

# Water Rights Fees Stakeholder Meeting

Thursday, August 6, 2020 at 11:00 am – 12:30 pm

Webcast and Teleconference Meeting Only

Teleconference Number: (888) 273-3658

Participant Code: 300828

***NO PHYSICAL MEETING LOCATION***

Live Webcast [Here](#)

[Fee Branch Email](#)



## **AGENDA**

1. Welcome and Introductions
2. Budget Cost Drivers (Attachment 1)
3. AB 658
  - 5 Year Temp Permit Filing Fee (Attachment 2)
  - CDFW Fee Proposal (Attachment 3)
4. FERC Fees (Attachment 4)
5. Proof of Claim Fees (Attachment 5)
6. Fee Alternatives for Consideration (Attachment 6)
7. Open Discussion
8. Next Steps

**Water Rights Fund  
Budget Cost Drivers  
FY 2020-21  
(\$000)**

<b>Water Rights Fund (3058)</b>	<b>FY 2019-20 Budget</b>	<b>FY 2020-21 Adopted Budget<sup>3</sup></b>	<b>Net Difference</b>	<b>Percent Change</b>	
<b>Budget Allocation</b>	\$27,739	\$30,404	\$2,665	9.6%	
<b>FY 2020-21 Budget Cost Drivers</b>	<b>Increase Amount</b>	<b>Percent Change</b>			
<b>State Operations<sup>1</sup></b>	\$1,117	4.0%			
<b>Pro Rata</b>	\$763	2.8%			
<b>DOJ Legal Services</b>	\$586	2.1%			
<b>Stream Gaging Plan (SB 19)</b>	\$200	0.7%			
<b>Control Sections<sup>2</sup></b>	-\$3	0.0%			
<b>Totals:</b>	\$2,663	9.6%			

<sup>1</sup> Includes employee compensation and retirement.

<sup>2</sup> Includes CDTFA, CalEPA, Fi\$Cal and pension payments.

<sup>3</sup> The enacted budget does not include estimated furlough salary savings.



## Staff Proposal for Fiscal Year 2020-2021

### Fee Structure Options for Division of Water Rights Application for 5-Year Underground Storage Temporary Permit Filing Fee

Assembly Bill 658 went into effect January 1, 2020. The Water Code now allows for parties to pursue a 5-year temporary permit for diversion to underground storage. The Division of Water Rights anticipates that most parties will use a 5-year temporary authorization as a first step in pursuing a long term project and permanent authorization for diversion to augment local supplies to help achieve basin sustainability. There may also be cases where parties seek a one-time 5-year temporary authorization to meet an urgent need situation. The current fee for a 5-year temporary permit is the standard application fee. Below staff outline options to modify this fee, including staff preferred option 3 to match the fee to the cost of a party pursuing five 180 day temporary permits for a project. The 5-year temporary permit is expected to offer several advantages to applicants over pursuing five 180 day permits, including collection of information to assist with protest resolution of their standard application and year to year consistency of permit terms. The Board has not yet received any filings for a 5-year temporary permit to date.

**Option 1:** Option 1 represents no change to the current application filing fee for 5 year temporary permits. Option 1 is equivalent to the standard application fee pursuant to Water Code section 1062(a)(1)(A).

**Option 2:** Option 2 is equivalent to the application filing fee for temporary (180 Day) non-underground storage permits pursuant to Water Code section 1062(a)(1)(C).

**Option 3:** Option 3 is intended to replicate the experience of filing a temporary (180 Day) underground storage permit application and 4 subsequent renewals. Option 3 consists of two parts (Parts A and B). Part A is an initial filing fee equivalent to the application filing fee for temporary (180 Day) underground storage permits plus four renewal fees assuming no diversion in years 2 through 5 pursuant to Water Code section 1062(a)(1)(E). Part B is a supplemental fee due 30 days after the close of the diversion seasons for years 2 through 5 (there is no supplemental fee for year 1). Part B is calculated as \$0.20 per acre foot of water actually diverted.

**Feedback:** The State Water Board welcomes and encourages feedback. Please send any comments regarding these options to: [WaterRightsFees@waterboards.ca.gov](mailto:WaterRightsFees@waterboards.ca.gov).



Options	Minimum Fee	Fee Structure	Example Fee for: 1,000 af 10,000 af 100,000 af	Maximum Fee
<b>Option 1.</b> Maintain current Standard Application Fee	\$1,000	(§1062(a)(1)(A): \$1,000 plus \$15 per each acre-foot greater than 10 acre-feet based on the total annual amount of diversion sought by the application or \$553,919, whichever is less	\$15,850 \$150,850 \$553,919	\$553,919.00
<b>Option 2.</b> Align AB 658 Applications with Fees for Temporary (180 Day) Non-Underground Storage Application Fee	\$2,000	§1062(a)(1)(C): \$2,000 or 50% of the fee calculated under §1062(a)(1)(A), whichever is greater	\$7,925 \$75,425 \$276,959.50	\$276,959.50
<b>Option 3.</b> Align AB 658 Applications to match cost of 5 consecutive years of Temporary (180 Day) Underground Storage Application Fees under §1062(a)(1)(E): 1-year Application Fee and 4 years of Renewals	\$8,000	<u>Initial Fee:</u> Temporary (180 Day) Underground Storage Application Permit Fee (§1062(a)(1)(E)) (variable amount based on acre-feet requested) plus four renewals assuming no diversion (\$6,000).  <u>Supplemental Fee:</u> \$0.20 per acre foot for actual flows diverted under years 2 through 5 of the temporary permit. Supplemental fees are due within 30 days of the close of each diversion season for years 2 through 5 of the temporary permit.	Min - Max \$11,100 - \$11,900 \$12,000 - \$20,000 \$21,000 - \$101,000  Example 10,000 af: At filing, paid \$12,000. Under maximum diversion scenario, paid \$2,000 each subsequent year. Under minimum (no) diversion scenario, paid \$0 each subsequent year.	N/A

- Note: The proposed fees do not include costs associated with proposed Trailer Bill Legislation (<https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/126>) for collecting fees for California Department of Fish and Wildlife (CDFW) review of AB 658 permits. Cost estimates associated with this proposal will be developed pending passage and coordination with CDFW.

## Staff Proposal for Fiscal Year 2020-2021

### Proposal for California Department of Fish and Wildlife Fee Component - Application for 5-Year Underground Storage Temporary Permit and 5 Year Temporary Change Petition Filing Fees

**Background:** As part of the newly enacted 5 Year Temporary Water Right Permit application and the 5 year temporary change petition process for diversion to underground storage filed by a groundwater sustainability agency or local agency, applicants or petitioners are required to consult with the California Department of Fish and Wildlife (CDFW) prior to temporary application or petition submittal.

AB 92 (Public resources: omnibus trailer bill 2019-2020) required that the Division of Water Rights, in setting the fee schedule for these actions, to also include an amount estimated by the State Board, in consultation with the CDFW, necessary to recover costs incurred by the department.

**Proposal:** The table below provides the proposed CDFW processing fee for their review of an applicable application or petition. The CDFW fee will be due at time of filing and is in addition to the Division of Water Right's application filing fee options also presented in this agenda packet, or the existing petition filing fee (which remains the same).

<b>Amount Requested in Acre-feet (AF)</b>	<b>Initial fee at time of filing</b>	<b>Example: fee for 1,000 AF</b>	<b>Example: fee for 10,000 AF</b>	<b>Example: fee for 100,000 AF</b>
<10,000 AF	\$3,000 + \$0.10/AF	\$3,100	\$6,000	\$15,000
≥10,000 AF	\$5,000 + \$0.10/AF			

**Federal Energy Regulatory Commission Fees:  
Proposal to Increase Fees for Fiscal Year 2020-2021**

Background. Following the January 2019 *Hoopa Valley Tribe v. Federal Energy Regulatory Commission* (FERC) decision (*Hoopa*), FERC has found waiver of the State Water Board’s water quality certification authority for several projects. The decrease in projected revenue associated with projects that have received a FERC waiver determination in Fiscal Year (FY) 2019-2020 is approximately \$900,000. To address this anticipated shortfall, staff recommends that the State Water Board raise fees for FERC projects in FY 2020-2021.

Funding Scenarios Evaluated. Staff evaluated various scenarios to determine the percentage of fee increase needed to support the FERC water quality certification program in FY 2020-21. Scenarios evaluated included:

- Full program funding<sup>1</sup>;
- Full program funding<sup>1</sup> with no funding of two existing vacancies (AGPA and WRCE); and
- Full program funding<sup>1</sup> with no funding of one existing vacancy (WRCE).

The percent funding increase associated with these scenarios ranges from a 15 to 23 percent fee increase for FERC projects, see **Table 1 – FERC Fees Scenario Summaries**.

There are several options for managing staff costs while incorporating the expected revenue shortfall caused by FERC waivers. Staff have put forward options that leave certain positions vacant in the near-term recognizing California’s current economic situation. The section currently has two vacant line-staff positions; the scenarios include options for hiring those staff as well as for leaving those two unfilled positions vacant for the foreseeable future. The scenarios also include a 10% staff savings as adopted in the budget. Staff will evaluate various ways implement the fee increase (i.e., increasing the kilowatt charge, increasing the base fee, etc.). Fee increases may be needed in future years depending on which new FERC projects come into the licensing process and how much of the deficit is addressed in the coming fiscal year.

**Table 1 summarizes the three scenarios evaluated and associated fee increases.**

<b>Table 1. FERC Fee Scenario Summaries</b>		
<b>No.</b>	<b>Scenario</b>	<b>Figures</b>
<b>1</b>	<b>Projected Staff Expenditures with PLP:</b>	\$ 3,738,803
	<b>Shortfall*:</b>	\$ (847,972)
	<b>Projected Fee Increase:</b>	<b>23%</b>
<b>2</b>	<b>Projected Staff with PLP and AGPA/ WRCE remain vacant:</b>	\$ 3,382,521
	<b>Shortfall*:</b>	\$ (491,690)
	<b>Projected Fee Increase:</b>	<b>15%</b>
<b>3</b>	<b>Projected Staff Expenditures with PLP and WRCE remains vacant:</b>	\$ 3,508,509
	<b>Shortfall*:</b>	\$ (617,678)
	<b>Projected Fee Increase:</b>	<b>18%</b>

\* Approximately \$900K of the shortfall is associated with the loss of revenue from FERC finding waiver of projects in FY 2019-2020.

<sup>1</sup> The Full Program Funding option includes 10 percent salary savings associated with the Personal Leave Program.

## **Staff Proposal for Fiscal Year 2021-2022**

### **Fee Structure Options for Division of Water Rights Proof of Claim Fee (Statutory Adjudications)**

When conducting a statutory adjudication of water rights, the State Water Resources Control Board (State Water Board) must notify potential water right claimants, investigate claims of right, assess public trust resources, review proofs of claim, produce a technical report and preliminary order of determination, hold hearings on objections, and submit a final order of determination to the court. (Wat. Code, §§ 2500-2868.)

When parties submit proofs of their water right claims to the State Water Board as part of a statutory adjudication process, they must pay a Proof of Claim Fee. (Wat. Code, § 2850.) Following the submission of the final order of determination to the court, the State Water Board must compute the entire expense it has incurred in conducting the statutory adjudication. If this total exceeds the amount collected in Proof of Claim Fees, the expense is equitably apportioned by the Board and recovered from the parties to the proceeding. (Wat. Code, §§ 2851-2853.) The Board may also order interim or partial payments by parties during the course of the adjudication. (Wat. Code, § 2865.) Parties claiming less than 10 acre-feet per annum (AFA) may be exempted by the State Water Board from participating in a statutory adjudication if their use of water would have no material effect on the rights of other claimants. Exempted parties are not required to pay a Proof of Claim Fee.

The current Proof of Claim Fee of \$500 has not been adjusted since 2003 and is not commensurate with State Water Board staff costs to conduct a statutory adjudication, particularly for water right claims involving large quantities of water which may require significant time to investigate. State Water Board staff have outlined three options to modify the Proof of Claim Fee below. The staff preferred option, Option 3, would modify the fee to more closely match the estimated costs of a statutory adjudication and adjust this fee for claims exceeding 1,000 AFA or 1,000 riparian acres (ac.).

**Option 1:** No change to the current proof of claim fee required by California Code of Regulations (CCR) Title 23 section 1069.

**Option 2:** Adjust the current proof of claim fee required pursuant to CCR Title 23 section 1069 for inflation since 2003, when the fee was last changed.

**Option 3:** Increase the proof of claim fee to reflect the amount of staff investigation costs for initial claims and more accurately reflect the greater resources expended on large water right claims (i.e., those exceeding 1,000 AFA or 1,000 ac.). This option also reduces the need for additional staff time and resources to undertake partial cost recovery during the statutory adjudication process and better balances the recovery of costs to reduce the lump sum payment due at the conclusion of the adjudication.

Options	Minimum Fee	Fee Structure	Example Fee for: Claim <1,000 AF or <1,000 ac. Claim >=1,000 AF or >=1,000 ac.	Maximum Fee
<b>Option 1.</b> Maintain current Proof of Claim Fee	\$500	(\$ 1069) \$500 for each person or entity that files one or more proofs of claim	\$500 \$500	\$500
<b>Option 2.</b> Adjust current Proof of Claim Fee for inflation	\$700	\$700 for each person or entity that files one or more proofs of claim	\$700 \$700	\$700
<b>Option 3.</b> Initial Partial Cost Recovery	\$1,000	\$1,000 for each person or entity that files one or more proofs of claim that total less than 1,000 AFA and less than 1,000 ac. of riparian land, or that files proofs of claim solely for public trust or non-consumptive uses.  \$10,000 for each person or entity that files one or more proofs of claim that total greater than or equal to 1,000 AFA or greater than or equal to 1,000 ac. of riparian land.	\$1,000 \$10,000	\$10,000

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## Fee Alternatives

	<b>FY 2020-21</b>	<b>BY+1</b>	<b>BY+2</b>
Option A – No Increase	0%	9.6%	9.6%
Option B – Partial Increase	3.0%	7.5%	7.5%
Option C – Balanced Increases	5.7%	5.7%	5.7%