

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF ADMINISTRATIVE SERVICES  
SEPTEMBER 19, 2011**

**ITEM 9**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200 AND 2200.6, AND ADDING SECTION 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. The Budget Act for FY 2011-12 will require the Board to increase fees by \$27.6 million to reach the budget level.

**Financial Condition of the Waste Discharge Permit Fund**

[Attachment 1](#) shows an eight-year analysis of the fund condition for WDPF. The FY 2010-11 beginning balance is \$6.6 million. Total revenue is approximately \$75.1 million, including \$74.5 million in fee revenue and \$618,000 in other revenue. Total expenditures, including salary savings are \$73.3 million, resulting in a \$1.8 million gain with an ending balance of \$8.4 million and a fund reserve of 11.4 percent.

The FY 2011-12 beginning balance of approximately \$8.4 million includes \$2.4 million in fines and penalty revenue not available for expenditure for core regulatory activities, which leaves an adjusted beginning balance of \$6.0 million. Under the current fee schedule, total revenue is anticipated to be \$73.7 million and total expenditures are anticipated to be \$101.4 million, resulting in a loss of \$27.7 million and a deficit in the Fund of \$21.7 million. In order to eliminate the projected deficit and meet budgetary expenditures, the State Water Board needs to generate an additional \$27.6 million in fee revenue to bring total fee revenue up to \$100.7 million. This will result in a \$77,000 loss with an ending balance of \$5.9 million and a fund reserve of 5.8 percent

**Program Expenditures**

Table 1 shows the projected FY 2011-12 revenue based on the existing fee schedule, the budget for FY 2011-12 along with the projected fee revenue needed to meet anticipated budgetary expenditures by program, the cost drivers, and the revenue increases needed by program area to meet budgeted expenditures. The cost drivers include staff cost adjustments, planning fund shifts distributed to all programs, and specific fund shifts for the Irrigated Lands Regulatory Program (ILRP) and NPDES Program. In addition to the fund shifts, there is a

revenue shortfall from FY 2010-11 that is mainly attributable to a return to full program budget authority. As Table 1 indicates, of the \$27.6 million fee increase, \$3.1 million or 11.3 percent is attributable to specific General Fund shifts in the NPDES and ILRP programs, \$18.3 million or 66.5 percent is attributable to General Fund shifts for planning activities, and \$8.2 million or 29.8 percent is attributable to a base revenue shortfall. None of the increase is attributable to growth in WDPF fee funded programs.

**Table 1**

WDPF Program	Base Revenue Forecast FY 11-12	Base Revenue Shortfall	Base FY 11-12 Budget <sup>1</sup>	Staff Cost Adjust <sup>2</sup>	Program Fund Shifts <sup>3</sup>	Planning Fund Shift <sup>4</sup>	FY 11-12 Budget <sup>5</sup>	Forecasted Revenue Increase FY 11-12	Percent Increase
NPDES	\$19,715	\$3,037	\$22,752	(\$550)	\$1,373	\$4,953	\$28,528	\$8,813	44.7%
WDR	\$18,152	\$545	\$18,697	(\$518)		\$4,290	\$22,469	\$4,317	23.8%
LD - No Tip Fee	\$6,724	\$871	\$7,596	(\$210)		\$1,743	\$9,128	\$2,404	35.7%
LD - Tip Fee	\$2,359	\$179	\$2,538	(\$70)		\$582	\$3,050	\$691	29.3%
Storm Water	\$19,735	\$2,821	\$22,555	(\$558)		\$4,621	\$26,619	\$6,884	34.9%
401 Cert	\$2,895	\$609	\$3,505	(\$105)		\$871	\$4,271	\$1,375	47.5%
CAF	\$2,828	\$170	\$2,998	(\$83)		\$688	\$3,603	\$775	27.4%
Irrigated Lands	\$661	(\$18)	\$643	(\$13)	\$1,762	\$613	\$3,005	\$2,344	354.7%
<b>TOTAL</b>	<b>\$73,070</b>	<b>\$8,214</b>	<b>\$81,284</b>	<b>(\$2,107)</b>	<b>\$3,135</b>	<b>\$18,360</b>	<b>\$100,672</b>	<b>\$27,602</b>	<b>37.8%</b>

**Footnotes:**

- <sup>1</sup> Includes redirected expenditures for SWAMP/GAMA, enforcement, Fee Unit and pro rata.
- <sup>2</sup> Includes reduction for employee compensation, retirement, and pro rata along with increase for health care costs.
- <sup>3</sup> Includes General Fund shifts to fee authority for individual WDPF programs.
- <sup>4</sup> Includes \$6.849 million Basin Planning and \$11.511 million TMDL General Fund shifts to fee authority redirected to all WDPF programs.
- <sup>5</sup> Includes redirected expenditures, staff cost adjustments, individual program fund shifts and general planning fund shifts.

**Methods for Revising the NPDES Program Fee Schedule**

The NPDES program budget for FY 2011-12 (including its portion of SWAMP) is \$28.5 million and projected revenue is \$19.7 million. The NPDES Program needs to generate an additional \$8.8 million in revenue to meet the FY 2011-12 Budget. Of this \$8.8 million, approximately \$5.8 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$3.0 million is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

The State Water Board directed staff to work with a NPDES Stakeholder Workgroup to analyze methods for assessing fees to NPDES permit holders. As a result of these discussions, the State Water Board staff developed four options to generate the necessary revenue to meet budgetary expenditures. One option is based on a straight percentage increase to all fee payers. The other three options follow a Sector Allocation method based on a work effort model that uses the 2001 Core Regulatory Program Needs Analysis (Needs Analysis) to approximate the workload associated with the following sectors: Municipals, Generals, and Industrials. The Industrial sector was then further split into two groups, Industrials and Steam Electric Power Plants (SEPPs). Each sector was then allocated a percentage of the program's costs based on the model.

### Option 1 – Modified Status Quo

Calculated based on the volume of a facility’s permitted flow, Option 1 would raise all NPDES fees by approximately 60.6 percent above the FY 2010-11 fee schedule, except the General Category 3 permit fee, which would be raised by only 33.9 percent so that it did not exceed the minimum fee paid by individual permit holders. Table 1A compares the FY 2011-12 fee schedule to the FY 2010-11 fee schedule.

**Table 1A – Modified Status Quo - Fee Schedule**

	FY 10-11	FY 11-12	Percent Increase
Base	\$1,000	\$1,606	60.6%
Cost per MGD	\$1,768	\$2,840	60.6%
Maximum Cap*	\$250,000	\$401,568	60.6%
General Cat 1	\$5,760	\$9,252	60.6%
General Cat 2	\$3,480	\$5,590	60.6%
General Cat 3	\$1,200	\$1,606	33.9%

\*Does not include the Industrial category surcharge, pretreatment surcharge or wet weather fee.

### Option 2 – Modified Sector Allocation

Option 2 would bring each sector’s fee revenue in line with its workload sector allocation. The industrial sector would see the largest increase, approximately 254.5 percent, compared to FY 2010-11 fees. To help mitigate the effects of the large increase on Industrial fee payers, the SEPP sector would pay one percent above its sector allocation. This would reduce the Industrial sector increase to approximately 245.4 percent. To achieve the necessary fee revenue for FY 2011-12, each sector would have a separate fee schedule as shown in Table 2A.

**Table 2A – Modified Sector Allocation - Fee Schedule**

	FY 10-11	FY 11-12 General	FY 11-12 Municipal	FY 11-12 Industrial	FY 11-12 SEPP
Base	\$1,000		\$3,279	\$2,200	\$70,000
Cost per MGD	\$1,768		\$3,133	\$9,360	n/a
Maximum Cap*	\$250,000		\$296,000	\$500,000	\$70,000
General Cat 1	\$5,760	\$12,108			
General Cat 2	\$3,480	\$7,315			
General Cat 3	\$1,200	\$2,522			

\*Does not include the pretreatment surcharge or wet weather fee.

### Option 3 – Combined Industrial/SEPP

Option 3 also brings each sector’s fee revenue in line with its sector allocation; however, this option differs in that it combines the Industrial and SEPP sectors into one sector, as they were in the Needs Analysis, to generate a combined revenue target of approximately 33.7 percent. Option 3 would also increase the base fee above the General Category 3 permit fee because general permits require less State Water Board staff work than do individual permits, but currently pay a higher fee than many individual permit holders. Table 3A compares the proposed fee schedule for this option to FY 2010-11 fees.

**Table 3A – Combined Industrial/SEPP – Fee Schedule**

	FY 10-11	FY 11-12	Percent Increase
Base	\$1,000	\$3,279	227.9%
Cost per MGD	\$1,768	\$3,133	77.2%
Maximum Cap*	\$250,000	\$296,000	18.4%
General Cat 1	\$5,760	\$12,108	110.2%
General Cat 2	\$3,480	\$7,315	110.2%
General Cat 3	\$1,200	\$2,522	110.2%

\*Does not include the pretreatment surcharge or wet weather fee.

#### Option 4 – Modified Combined Industrial/SEPP

Option 4 is a variation on the third option, with the added objective of minimizing the effect of the large fee increase to low flow dischargers seen in Option 3. This was accomplished by lowering the base fee for all individual facilities, lowering the General Category 3 permit fee, and raising the cost per MGD and maximum fee cap. Table 4A compares the proposed fee schedule for this option to FY 2010-11 fees.

**Table 4A – Modified Combined Industrial/SEPP - Fee Schedule**

	FY 10-11	FY 11-12	Percent Increase
Base	\$1,000	\$2,088	108.8%
Cost per MGD	\$1,768	\$3,387	91.6%
Maximum Cap*	\$250,000	\$320,000	28.0%
General Cat 1	\$5,760	\$12,108	110.2%
General Cat 2	\$3,480	\$5,987	72.0%
General Cat 3	\$1,200	\$1,606	33.9%

\*Does not include the pretreatment surcharge or wet weather fee.

#### Other WDPF Program Fees

##### WDR

The WDR program budget for FY 2011-12 (including its portion of GAMA) is \$22.5 million and projected revenue is \$18.2 million. The WDR Program needs to generate an additional \$4.3 million in revenue to meet the FY 2011-12 Budget. This translates to a 23.8 percent increase to all WDR fee categories. Of this \$4.3 million, approximately \$3.8 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$545,000 is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

##### Land Disposal – No Tipping Fee

The Land Disposal – No Tipping Fee program budget for FY 2011-12 (including its portion of GAMA) is \$9.1 million and projected revenue is \$6.7 million. The Land Disposal – No Tipping Fee Program needs to generate an additional \$2.4 million in revenue to meet the FY 2011-12 Budget. This translates to a 35.7 percent increase to all Land Disposal – No Tipping Fee categories. Of this \$2.4 million, approximately \$1.5 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$871,000 is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

### Land Disposal – Tipping Fee

The Land Disposal – Tipping Fee program budget for FY 2011-12 (including its portion of GAMA) is \$3.1 million and projected revenue is \$2.4 million. The Land Disposal – Tipping Fee Program needs to generate an additional \$691,000 in revenue to meet the FY 2011-12 Budget. This translates to a 29.3 percent increase to all Land Disposal – Tipping Fee categories. Of this \$691,000, approximately \$512,000 is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$179,000 is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

### Storm Water

The Storm Water program budget for FY 2011-12 (including its portion of SWAMP) is \$26.6 million and projected revenue is \$19.7 million. The Storm Water Program needs to generate an additional \$6.9 million in revenue to meet the FY 2011-12 Budget. This translates to a 34.9 percent increase to all Storm Water fee categories. Of this \$6.9 million, approximately \$4.1 million is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$2.8 million is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

### 401 Certification

The 401 Certification program budget for FY 2011-12 (including its portion of GAMA) is \$4.3 million and projected revenue is \$2.9 million. The 401 Certification Program needs to generate an additional \$1.4 million in revenue to meet the FY 2011-12 Budget. This translates to a 47.5 percent increase to all 401 Certification fee categories. Of this \$1.4 million, approximately \$766,000 is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$609,000 is attributable to fee increases needed to offset a projected revenue shortfall, mainly attributable to a return to full program budget authority.

### Confined Animal Facilities (CAF)

The CAF program budget for FY 2011-12 (including its portion of GAMA) is \$3.6 million and projected revenue is \$2.8 million. The CAF Program needs to generate an additional \$775,000 in revenue to meet the FY 2011-12 Budget. This translates to a 27.4 percent increase to all CAF fee categories. Of this \$775,000, approximately \$605,000 is attributable to increases in budgetary expenditures as shown in Table 1 while the remaining \$170,000 is attributable to fee increases needed to offset projected revenue shortfall, mainly attributable to a return to full program budget authority.

### Irrigated Lands Regulatory Program (ILRP)

The ILRP program budget for FY 2011-12 is \$3.0 million and projected revenue is \$661,000. The ILRP Program needs to generate an additional \$2.3 million in revenue to meet the FY 2011-12 Budget. This translates to a 354.7 percent increase to Tier 1 and Tier 2 fees. The entire \$2.3 million is attributable to increases in budgetary expenditures as shown in Table 1.

### **Storm Water Fee Rebalance**

Between FY 2004-05 and FY 2009-10, the Storm Water Program collected approximately \$22 million more in revenue than it incurred in expenditures. This amount contributed to the large reserve balances carried in the WDPF during these years. It also allowed the State Water Board to minimize fee increases during this time period. Now that fees are increasing across all programs to cover various fund shifts, the State Water Board could minimize the fee increase on the Storm Water Program by holding its increase to 20 percent rather than the 34.9 percent outlined in Table 1. Table 3 below shows how limiting the Storm Water Program's fee increase to 20 percent would impact the other programs.

**Table 3**

WDPF Program	Base Revenue Forecast FY 11-12	Forecasted Revenue Increase FY 11-12	Percent Increase	Storm Water Adjustment <sup>1</sup>	Adjusted Revenue Increase	Adjusted Percent Increase
NPDES	\$19,715	\$8,813	44.7%	\$1,023	\$9,836	49.9%
WDR	\$18,152	\$4,317	23.8%	\$913	\$5,230	28.8%
LD - No Tipping Fee	\$6,724	\$2,404	35.7%	\$163	\$2,566	38.2%
LD - Tipping Fee	\$2,359	\$691	29.3%		\$691	29.3%
Storm Water	\$19,735	\$6,884	34.9%	(\$2,940)	\$3,944	20.0%
401 Cert	\$2,895	\$1,375	47.5%	\$129	\$1,504	51.9%
CAF	\$2,828	\$775	27.4%	\$359	\$1,133	40.1%
Irrigated Lands	\$661	\$2,344	354.7%	\$354	\$2,699	408.3%
<b>TOTAL</b>	<b>\$73,070</b>	<b>\$27,602</b>	<b>37.8%</b>	<b>\$0</b>	<b>\$27,602</b>	<b>37.8%</b>

**Footnote:**

<sup>1</sup> Based on actual revenue and actual expenditures from FY 04-05 through FY 09-10.

**Other Fee Schedule Changes**

In addition to the proposed fee increases, State Water Board staff is also recommending the following changes to the fee regulations:

- Minor language changes to clarify the fee regulations for the Irrigated Lands Regulatory Program.
- Minor language changes to clarify the fee categories for the Land Disposal program and the complexity definition in Category A used for the WDR and Land Disposal programs.

**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 \$101.4 million while the current fee schedules would only generate a projected \$73.7 million in revenue, leaving a negative fund balance of \$21.7 million. The proposed changes would generate an additional \$27.6 million in fee revenue. With this increase, the ending fund balance for FY 2011-12 would be \$5.9 million, keeping the fund solvent with a prudent reserve of 5.8 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 summarized below:

- 1) NPDES Fees: State Water Board staff recommends adopting Option 1 – Modified Status Quo as the method for assessing NPDES fees.
- 2) Other WDPF Program Fees: State Water Board staff recommends assessing fees on other WDPF fee programs as specified in Table 1.
- 3) Other Fee Schedule Changes: State Water Board staff recommends making the minor language changes as proposed.

State Water Board action on this item will assist the Water Boards in reaching Goals 1-4 of the Strategic Plan Update: 2008-2012 to:

- Goal 1: Support beneficial uses
- Goal 2: Improved and protect groundwater equality
- Goal 3: Increase sustainable local water supplies
- Goal 4: Address water quality protection and restoration

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200 AND 2200.6, AND ADDING SECTION 2200.7 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 State 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 and 2200.6, and adding Section 2200.7 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 September 19, 2011.

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Jeanine Townsend  
Clerk to the Board