.

What is the process for implementing the fee increase?

The Budget Act of 2003 provided for the support of the water right program by fee revenues. Senate Bill (SB) 1049, which requires the SWRCB to increase existing fees and assess new fees, was adopted by the Legislature in September and signed by the Governor in October 2003. (Stats. 2003, ch. 741.) The legislation directs the SWRCB to adopt emergency regulations to implement fees to support the water right program. Although the SWRCB has a very short time to implement SB 1049, it has decided to hold workshops to receive comments from potential fee payers on the proposed emergency regulations. The SWRCB will hold a Board meeting later this year to consider whether to adopt the emergency regulations. Invoices will be sent out about a month after the SWRCB adopts the emergency regulations.

In general, under the proposed emergency regulations, the SWRCB will increase filing fees for water right actions. Those fees must be paid to the SWRCB at the time the action is filed with the SWRCB. The SWRCB will also adopt new annual fees for permits, licenses, water leases, and projects subject to water quality certification. The

SWRCB will calculate the amount of each fee payer's annual assessment and will transmit that information to the State Board of Equalization (BOE). BOE will send out the invoices for the annual fees, collect the annual fees and take any necessary enforcement action against those fee payers who are assessed a fee, but do not pay it.

I already have a water right; why do I have to pay a fee?

More than half of the Division's costs are the result of actions that are for the primary purpose of managing existing water rights. These actions include investigating complaints filed by water right holders, conducting compliance inspections of existing diversion facilities, processing petitions to amend permit or license conditions, conducting field inspections of permitted diversion projects to determine the amount of water beneficially used prior to issuing a water right license, providing notification to existing water right holders of new applications to appropriate water, and resolving protests filed by those water right holders.

Why did entities that contract with the US Bureau of Reclamation receive a copy of the notice?

The proposed water right fees apply to the United States to the extent authorized under federal law. The Division's records indicate that the U.S. Bureau of Reclamation holds rights to about 30 percent of the water that is diverted under water right permits or licenses. In the past, the U.S. Bureau of Reclamation has declined to pay water right fees to the state, claiming sovereign immunity. Under SB 1049, if the SWRCB determines that a fee payer such as the U.S. Bureau of Reclamation is likely to decline to pay a fee or expense based on a claim of sovereign immunity, then the SWRCB may allocate the fees due to that fee payer's water contractors. Under the Freedom of Information Act, the SWRCB requested information from the U.S. Bureau of Reclamation regarding its contractors and sent the contractors a copy of the workshop notice.

How will my fees be calculated?

The SWRCB has not yet determined how the fees should be assessed. This decision will be made at a Board meeting following the workshops. The Board's staff has proposed a fee schedule to raise the necessary \$4.4 million. This schedule was attached to the workshop notice that was mailed. It can also be accessed at the Division's website:

<http://www.waterrights.ca.gov/Fees/Final%20Fee%20workshop%20Notice.pdf>

Please see the notice for a discussion of the proposed fees.

The staff has also proposed a formula for passing the US Bureau of Reclamation's fees onto its Central Valley Project contractors. That formula is specified in section 1073 of the proposed regulations. The regulations do not specify how fees for other US Bureau of Reclamation projects should be allocated, but instead leaves that determination to the Chief of the Division of Water Rights. Most likely, the fees associated with those projects would be prorated to each project's contractors based on contract amount.

Do I have to pay an annual fee on each permit or license I hold?

The staff has proposed that an annual fee be assessed for each water right. If you hold more than one water right permit or license or if you have filed more than one registration, you will receive a separate invoice for each water right or registration you hold. Your total fee will be the sum of all the invoices you are sent.

How much are my proposed annual fees?

If you are a permit or license holder, you can calculate your fee for each water right by multiplying the amount of water that your water right authorizes you to divert by the per acre-foot cost factor (currently proposed at 3 cents (\$0.03) per acre-foot). If you have a water right that authorizes a direct diversion (expressed as either cubic-feet per second or gallons per minute), you must first convert that rate into a diversion volume. To convert **cubic-feet per second** into acre-feet per year, multiply your authorized diversion rate in cubic-feet per second by 1.98 and then multiply the product by the number of days that you are allowed to divert each year. To convert **gallons per minute** into acre-feet per year, multiply the number of gallons per minute that you are allowed to divert by 0.00442 and then multiply the product by the number of days you are allowed to divert each year. To convert **gallons per day** into acre-feet per year, multiply the number of gallons per day that you are allowed to divert by 0.00000307 and then multiply the product by the number of days you are allowed to divert each year. This number is the volume of water that you are allowed to divert under that permit or license in a year. If you have a water right that authorizes diversion to storage, your diversion is already expressed as a volume.

Your water right may contain an annual use limitation, normally expressed as the phrase “The maximum amount diverted under this permit shall not exceed ___ acre-feet per year.” If your permit or license contains this limitation, and the limitation is less than the calculated diversion volume, your fee will be based on the amount specified in the limitation. To determine your cost, multiply your diversion volume or the maximum annual limitation, whichever is less, by the proposed fee of \$0.03 per acre-foot. The proposed annual fee for your water right is either the amount you have just calculated or \$100, whichever is more. If, however, you hold multiple water rights that contain an annual use limitation that is applicable to the combination of those rights, but you may still divert the full amount authorized under a particular right, then your fee is based on the total annual amount for that individual right.

If you hold a small domestic or livestock pond registration, then the proposed registration renewal fee, which is due every five years, is \$500. If you file a groundwater extraction notice, the proposed filing fee is \$150 per year.

What do I do if I want to comment on the proposed fee regulations?

As stated on the workshop notice, the SWRCB will hold two workshops to receive comments on the proposed fee schedule. You are encouraged to file written comments in accordance with the directions in the notice. You may also give oral comments at the workshops. Your comments will become part of the rulemaking record.

What should I do if I no longer hold the water right application, permit or license, or registration?

Along with the workshop notice, each water right applicant, permit or license holder, or registrant was mailed a sheet of paper that identifies the water right application or registration number that our records indicate that person holds. If you no longer own the water right in question, please complete the bottom of the sheet and return it to the Division of Water Rights as soon as possible so that we can update our records. The invoice associated with that water right will then be sent to the new owner of record. If you do not notify the SWRCB of the new owner of the water right, the invoice associated with that water right will be sent to you, and you will be responsible for paying it.

Must I pay a fee if I am not diverting water under my water right?

Yes. The water right fee pertains to the full amount allowed in your permit or license, not the frequency or duration of your diversion. Since your permit or license allows you to divert a specified amount, you must pay an annual fee as long as your permit or license remains active. If you are no longer diverting water and think you should not be assessed future fees, you must notify the SWRCB. As appropriate, the SWRCB may revoke your permit or license or cancel your application. If your permit or license is revoked or your application cancelled, you will not be assessed future fees and you will not have an appropriate right to divert water. You still will be responsible for paying any fees that you have been assessed.

Will my fees go up next year?

SB1049 directs the SWRCB to adopt emergency regulations each Fiscal Year to generate revenues consistent with the Budget Act. This Fiscal Year that amount is \$4.4 million. The General Fund support for the water right programs this Fiscal Year is \$3.6 million. If the Legislature next year determines that fees, rather than General Funds, should support a higher portion of the water right program, then the fees likely will increase. The statute also directs the SWRCB to adjust the fees each year to make up for under-collected or over-collected revenues from the previous Fiscal Year. In the proposed regulations, the staff assumed an estimated non-collection rate of 40 percent in this year's proposed fee schedule. If significantly more or less than 60 percent of the assessed fees are successfully collected, the fees for next year will be adjusted accordingly. Similarly, if the Division receives water right applications for several large projects, revenues will exceed expectations and the fees for next Fiscal Year will be adjusted accordingly. As a result, it is impossible to determine exactly how the fees will vary from year to year.

If I have any further questions, whom should I contact?

Please call the Division of Water Rights at (916) 341-5128. You will hear a voice mail recording. Please record your name and phone number and your question. A staff member will return your call. Alternatively, you may email your question to feechange@waterrights.swrcb.ca.gov