



CONFIDENTIAL-Government Code §6254(l)		
Department/Board: State Water Resources Control Board (SWRCB)	Author: Committee on Budget and Fiscal Review	Bill Number/Version Date: SB 1049 (9/9/03)
Sponsor: Author <input type="checkbox"/> Admin Sponsored	Related Bill(s) Budget Act of 2003 AB 1747	Chaptering Order (if known) <input type="checkbox"/> Attachment
Subject: Increased fee authorization to fund SWRCB's Water Rights regulatory program		

SUMMARY

This omnibus budget trailer bill, among other things, implements the 2003-04 Budget Act by authorizing a fee-supported funding source for SWRCB's Division of Water Rights (the Division). SB 1049 would authorize the collection, as specified, of water right fees and water quality certification fees in an amount that will replace the general funds that have historically supported the administration of the water rights program. The bill also gives the SWRCB additional flexibility to implement recent mandates regarding the implementation of Proposition 50.

PURPOSE OF THE BILL

The 2003-04 Budget Act included revenue assumptions and appropriations that were based on various increases in fees, including fee increases and fee creation that are necessary to support the water rights program. SB 1049 would enact statutory changes that conform State law to the Budget Act appropriations. The bill increases the fees assessed by the SWRCB by approximately \$4.4 million, enabling the Division to continue its operations.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN - This bill is critical for the SWRCB, as it implements the 2003-04 Budget Act by

Departments That May Be Affected	
State Water Resources Control Board, Department of Water Resources	
<input checked="" type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment
<input type="checkbox"/> Legislative Appointment	<input checked="" type="checkbox"/> State Mandate
	<input checked="" type="checkbox"/> Urgency Clause
Dept/Board Position	Agency Secretary Position
<input checked="" type="checkbox"/> Sign	<input checked="" type="checkbox"/> Sign
<input type="checkbox"/> Veto	<input type="checkbox"/> Veto
<input type="checkbox"/> Defer to	<input type="checkbox"/> Defer to:
Director /Chair Date <i>C. J. [Signature]</i> 9/18/03	Agency Secretary Date <i>W. [Signature]</i> 9/18/03

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authorizing a fee-supported funding source for the Division. If this bill is not enacted, the SWRCB will likely discontinue its far-reaching water right regulatory program, a program that for nearly 100 years has provided water users with certainty regarding their rights while ensuring the protection of the public's most precious resource.

ANALYSIS

This analysis only considers the bill as it impacts the SWRCB's programs. Staff from the Legislature and the Department of Finance have worked closely with SWRCB staff in drafting the water right fee provisions of this bill. The close collaboration has produced the necessary mechanisms to replace a taxpayer-supported program with an equitable and efficient program funded by the beneficiaries and users of the water rights program.

1. The bill would repeal existing water right fees set forth in the Water Code. These fees are currently deposited into the general fund. The bill would instead require certain water right holders to pay one-time and annual fees according to a fee schedule to be set by the SWRCB through the adoption of emergency regulations.

The Budget Act of 2003-04 provides \$3.6 million in general funding to support the water rights program. This is a reduction of 61% from the general funding of FY 02-03 and 69% from FY 01-02. Funding from other sources is extremely limited. The Legislative Analyst's Office has proposed the elimination of general funding for the water rights program in FY 04-05 and beyond. Without authorization to assess and collect fees to replace lost general fund revenues, the SWRCB will not be able to carry out its far-reaching water right responsibilities (see Program Background).

The newly authorized fees would be deposited into the Water Rights Fund (the fund). The bill would authorize the SWRCB to spend money in the fund, upon appropriation by the legislature, to recover costs incurred in connection with the issuance, administration, review, monitoring and enforcement of water right permits, licenses, certificates, and registrations. It also allows for the recovery of administrative costs related to collection of filing fees.

2. The bill would authorize the collection of fees that recover the costs incurred in issuing water quality certifications for Federal Energy Regulatory Commission (FERC) licensed hydroelectric projects and construction activities related to water diversion projects.

Existing law authorizes the SWRCB to establish a fee to cover the cost of water quality certifications, which must certify whether FERC licensed hydroelectric projects will comply with State water quality standards and objectives. The established fee has been insufficient, simply because existing law does not authorize fees to cover program administration and oversight costs. The bill would obviate these problems, as the newly authorized fees would be calculated to generate the amounts necessary for the administration and oversight of the numerous and complex projects subject to the water quality certification program.

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3. The bill would also direct the Board of Equalization (BOE) to collect annual fees in accordance with the existing Fee Collection Procedures Law.

The BOE will utilize its existing structure to collect annual fees from water right holders, and also its enforcement system, which provides a deterrent against delinquent payments. The BOE already collects payments for other SWRCB programs, including the Underground Storage Tank Program. The SWRCB's fee schedule will be calculated such that the BOE will be reimbursed for its costs. Because the Fee Collection Procedures Law specifies that anyone who fails to comply with the law is subject to a misdemeanor or a felony, as applicable, the bill would create a state-mandated local program by creating a new crime.

4. The bill would establish legislative intent that, despite the recently added Proposition 50 implementation mandates to establish program guidelines and provide technical assistance to economically disadvantaged communities, these duties should be performed where appropriate within budgetary constraints.

SWRCB believes that the bill's language serves the dual purpose of reaffirming the commitment to the above goals, while realistically acknowledging that the scarcity of state resources may limit full implementation. Therefore, creative efforts and efficiencies are urged to reasonably achieve the goals of AB 1747 (Stats. 2003, ch. 240) to the maximum extent possible. SWRCB supports this clarification of AB 1747.

LEGISLATIVE HISTORY

In 1913, the Legislature enacted the Water Commission Act, a referendum approved by the voters in 1914, creating the State Water Commission and providing a statutory procedure to be followed for appropriations of any water flowing in a natural channel. The water could be appropriated only if used for beneficial purposes, as specified. Water could not be "wasted." The Water Commission Act required the payment of water right application fees, payable into the State's general fund. The fees were set by statute. In 1943 the Water Commission Act was codified in the Water Code. The minimum application fee was set at \$5 with the fee computed separately for direct diversion projects and storage projects. The diversion fees were regressive, with the incremental price decreasing as volume increased.

In 1955, the fees were increased. The minimum application fee rose to \$10 and additional flat rate fees were imposed for filing change or extension petitions: The petition fee for an extension of time was \$5, while the petition fee to otherwise change the terms of a permit or license was \$10. In 1969 language was added that allowed the SWRCB to impose under certain circumstances an annual application fee equal to the original application fee. In 1979 a separate application fee scheduled was added that applied specifically to hydropower projects.

In 1985, the minimum application fee was increased to \$100, and the diversion fees became progressive, with the incremental charge increasing as the volume increased. Also, petition fees increased to \$50 for a time extension and \$100 for a change. Since 1985, there have been no major revisions to the fee structure.

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AB 1747 (Budget Committee), Chapter 240, Statutes of 2003, requires SWRCB to implement Proposition 50 by adopting 11 separate project solicitation and evaluation guidelines, providing outreach and technical assistance to economically disadvantaged communities, and annually reporting to the Legislature.

PROGRAM BACKGROUND

California recognizes many types of surface water rights. The SWRCB issues permits for direct diversions of surface water and "subterranean streams" for use on non-riparian lands and for storage. Water rights that predate the Water Commission Act of 1913 have been "grandfathered" into the system. The SWRCB has limited authority to regulate these types of rights.

The Division has processed about 30,000 water right applications since the Water Commission Act took effect in 1914. The Division currently has on record about 15,000 water right permits and licenses, and maintains additional records regarding other types of water rights that are not subject to permits and licenses.

The Division can issue a water right permit to an applicant only after determining that water is available for the proposed project. To make this finding, the Division must analyze historical streamflow and diversion records. The Division must also notify all known water right holders who may be affected by the project and reviews any issues that they raise relative to the proposed project. Lastly, the Division conducts an analysis to ensure that the project will not unreasonably affect fish, wildlife, or other beneficial uses of the water.

If a permit is issued, the Division will conduct a field investigation to verify that the project has been constructed as approved and that operations have been in compliance with all required conditions in the permit. The Division also confirms and records the amount of water that the permittee is using. Following this inspection, the Division issues a water right license.

The Division processes petitions filed by water right holders to amend the conditions of their permits or licenses. As a recent example, the SWRCB's water rights program approved in 2002, together with required findings, a proposed 300,000 acre-foot water transfer from the Imperial Irrigation District to the San Diego County Water Authority, while ensuring that the habitat of the Salton Sea and other affected waters would be preserved.

The Division conducts periodic compliance investigations of water right permittees and licensees and also investigates complaints from the public regarding illegal use of water. Lastly, the Division assists the local superior courts in adjudicating water right disputes that are outside the SWRCB's permitting authority.

In addition to administering the State's water right program, the Division also administers the State's water quality certification program under section 401 of the Clean Water Act as it relates to hydropower projects subject to the Federal Power Act and to construction activities related to water diversion projects. The Division also conducts water quality planning for the

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Sacramento-San Joaquin River Delta Estuary and periodically conducts water right hearings to implement the Delta plan.

The Division of Water Rights currently collects approximately \$240,00 per year from all revenue sources, including the water quality certification program, which generates revenues of about \$153,000 per year. The annual cost of administering these programs at current staffing levels is about \$9 million.

In the past, the Division has had as many as 120 staff positions; however, the Division currently has 76 positions plus 9 positions within the Office of Chief Counsel (OCC). The Division has about 700 pending applications, 300 pending change or extension petitions, and 1800 pending licensing inspections and receives about 150 applications and 60 petitions annually. If SB 1049 is not passed, the Division will have to immediately reduce its staffing by about 75%. By July 2004, there would be virtually no water rights staff to perform the above duties.

OTHER STATES' INFORMATION

All western states have some sort of water right program due to their arid nature and variable hydrologic conditions. To some extent, each state's program is supported by fees. A review of several states (Oregon, Washington, Arizona, Nevada, Colorado, and South Dakota) indicates that most states do not fully support their water rights programs with fees. Water right applicants in Washington pay less than two percent of the cost of administering the water rights program.

It is difficult to compare the fees charged by other states to the SWRCB's fees because the laws affecting each state are so different. The SWRCB, for example, regulates neither groundwater withdrawals nor the exercise of riparian rights, unlike most other western states. Most other states charge some sort of fee for all water diversions, whereas California has typically charged fees only for surface water permits and licenses. Oregon charges fees that are substantially higher than California's. Oregon charges a \$250 "examination fee" for each water right application filed in addition to a fee of \$150 for the first cubic foot per second (cfs) of water diverted and a fee of \$75 for each additional cfs diverted. In fact, most states charge fees based on the volume of water diverted. Nevada and Arizona, states with limited surface supplies, mostly administer groundwater diversions and adjudicate existing rights. Nevada charges a \$100 fee for each proof of claim filed in a water right adjudication. By contrast, California's fee for the same action is \$10.

FISCAL IMPACT

The Budget Act of 2003-04 (Stats. 2003, ch. 157) [AB 1765] provides general funding and special funds to support the water rights program. The bill increases the authorized fees assessed by the SWRCB by approximately \$4.4 million, the amount necessary to fund the total \$9 million appropriation granted to the Division. In subsequent fiscal years, the general funding is expected to disappear, such that most of the \$9 million appropriation would be generated by fees.

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In FY 2003-04, the Division would incur one-time startup costs in establishing the new fee system and schedule. This includes \$50,000 for the SWRCB's development of a water right fee database. Additionally, the SWRCB will reimburse the BOE a total of \$670,000 for costs incurred to modify its own annual-fee database (\$290,000) and to collect annual fees and delinquent one-time fees (\$380,000).

In subsequent fiscal years, the Division would face minor ongoing fee collection staffing costs of \$90,000 (0.9 PY), plus \$10,000 annually to maintain the Division's water right fee database. This minor impact is primarily due to efficiencies gained by partnering with the BOE. In addition, the Division expects to compensate the BOE \$380,000 annually for its fee collection efforts. The ongoing expenses will be paid out the fee revenues, which would be calculated in an amount to cover the both program administration and ongoing fee collection expenses.

SWRCB expects unspecified savings to accrue due to the increased flexibility granted to its Division of Financial Assistance in implementing AB 1747.

ECONOMIC IMPACT

Some water users within the California economy may be affected by fee increases. However, the actual impact depends on the fee schedule, which the SWRCB would formally adopt on an emergency basis through an expedited, but thorough, public comment process. To the extent that the SWRCB follows current practice adopting a fee schedule based on the amount of water diverted, California agriculture, which diverts the lion's share of California water, will be responsible for most of the fees assessed. However, the impact per farmer is expected to be minimal because the necessary revenue is fairly small and the fee payer base is very large. The other major users are municipal and industrial. It is anticipated that any minor fees assessed to municipal water suppliers will be passed on to homeowners and businesses. Domestic users who have small water supply systems may be faced with proportionally higher fees than they have experienced in the past.

LEGAL IMPACT

This legislation will change the way the State's water right program is funded from general funds to user fees. In addition, the fees will be set by regulation rather than by statute.

APPOINTMENTS

None.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

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ARGUMENTS

Pro: A water right confers significant economic benefits to the water right holder. Since water rights are of significant value, and the water right program provides fair protection of those rights while also safeguarding the public trust from environmental harm that might otherwise result from excessive use, water right holders should pay for the cost of administering the program.

Con: Water is a basic necessity of life. Water is used for drinking, bathing, production of food and other goods used by all people. Therefore, the benefits of a water rights program accrue to all people and should be supported by the general fund. In addition, because many water users in California are not required to obtain a water right permit or license (most groundwater users, riparian water right holders, and pre-1914 water right holders), they will get a "free ride" because they will not be subject to the annual fees contemplated in the bill.

VOTES

Assembly Floor
Senate Floor

42-35
21-15

September 10, 2003
September 11, 2003

Republican lawmakers generally opposed SB 1049 because increased fees, in their view, are similar to increased taxes, which they strongly oppose.

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