

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
SEPTEMBER 18, 2019**

ITEM 11

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE CORE WATER QUALITY REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.6 AND 2200.7 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. Staff review all WDPF programs' fees on an annual basis and hold several stakeholder meetings throughout the year that coincide with the various iterations of the Governor's Budget.

Waste Discharge Permit Fund Budget Cost Drivers

Attachment 1: WDPF Budget Cost Drivers shows the FY 2019-20 projected revenue based on the existing fee schedule, the budget for FY 2019-20, the projected revenue adjustments and the cost drivers, including staff cost and program adjustments and budget change proposal (BCP) adjustments. Staff is proposing to increase fees for most WDPF programs as noted below due to several factors. Fee increases were required in FY 2016-17, FY 2017-18 and FY 2018-19, but some of the necessary increases were deferred to future fiscal years by utilizing the fund reserve to cover some of the revenue shortfall. In addition, as a result of delays related to the Fi\$Cal system conversion, staff does not have data on actual FY 2018-19 expenditures and is therefore unable to accurately project the fund reserve for FY 2019-20. For these reasons, staff is proposing to increase fees for most programs the full required amount to ensure revenue meets expenditures.

Proposed Fee Schedule Changes

Waste Discharge Requirement (WDR)

The WDR program budget for FY 2019-20 is \$33.9 million and projected revenue is \$29.5 million. The WDR program needs to generate an additional \$4.4 million in revenue to meet the FY 2019-20 budget which translates to an average 14.8 percent increase to all WDR fee categories. All applicable surcharges will remain unchanged for FY 2019-20.

Water Quality Certification (WQC)

The WQC program budget for FY 2019-20 is \$15.2 million and projected revenue is \$10.4 million. The WQC program needs to generate an additional \$4.8 million in revenue to meet the FY 2019-20 budget. The additional revenue needed is broken down into two categories, fee payers not associated with Public Utilities Code (PUC), Division 4.1, Chapter 6 and electronic service providers that are performing activities pursuant to PUC, Division 4.1, Chapter 6 and identified in an approved Utility Wildfire Mitigation Plan (plans are approved by the California Public Utilities Commission). For fee payers not associated with PUC, Division 4.1, Chapter 6, \$2.5 million in revenue is needed which translates to an overall 19.0 percent increase for applicable WQC fee categories. Staff is proposing to keep the Fill & Excavation annual fee at the FY 2018-19 level to provide stability and predictability to potential applicants that might not apply for permits or comply with regulations if fees continue to increase and to compensate by increasing the project fee impact area per acre multiplier by 19.9 percent.

- **PUC, Division 4.1, Chapter 6** – To support staff workload associated with electronic service providers that are conducting dredge and fill activities pursuant to a wildfire mitigation plan developed and approved in accordance with PUC, Division 4.1, Chapter 6, staff is proposing an annual fee of \$43.00 per transmission mile identified as high risk or high threat in the wildfire mitigation plan that would cover all associated dredge and fill projects for the year for that provider. The combined total of all the annual fees paid by utility companies would equal the required \$2.3 million in revenue (\$1.8 million for the BCP, plus \$500,000 for foundational program costs).

Storm Water

Staff is proposing to amend section 2200(b)(1)(A) of the fee schedule to clarify that special districts located within a city or county that does not oversee storm water compliance for the district are required to pay the municipal separate storm sewer system (MS4) fee.

NPDES

The NPDES (not including Storm Water) program budget for FY 2019-20 is \$33.3 million and projected revenue is \$29.3 million. The NPDES program needs to generate an additional \$4.0 million in revenue to meet the FY 2019-20 budget which translates to an average 13.4 percent increase to all NPDES fee categories. All applicable surcharges will remain unchanged for FY 2019-20.

- **California Water Code Section 13142.5(b) Consistency Determination for Seawater Desalination Facilities**

Due to the significant and lengthy process for reviewing and approving consistency determinations for seawater desalination facilities, staff is proposing an application fee be implemented and assessed annually once a draft report of waste discharge is submitted until the permit is issued or another determination is made. Once the permit is issued, the discharger will pay the standard NPDES flow-based fee. Staff is recommending that the application fee be based on intake technology type, because substantially more staff time is required to evaluate surface or alternative intake applications than subsurface intake applications.

Fee Basis	Annual Fee
Subsurface Only	\$62,500
Surface, Combined Surface and Subsurface, or Alternative Intake Technologies	\$187,500

Confined Animal Facilities (CAF)

The CAF program budget for FY 2019-20 is \$5.5 million and projected revenue is \$5.0 million. The CAF program needs to generate an additional \$477,000 in revenue to meet the FY 2019-20 budget which translates to an average 9.5 percent increase to all CAF fee payers.

- Staff has determined that some inequities exist in the way fees are assessed to dairy facilities that contain both mature dairy cattle and bred heifers that are in excess of industry averages. To make the fee schedule more equitable, staff is proposing to amend section 2200(c) of the fee schedule by removing the text “(not at a dairy)” from the Feedlots table. This change will bring the table in line with the current fee schedule language requiring the discharger to pay the higher of the two fees if there are multiple animal types at a facility.
- Staff is proposing to change the two lowest tiers in the Feedlot-Heifers fee schedule to align with the current orders regulating heifer facilities. The animal count for lowest tier will change from 0-99 to 0-136 and the next tier up will change from 100-299 to 137-299.

Agricultural (Ag) Lands

The Ag Lands program budget for FY 2019-20 is \$7.8 million and projected revenue is \$7.0 million. The Ag Lands program needs to generate an additional \$815,000 in revenue to meet the FY 2019-20 budget which translates to an average 11.7 percent increase. Staff is proposing to modify the current fee structure from a flat per acre fee to per acre fee based on the discharger’s defined agricultural activity as shown below, to reflect the staff time savings associated with Tier B dischargers not being required to submit an Irrigation and Nitrogen Management Plans (INMP).

Option 3 – Agricultural Activities

Agricultural Activity	Group Enrollment: Per Acre Fee	Individual Enrollment: New Per Acre Fee Structure
Tier A	\$1.08	\$27.00 per acre up to 300 acres plus \$13.50 per acre over 300 acres with a minimum fee of \$550
Tier B	\$0.87	\$21.60 per acre up to 300 acres plus \$10.80 per acre over 300 acres with a minimum fee of \$550

Definitions:

Third-Party Group – A group approved by the Regional Water Board or Regional Board Executive Officer to manage fee collection and payment to the State Water Board.

Individual Enrollment – A discharger that is not a member of an approved Third-Party Group.

Tier A – All agricultural activities except those identified in Agricultural Activity Tier B.

Tier B - Discharger or group of dischargers whose agricultural activities are managed wetlands, irrigated pastures with no external nitrogen input, those belonging to the California Rice Commission third party group, or are determined by the Regional Water Board or the Executive Officer to be exempt from the precedential requirement to develop an INMP (per State Water Board Order No. WQ 2018-0002, In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group).

Cannabis

Staff is proposing to remove section 2200.7(a) as those fees apply only to dischargers under a regional board order and all dischargers were required to enroll in the Statewide General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation by July 1, 2019.

Programs with No Proposed Fee Increases

The Land Disposal and Storm Water programs are projected to generate sufficient revenue to meet budgeted expenditures. Therefore, staff is proposing no fee increases for FY 2019-20 for these programs.

POLICY ISSUE

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

FISCAL IMPACT

The FY 2019-20 Budget Act includes expenditure authority for the Waste Discharge Permit Fund of \$159.2 million. The proposed fee schedule changes will ensure the projected revenue for the WDPF meets the FY 2019-20 budget expenditure authority.

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.