

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF ADMINISTRATIVE SERVICES  
OCTOBER 5, 2010**

**ITEM 3**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY WATER QUALITY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200 AND 2200.6 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. The Budget Act for FY 2010-11 will require the Board to increase fees by \$19.5 million to reach the budget level.

Financial Condition of the Waste Discharge Permit Fund

[Attachment 1](#) shows a nine-year analysis of the fund condition for WDPF. The FY 2009-10 beginning balance is \$8.2 million. Total revenue is approximately \$75.5 million, including \$74.7 million in fee revenue and \$858,000 in other revenue. Total expenditures are \$74.4 million, resulting in a \$1.1 million gain with an ending balance of \$9.3 million and a fund reserve of 12.6 percent. Revenue was down in FY 2009-10 because of a one-time credit to NPDES fee payers. Expenditures were down due to savings attributable to the furlough program.

The FY 2010-11 beginning balance of \$9.3 million includes \$2.3 million in fines and penalty revenue that is not available for expenditure for core regulatory activities, which leaves an adjusted beginning balance of \$7.1 million. Under the current fee schedule rates, total revenue is anticipated to be \$72.4 million and total expenditures are anticipated to be \$91.7 million, which would result in a \$19.3 million deficit and a negative ending balance of \$12.2 million. The \$19.3 million projected deficit is attributable to a combination of a shortfall in revenue and increasing expenditures.

The shortfall in revenue is a result of under-collection of revenue in the Surface Water Ambient Monitoring Program (SWAMP) in FY 2009-10 and a substantial drop in enrollment under the State Water Board's recently adopted storm water construction permit. In July 2009, the State Water Board adopted [Order 2009-0009-DWQ](#) requiring storm water construction dischargers to enroll in a new storm water construction permit by July 1, 2010. Approximately 7,000 or 64 percent of previous storm water construction permit holders did not renew their permits by the deadline and have been terminated from coverage. Many of these permittees did not reenroll because of a decline in construction activity, though some will likely renew during the

year. At the same time, the downturn in the construction industry has resulted in a reduction of the number of new permits being issued. The State Water Board anticipates that these two factors will result in a \$3.2 million decline in storm water revenue for FY 2010-11.

### Increasing Expenditures

Table 1 shows the budget changes from FY 2009-10 to FY 2010-11 for each program. The total FY 2009-10 WDPF program budget was \$76.2 million. Primarily due to fund shifts and a return to full payroll costs due to the discontinuance of the furlough program, the FY 2010-11 Budget will be \$91.3 million, an increase of \$15.1 million. The total amount of fund shifts, including a shift in funding for basin planning from General Fund support to fee support, is \$12.5 million or 82.6 percent of the increase. The increase in payroll costs as a result of the discontinuance of the furlough program is \$2.5 million or 16.5 percent of the increase.

**Table 1**

WDPF Program	FY 2009-10 Budget <sup>1</sup>	Fund Shift <sup>2</sup>	Payroll Increase	Basin Planning	Other <sup>3</sup>	FY 2010-11 Budget	Difference
NPDES	\$22,210,128	\$1,373,000	\$722,870	\$1,850,063	\$142,804	\$26,298,864	\$4,088,737
WDR	\$17,706,820		\$593,558	\$1,598,071	\$136,713	\$20,035,162	\$2,328,342
Land Disposal-Closed	\$7,190,472		\$244,243	\$649,233	\$55,541	\$8,139,488	\$949,016
Land Disposal-Open	\$0	\$2,468,165	\$2,682	\$216,949	\$32,111	\$2,719,907	\$2,719,907
Stormwater	\$22,410,561		\$700,551	\$1,726,436	-\$298,726	\$24,538,822	\$2,128,261
401 Cert	\$3,241,134		\$116,814	\$324,000	\$29,465	\$3,711,413	\$470,279
CAF	\$2,839,900		\$94,559	\$256,250	\$21,922	\$3,212,631	\$372,731
Ag Waivers	\$585,985	\$1,762,000	\$14,995	\$227,998	\$20,734	\$2,611,713	\$2,025,727
<b>TOTAL</b>	<b>\$76,185,000</b>	<b>\$5,603,165</b>	<b>\$2,490,272</b>	<b>\$6,849,000</b>	<b>\$140,563</b>	<b>\$91,268,000</b>	<b>\$15,083,000</b>

**Footnotes:**

<sup>1</sup> SWAMP and GAMA program expenditures have been distributed to the applicable programs.

<sup>2</sup> Fund Shift for Land Disposal - Open includes a \$2 million fund shift plus applicable WDPF expenditure redirects.

<sup>3</sup> Other includes budget change adjustments for expiring BCP's, Senate/Assembly bills, enforcement, Fee Unit and pro rata.

### Proposed Changes

The State Water Board is proposing to raise fees by approximately \$19.5 million for FY 2010-11 to eliminate the projected deficit, meet Budget Act expenditures, and keep the Fund solvent.

Table 2 shows the revenue increases needed by program area to meet budgeted expenditures.

**Table 2**

FY 2010-11 (\$000)						
Program	FY 2010-11 Budget	Forecasted Base Revenue (FY 09-10 Fee Schedule)	Additional New Revenue	Projected Revenue Increase	Projected Program Fee Increase	Projected Total Revenue
NPDES	\$26,299	\$19,932	\$6,367	31.9%	31.4%	\$26,299
WDR	\$20,035	\$18,516	\$1,519	8.2%	8.3%	\$20,035
Land Disposal - Closed	\$8,139	\$6,642	\$1,498	22.6%	22.9%	\$8,139
Land Disposal - Open <sup>1</sup>	\$2,720	n/a	\$2,720	n/a	n/a	\$2,720
Stormwater	\$24,539	\$20,114	\$4,425	22.0%	21.5%	\$24,539
401 Cert	\$3,711	\$2,895	\$816	28.2%	28.2%	\$3,711
CAF	\$3,213	\$2,990	\$223	7.5%	7.6%	\$3,213
Ag Waivers	\$2,612	\$662	\$1,950	294.6%	308.3%	\$2,612
<b>Total</b>	<b>\$91,268</b>	<b>\$71,751</b>	<b>\$19,517</b>			<b>\$91,268</b>

**Footnotes:**

<sup>1</sup> Projected New Revenue for Land Disposal - Open reflects new fee payers in the program that previously did not pay an annual WDR fee.

**NPDES**

The NPDES program budget for FY 2010-11 (including its portion of SWAMP) is \$26.3 million. The NPDES program needs to generate an additional \$6.4 million in revenue to meet the FY 2010-11 Budget. This translates to a 31.4 percent increase to all NPDES fee categories. Of this \$6.4 million, approximately \$4.1 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$2.3 million is attributable to fee increases needed to offset a revenue shortfall and an increase in the program's share of pro rata costs.

**WDR**

The WDR program budget for FY 2010-11 (including its portion of GAMA) is \$20.0 million. The WDR program needs to generate an additional \$1.5 million in revenue to meet the FY 2010-11 Budget. This translates to an 8.3 percent increase to all WDR fee categories. The entire \$1.5 million is attributable to increases in budgetary expenditures as shown on Table 1.<sup>1</sup>

**Land Disposal – Closed**

The Land Disposal – Closed program budget for FY 2010-11 (including its portion of GAMA) is \$8.1 million. The Land Disposal – Closed program needs to generate an additional \$1.5 million in revenue to meet the FY 2010-11 Budget. Of this \$1.5 million, approximately \$949,000 is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$551,000 is attributable to fee increases needed to offset a revenue shortfall and an increase in the program's share of pro rata costs. This translates to a 22.9 percent increase to all Land Disposal – Closed fees categories.

<sup>1</sup> Approximately \$800,000 of the \$2.3 million in budget increases can be absorbed through existing fee rates.

### **Land Disposal – Open**

Historically, the Water Boards' costs of regulating open landfills has been supported by tipping fees levied by CalRecycle (formerly known as the California Integrated Waste Management Board) and deposited into the Integrated Waste Management Account (IWMA). Due to declining revenue in the IWMA, the Budget Act shifts \$2.03 million in budget authority from IWMA to the Waste Discharge Permit Fund. Consequently, the State Water Board expects to assess permit fees to open landfills in order to make up for the decline in tipping fee revenue and meet anticipated budgetary expenditures for the Land Disposal – Open program. The Land Disposal – Open program budget for FY 2010-11 (including its portion of GAMA) is \$2.7 million. The State Water Board will add a Land Disposal – Open fee schedule to its existing fee schedules by using the proposed Land Disposal – Closed fee schedule, discounted by approximately 24.4 percent, to assess fees at the appropriate revenue level.

### **Storm Water**

The Storm Water program budget for FY 2010-11 (including its portion of SWAMP) is \$24.5 million. The Storm Water program needs to generate an additional \$4.4 million in revenue to meet the FY 2010-11 Budget. Of this \$4.4 million, approximately \$2.1 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$2.3 million is due to an anticipated sharp decline in revenue from a 64 percent reduction in the number of storm water construction projects under permit. The \$4.4 million increase translates to a 21.5 percent increase to all Storm Water fee categories.

### **401 Certification**

The 401 Certification program budget for FY 2010-11 (including its portion of GAMA) is \$3.7 million. The 401 Certification program needs to generate an additional \$816,000 in revenue to meet the FY 2010-11 Budget. Of this \$816,000, approximately \$470,000 is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$346,000 is attributable to fee increases needed to offset a revenue shortfall and an increase in the program's share of pro rata costs. The \$816,000 increase translates to a 7.6 percent increase in all 401 Certification fee categories.

### **Confined Animal Facilities (CAF)**

The CAF program budget for FY 2010-11 (including its portion of GAMA) is \$3.2 million. The CAF program needs to generate an additional \$223,000 in revenue to meet the FY 2010-11 Budget. This translates to a 7.8 percent increase to all CAF fee categories. The entire \$223,000 increase is attributable to increases in budgetary expenditures as shown on Table 1.<sup>2</sup>

### **Agricultural Waivers**

The Agricultural Waivers program budget for FY 2010-11 is \$2.6 million. The Agricultural Waivers program needs to generate an additional \$1.9 million in revenue to meet the FY 2010-11 Budget. This translates to a 308.3 percent increase to the per acre foot charge in all Tier I (from 12 cents per acre to 49 cents per acre) and Tier II (from 20 cents per acre to 82 cents per acre) fee categories. The entire \$2.6 million increase is attributable to increases in budgetary expenditures as shown on Table 1.<sup>3</sup>

### **SWAMP**

The SWAMP surcharge will remain at 21 percent in order to generate the required revenue level to meet budget expenditures.

---

<sup>2</sup> Approximately \$150,000 of the \$373,000 in budget increases can be absorbed through existing fee rates.

<sup>3</sup> Approximately \$75,000 of the \$2.03 million in budget increases can be absorbed through existing fee rates.

**GAMA**

The GAMA surcharge will be reduced from 9.5 percent to 7.9 percent in order to generate the required revenue level to meet budget expenditures.

**POLICY ISSUE**

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

**FISCAL IMPACT**

The Budget Act includes expenditure authority for the Waste Discharge Permit Fund of \$91.3 million while the current fee schedules would only generate a projected \$72.2 million in revenue, leaving a negative fund balance of \$12.4 million. The proposed changes would generate an additional \$19.5 million in fee revenue. The ending fund balance for FY 2010-11 would be \$7.1 million, keeping the fund solvent with a prudent reserve of 7.9 percent.

**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 Goal 6 of the Water Boards' Strategic Plan: to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.

# D R A F T

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY WATER QUALITY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200 AND 2200.6 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 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, 2200.3, 2200.4, 2200.5 and 2200.6 of the California Code of Regulations to implement the provisions of the 2010 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 October 5, 2010.

---

Jeanine Townsend  
Clerk to the Board