Water Right Fee Proposal

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Assistant Division Chief
Purpose of the Proposed Emergency Regulations

- To implement a fee schedule to raise existing fees and implement new fees consistent with Senate Bill 1049
Goal and Objective

- **Goal:** To raise $4.4M in revenues to support activities of the Division of Water Rights.

- **Objective:** To establish the fee schedule and collect the fees as soon as possible.
Today’s Situation

- Budget Act of 2003 has reduced the funding for the Division of Water Rights by 37% over the past two years and reduced staffing levels by 25%.
Historical Staffing Levels

PYs

1988-89
1989-90
1990-91
1991-92
1992-93
1993-94
1994-95
1995-96
1996-97
1997-98
1998-99
1999-00
2000-01
2001-02
2002-03
2003-04

Division of Water Rights 2003

02/18/2004
### Historical Staffing Levels, cont.

<table>
<thead>
<tr>
<th>Year</th>
<th>Staffing Level</th>
<th>No. of Processed Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Engineers &amp; Engineering Technicians</td>
<td>Attorneys</td>
</tr>
<tr>
<td>1961</td>
<td>50</td>
<td>5</td>
</tr>
<tr>
<td>2003</td>
<td>42*</td>
<td>5</td>
</tr>
<tr>
<td>Difference</td>
<td>-16%</td>
<td>0%</td>
</tr>
</tbody>
</table>

*Division staffing also includes 21 scientists who are responsible for implementing environmental protection laws that did not exist in 1961.*
How Did We Get Here?

- The water rights program has historically been supported predominantly by the General Fund.
- The State’s budget crisis resulted in a legislative review of all General Fund supported programs.
- Current Fees produce on average less than $50,000 in revenue (about 0.5% of the cost of the program).
- Last fee increase was in 1985
How were the recommended fees determined?

- Constraints
- Assumptions
- Methodology
- Recommendation
Constraints

- Fees must generate $4.4M in revenue
- Funding source must be relatively stable
- Fees must be implemented by January 2004
  - Division must be able to calculate the fees using its database
  - Database modifications must be minimal
Assumptions-One time fees

- Fees should reflect costs but not be so high that they are prohibitive
- Actions that require a hearing in all circumstances should be assessed an additional fee
- Registrants who hold small domestic and livestock registrations should pay the same amount as the smallest water right holders
Assumptions-One time fees (cont.)

- Fees associated with adjudications should generate the estimated cost of the adjudication
- Fees associated with 401 certifications for FERC licensed projects should generate revenues consistent with the Budget Act
- Groundwater recordation program should be self-supporting
Assumptions

- Annual Fees
  - Revenues not generated from one-time fees should be generated from annual fees.
  - 40 percent of billed revenues are not collectable.
    - Sovereign immunity
    - Defunct water rights
    - Budgetary Restrictions
  - FERC-licensed single purpose hydropower projects should receive a 70% discount.
Methodology

- Calculate estimated revenues from one-time fees
- Calculate revenue from other annual fees (such as 401 fees)
- Determine remaining revenue needs
- Multiply by 1.4 (target revenue)
Methodology (cont.)

- Allocate annual fee revenues among water right holders by
  - Calculating the annual diversion allowed under each permit/license (face value).
  - Reduce that amount by any limitation that applies to that permit/license.
Methodology (cont.)

- If the permit authorizes power use and the diversion is subject to a FERC license, multiply the amount by 0.3. This effectively applies the discount.
- Determine the cumulative authorized diversion.
- Divide the target revenue by the cumulative diversions authorized to determine the per acre-ft rate.
Methodology (cont.)

- Determine the revenues generated by those subject to the minimum fee.
- Subtract this from the target revenue.
- Recalculate the per acre-ft rate for the remaining permittees/licensees.
USBR

- USBR holds rights to about 30% of the water authorized for diversion
- USBR has historically claimed sovereign immunity
- Statute authorizes a “pass through” to those who contract for “delivery of water.” (Section 1540.)
USBRR (cont.)

- Draft regulations specify a formula for those who contract for CVP water.
  - Contract entitlement
  - For settlement contractors, supplemental supply entitlement

- Draft Regulations do not currently specify allocation methodology for other projects.

- Statute specifies that allocation of fees does not:
  - Affect ownership of the water right
  - Vest equitable title in the contractors
### Fee Schedule Summary

<table>
<thead>
<tr>
<th>Fee Category</th>
<th>Proposed Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>Greater of $1,000 or $10 per Acre-Foot per Annum</td>
</tr>
<tr>
<td>Petition to Revise Declaration of Fully Appropriated Streams filed with Application</td>
<td>$10,000 in addition to Application Fee</td>
</tr>
<tr>
<td>Petition for Assignment of a State Filed Application</td>
<td>$5,000 in addition to Application Fee</td>
</tr>
<tr>
<td>Applications filed between July 1, 2003 &amp; Effective Date of Regulations</td>
<td>Difference between Application Fee above and fees paid previously.</td>
</tr>
<tr>
<td>Change Petition</td>
<td>$1,000</td>
</tr>
<tr>
<td>Change Petition Pursuant to Water Code §1707</td>
<td>$850</td>
</tr>
<tr>
<td>Time Extension Petition</td>
<td>$1,000</td>
</tr>
<tr>
<td>Wastewater Petitions</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
**Recommendation (cont.)**

<table>
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<tr>
<th>Fee Schedule Summary</th>
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</table>

### One-Time Fee Categories (Collected by SWRCB)

<table>
<thead>
<tr>
<th>Fee Category</th>
<th>Proposed Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>401 Certification for Water Development Projects not subject to FERC Licensing</td>
<td>Fee Based on Project Specific Costs</td>
</tr>
<tr>
<td>401 Certification for Projects not Involving Water Development</td>
<td>No Change, Based on Water Quality Fee Schedule Adopted 9/30/2003</td>
</tr>
<tr>
<td>Water Lease Application (for leases under Water Code § 1020 et seq. not involving water districts)</td>
<td>Greater of $1,000 or $10 per Acre-Foot Leased</td>
</tr>
<tr>
<td>Small Domestic and Stockpond Registration/5-year Renewal Fee</td>
<td>$500</td>
</tr>
<tr>
<td>Proof of Claim under Water Code §2575 et seq.</td>
<td>$500</td>
</tr>
<tr>
<td>Groundwater Recordation under Water Code §4999 et seq.</td>
<td>$150</td>
</tr>
</tbody>
</table>
**Recommendation (cont.)**

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<thead>
<tr>
<th>Fee Category</th>
<th>Proposed Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permits &amp; Licenses Annual Fees</td>
<td>Greater of $100 or $0.03 per Acre-Foot per Annum</td>
</tr>
<tr>
<td>Pending Application Annual Fee</td>
<td>Greater of $100 or $0.03 per Acre-Foot per Annum</td>
</tr>
<tr>
<td>Petition Annual Fee</td>
<td>$1,000</td>
</tr>
<tr>
<td>Water Lease Annual Fee (for leases under Water Code § 1020 et seq. involving water districts)</td>
<td>Greater of $1,000 or $10 per Acre-Foot</td>
</tr>
<tr>
<td>Projects under review for 401 Certification for FERC licensing</td>
<td>$500 plus $0.085 per Kilowatt</td>
</tr>
<tr>
<td>Projects issued FERC licenses pursuant to 401 certification</td>
<td>$10 plus $0.01 per Kilowatt</td>
</tr>
</tbody>
</table>
Administrative Issues

- One time and filing fees will be paid directly to SWRCB.
- SWRCB will contract with the BOE to issue and collect annual fees.
- Statute requires that emergency regulations be adopted each year consistent with the Budget Act.
Where do we go from here?

- Review all comments (specific proposals are more useful).
- Revise draft as appropriate consistent with direction from the Board.
- Present revised draft regulations for Board’s consideration at a future Board meeting.
Concluding points

- There is no “right” answer.
- Fees in subsequent years can be affected by
  - General Fund allocations
  - Amendments to water rights
  - Adjustments to account for differences between actual and projected revenues the previous year.
- This is a “zero sum game.” Any reductions given to one group will result in increases to another.