

- **Board of Directors**
Communications and Legislation Committee

April 10, 2007 Board Meeting

8-15

Subject

Express support for SB 258 (Ducheny, D-Chula Vista) regarding State Water Resources Control Board water rights fees

Description

Staff recommends that the Board adopt a support position on SB 258 (Ducheny, D-Chula Vista).

The 2003 enactment of Senate Bill 1049 eliminated all state general fund support for the State Water Resources Control Board (SWRCB) Division of Water Rights (Division) and instead required SWRCB to charge water user fees to fund the Division's activities commencing fiscal year 2003/04. The Division is responsible for the management of water rights in California, including processing and maintaining all water rights applications, approving changes to water rights and enforcing the state's reasonable use, public interest and public trust laws. SWRCB adopted an annual per acre-foot fee on all water rights permittees (currently \$0.03 per acre-foot) for the total amount of diversions by the permittee and application fees of varying amounts. Metropolitan has been assessed approximately \$36,000 per year for Colorado River filings and pays its proportionate share of the fees assessed on State Water Project water rights.

SWRCB's fee regulations were initially upheld by the Sacramento County Superior Court in *California Farm Bureau Federation v. California State Water Resources Control Board*. However, on January 17, 2007, the Third District Court of Appeal, while it upheld the fee statute, invalidated SWRCB's fee regulations as applied. In particular, the Court of Appeal held that the fees were allocated on only 40 percent of water rights holders; that while one-third of the Division's work is for the benefit of the general public, that work is also charged to that smaller group of water rights holders; and that the annual fee subsidized those filing new water rights applications. The SWRCB subsequently petitioned the Court of Appeal for a rehearing, which is still pending, and may appeal to the California Supreme Court. Consequently, the validity of SWRCB's water rights fees and the ability to fund the Division is in serious question.

SB 258 by Senator Ducheny would require the restoration of funding from the General Fund in an amount equal to a currently unspecified percentage of the Division's funding needs, presumably to recognize the Division's public interest and public trust responsibilities. It also would establish an as-yet unspecified maximum percentage of remaining Division funding that it could collect through water user fees. A copy of SB 258 is included as [Attachment 1](#).

By restoring general funds, the bill would allow the Division to continue carrying out its general regulatory responsibilities. Furthermore, the bill likely would remedy one of the defects the Court of Appeal found in SWRCB's application of the fees—it would eliminate or substantially reduce the costs imposed on water rights permittees for a portion of the Division's work that the Court of Appeal suggested should be borne by the General Fund. Also assuming an appropriate percentage limitation on the annual fees' portion of the remaining funding, the bill could cure the Court of Appeal's finding that annual fee payers are subsidizing new applications. The restoration of public funding plus limitations on water rights fees potentially could facilitate resolution of the remaining legal issues as SWRCB develops its new fee regulations. The restoration of the public's share of the Division's fees likely will ultimately reduce the fees imposed on Metropolitan and the State Water Project.

Policy

Policy Principle on State Budget, M.I. 40303 – June 15, 1993; M.I. 42829 – February 19, 1998

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express support for SB 258.

Fiscal Impact: Likely reduction in the annual fees paid by Metropolitan to fund the Division in an unknown amount if the bill is enacted

Business Analysis: Enactment of the bill likely would put the Division in a sounder financial position allowing it to carry out its responsibilities and reduce Metropolitan’s costs.

Option #2

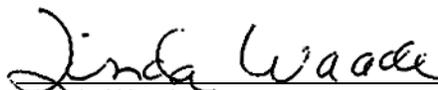
Take no position on SB 258.

Fiscal Impact: Potential failure of the bill, with no reduction of Metropolitan’s annual fees and possible increase depending on SWRCB’s new fee regulations

Business Analysis: Uncertainty regarding fees potentially imposed on Metropolitan regarding funding for the Division

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

3/29/2007
Date


Jeffrey Kightlinger
General Manager

3/29/2007
Date

Attachment 1 – Senate Bill 258

BLA #5393

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 258

Introduced by Senator Ducheny

February 14, 2007

~~An act to add Section 1526 to the Water Code, relating to water. An act to amend Section 1525 of, and to add Section 1524 to, the Water Code, relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 258, as amended, Ducheny. Water use fees.

Existing law requires a person who files a specified application, registration, petition, or request relating to water use to pay certain fees imposed by the State Water Resources Control Board. The board is required to adopt a fee schedule so that the total amount of fees collected equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in points of discharge, place of use, or purpose of use of treated wastewater. The board is required to set the amount of total revenue collected each year through the fees at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The revenue generated by those fees is required to be deposited in the Water Rights Fund. The board is authorized to expend the money in the fund, upon appropriation, for the administration of certain provisions of the Water Code.

This bill would delete the requirement that the fee schedule ensure that the total amount of fees collected equals that amount necessary to recover specified costs. The bill also would delete the requirement that

the board set the amount of total revenue collected each year through the fees at an amount equal to the revenue levels set forth in the annual Budget Act. The bill would require that not less than an unspecified percentage of the total amount of funding for support of the activities of the Division of Water Rights of the board be appropriated from the General Fund. Not more than an unspecified percentage of that funding would be required to be generated by the imposition of specified water use fees, of which amount not more than an unspecified percentage would be derived from fees relating to permits or licenses to appropriate water and water leases.

~~Existing law requires a person who files a specified application, registration, petition, or request relating to water use to pay certain fees imposed by the State Water Resources Control Board.~~

~~This bill would require the board to calculate a fee imposed on a person or entity who holds a permit or license to appropriate water on the basis of actual water use in the prior year. The bill would require the board to calculate a fee imposed on a person or entity who holds a permit or license to appropriate water for the operation of a hydroelectric facility on the basis of volumetric flow through that facility. The bill would require the board to calculate that fee on the basis of volumetric flow through a single hydroelectric facility if the holder of the permit or license owns or operates more than one hydroelectric facility on the same river, stream, or canal.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *The adjudicatory and enforcement functions related to the*
- 4 *administration of water rights in California are vital to the*
- 5 *environment, economy, and well-being of all Californians.*
- 6 (b) *Equal access to a fair and impartial quasi-judicial forum*
- 7 *to arbitrate and resolve water right disputes is an essential right*
- 8 *afforded to all Californians. Moreover, the administrative*
- 9 *resolution of water rights relieves the judicial system from handling*
- 10 *many of these disputes.*

1 (c) *The funding of the Division of Water Rights of the State*
2 *Water Resources Control Board should reflect the core values of*
3 *equal access, equity, and affordability.*

4 (d) *The Division of Water Rights of the State Water Resources*
5 *Control Board should not assess fees on persons or entities to*
6 *recover costs that are not allocated to other persons or entities*
7 *because of policy decisions or that are incurred by the division in*
8 *connection with actions taken to promote the public interest.*

9 SEC. 2. *Section 1524 is added to the Water Code, to read:*

10 1524. *Funding for support of the activities of the Division of*
11 *Water Rights of the board shall be as follows:*

12 (a) *Not less than ____ percent of the total amount of these funds*
13 *shall be appropriated from the General Fund.*

14 (b) *Not more than ____ percent of the total amount of these*
15 *funds shall be generated by the imposition of fees imposed pursuant*
16 *to this article. Of the funds described in this subdivision, not more*
17 *than ____ percent shall be generated by the imposition of fees*
18 *imposed pursuant to subdivision (a) of Section 1525.*

19 SEC. 3. *Section 1525 of the Water Code is amended to read:*

20 1525. (a) *Each person or entity who holds a permit or license*
21 *to appropriate water, and each lessor of water leased under Chapter*
22 *1.5 (commencing with Section 1020) of Part 1, shall pay an annual*
23 *fee according to a fee schedule established by the board.*

24 (b) *Each person or entity who files any of the following shall*
25 *pay a fee according to a fee schedule established by the board:*

26 (1) *An application for a permit to appropriate water.*

27 (2) *A registration of appropriation for a small domestic use or*
28 *livestock stockpond.*

29 (3) *A petition for an extension of time within which to begin*
30 *construction, to complete construction, or to apply the water to*
31 *full beneficial use under a permit.*

32 (4) *A petition to change the point of diversion, place of use, or*
33 *purpose of use, under a permit or license.*

34 (5) *A petition to change the conditions of a permit or license,*
35 *requested by the permittee or licensee, that is not otherwise subject*
36 *to paragraph (3) or (4).*

37 (6) *A petition to change the point of discharge, place of use, or*
38 *purpose of use, of treated wastewater, requested pursuant to Section*
39 *1211.*

40 (7) *An application for approval of a water lease agreement.*

1 (8) A request for release from priority pursuant to Section 10504.

2 (9) An application for an assignment of a state-filed application
3 pursuant to Section 10504.

4 ~~(e) The board shall set the fee schedule authorized by this section~~
5 ~~so that the total amount of fees collected pursuant to this section~~
6 ~~equals that amount necessary to recover costs incurred in~~
7 ~~connection with the issuance, administration, review, monitoring,~~
8 ~~and enforcement of permits, licenses, certificates, and registrations~~
9 ~~to appropriate water, water leases, and orders approving changes~~
10 ~~in point of discharge, place of use, or purpose of use of treated~~
11 ~~wastewater. The board may include, as recoverable costs, but is~~
12 ~~not limited to including, the costs incurred in reviewing~~
13 ~~applications, registrations, petitions and requests, prescribing terms~~
14 ~~of permits, licenses, registrations, and change orders, enforcing~~
15 ~~and evaluating compliance with permits, licenses, certificates,~~
16 ~~registrations, change orders, and water leases, inspection,~~
17 ~~monitoring, planning, modeling, reviewing documents prepared~~
18 ~~for the purpose of regulating the diversion and use of water,~~
19 ~~applying and enforcing the prohibition set forth in Section 1052~~
20 ~~against the unauthorized diversion or use of water subject to this~~
21 ~~division, and the administrative costs incurred in connection with~~
22 ~~carrying out these actions.~~

23 ~~(d)~~

24 (c) (1) The board shall adopt the schedule of fees authorized
25 under this section as emergency regulations in accordance with
26 Section 1530.

27 (2) For filings subject to subdivision (b), the schedule may
28 provide for a single filing fee or for an initial filing fee followed
29 by an annual fee, as appropriate to the type of filing involved, and
30 may include supplemental fees for filings that have already been
31 made but have not yet been acted upon by the board at the time
32 the schedule of fees takes effect.

33 ~~(3) The board shall set the amount of total revenue collected~~
34 ~~each year through the fees authorized by this section at an amount~~
35 ~~equal to the revenue levels set forth in the annual Budget Act for~~
36 ~~this activity. The board shall review and revise the fees each fiscal~~
37 ~~year as necessary to conform with the revenue levels set forth in~~
38 ~~the annual Budget Act. If the board determines that the revenue~~
39 ~~collected during the preceding year was greater than, or less than,~~
40 ~~the revenue levels set forth in the annual Budget Act, the board~~

1 may further adjust the annual fees to compensate for the over or
2 under collection of revenue.

3 (e) Annual fees imposed pursuant to this section for the 2003-04
4 fiscal year shall be assessed for the entire 2003-04 fiscal year.

5 SECTION 1. The Legislature finds and declares all of the
6 following:

7 (a) The adjudicatory and enforcement functions related to the
8 administration of water rights in California are vital to the
9 environment, economy, and well-being of all Californians.

10 (b) Equal access to a fair and impartial quasi-judicial forum to
11 arbitrate and resolve disputes involving water rights is an essential
12 right afforded to all Californians that has the indirect benefit of
13 relieving the judicial system from handling many of these disputes.

14 (c) The funding of the Division of Water Rights of the State
15 Water Resources Control Board should properly reflect the core
16 values of equal access, equity, and affordability.

17 (d) The Division of Water Rights should not assess fees on
18 persons or entities to recover costs that are not allocated to other
19 persons or entities because of policy decisions or that are incurred
20 by the division in connection with actions taken to promote the
21 public interest.

22 (e) For the purpose of assessing fees on the holder of a permit
23 or license to appropriate water for the operation of a hydroelectric
24 facility, the State Water Resources Control Board should only
25 assess one time a particular molecule of water that flows through
26 multiple hydroelectric facilities that are owned or operated by a
27 single person or entity on the same river, stream, or canal.

28 (f) The imposition of fees on the holder of a permit or license
29 to appropriate water for the operation of a hydroelectric facility
30 should be undertaken in a manner that does not deter or impair the
31 development of environmentally compatible hydroelectric facilities
32 that otherwise assist the state in meeting its commitments to reduce
33 the emission of greenhouse gases in accordance with the California
34 Global Warming Solutions Act of 2006 and Chapter 598 of the
35 Statutes of 2006.

36 SEC. 2. Section 1526 is added to the Water Code, to read:

37 1526. (a) The board shall calculate a fee imposed pursuant to
38 this chapter on a person or entity who holds a permit or license to
39 appropriate water on the basis of actual water use in the prior year.

1 ~~(b) The board shall calculate a fee imposed pursuant to this~~
2 ~~chapter on a person or entity who holds a permit or license to~~
3 ~~appropriate water for the operation of a hydroelectric facility on~~
4 ~~the basis of volumetric flow through the hydroelectric facility. If~~
5 ~~the person or entity owns or operates more than one hydroelectric~~
6 ~~facility on the same river, stream, or canal, the board shall calculate~~
7 ~~the fee on the basis of volumetric flow through a single~~
8 ~~hydroelectric facility.~~