

Fiscal Year 2004-05 Fee Schedule Summary

Annual Fee Categories (Collected by State Board of Equalization)		
Fee Category	Fiscal Year 2004/05 Fee	Fiscal Year 2003/04 Fee
Permits & Licenses Annual Fees ^[1]	\$100 plus \$0.025 per each acre-foot greater than 10 acre-feet	Greater of \$100 or \$0.03 per Acre-Foot per Annum
Pending Application Annual Fee ^[2]	\$100 plus \$0.025 per each acre-foot greater than 10 acre-feet	Greater of \$100 or \$0.03 per Acre-Foot per Annum
Petition Annual Fee ^[3]	\$1,000	\$1,000
Water Lease Annual Fee (for leases under Water Code § 1020 et seq. involving water districts) ^[1]	\$1,000 plus \$15 per each acre-foot greater than 10 acre-feet based on the amount of water proposed to be leased for each year the lease is in effect.	Greater of \$1,000 or \$10 per Acre-Foot
Projects under review for 401 Certification for FERC licensing	\$1,000 plus \$ 0.15 per Kilowatt	\$500 plus \$0.085 per Kilowatt
Projects issued FERC licenses pursuant to 401 certification	\$100 plus \$0.015 per Kilowatt	\$10 plus \$0.01 per Kilowatt

One-Time Fee Categories (Collected by SWRCB)		
Fee Category	Proposed Fee	Fiscal Year 2003/04 Fee
Application ^{[4][5]}	\$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 \$400,000, whichever is less.	Greater of \$1,000 or \$10 per Acre-Foot per Annum
Petition to Revise Declaration of Fully Appropriated Streams filed with Application	\$10,000 in addition to Application Fee	\$10,000 in addition to Application Fee
Petition for Assignment of a State Filed Application	\$5,000 in addition to Application Fee	\$5,000 in addition to Application Fee
Applications or Petitions filed between July 1, 2003 & January 1, 2004	Difference between Application or Petition Fee due pursuant to regulations in effect on Jan. 1, 2004 and fees paid previously.	Difference between Application or Petition Fee and fees paid previously.
Change Petition ^[5]	\$1,000 plus \$0.30 per each acre-foot greater than 10 acre-feet based on the total annual amount of diversion covered by the permit or license, or \$5,000, whichever is less	\$1,000
Change Petition Pursuant to Water Code §170 ^[5]	\$850	\$850
Change Petition involving a transfer of water pursuant to Water Code section 382, 1701, 1725, or 1735 ^[5]	\$2,000 plus \$0.30 per each acre-foot greater than 10 acre-feet based on the total annual amount of water sought to be transferred annually or \$400,000, whichever is less	\$0.30 per Acre-Foot
Time Extension Petition ^[5]	\$1,000	\$1,000
Wastewater Petitions ^[5]	\$1,000	\$1,000
Request for Release from Priority (State Filing) ^[5]	\$5,000 in addition to Application Fee	\$5,000 in addition to Application Fee
401 Certification for Water Development Projects not subject to FERC Licensing	Fee Based on Project Specific Costs	Fee Based on Project Specific Costs
Water Lease Application (for leases under Water Code § 1020 et seq. not involving water districts)	\$1,000 plus \$15 per each acre-foot leased greater than 10 acre-feet based on the total amount of water proposed to be leased over the term of the lease	Greater of \$1,000 or \$10 per Acre-Foot Leased
Small Domestic and Stockpond Registration/ 5-year Renewal Fee	\$250 \$100	\$250 \$100
Proof of Claim under Water Code §2575 et seq.	\$500	\$500
Groundwater Recordation under Water Code §4999 et seq.	\$115	\$115

^[1] Total Acre-Foot per Annum will be considered equal to the diversion rate multiplied by the length of the direct diversion season, and the total collection amount for storage, unless otherwise specified. If the permit or license includes both direct diversion and storage, the two amounts will be additive, unless a total annual amount is specified.

^[2] Due under specific circumstances such as: project is initiated prior to the SWRCB issuing a permit authorizing the diversion; applicant requests a delay in processing application; applicant is lead agency under California Environmental Quality Act (CEQA) and has not adopted or certified a final environmental document for the project within two years after the water right application is noticed; applicant fails to provide requested supplemental information; or Division has determined that a permit may be issued but the applicant has failed to pay filing fees.

^[3] Due under specific circumstances such as: petitioner diverts water prior to the SWRCB approving the requested change; petitioner requests a delay in processing petition; petitioner is lead agency under CEQA and has not adopted or certified a final environmental document for the project within two years after the petition is noticed; or petitioner fails to provide requested supplemental information.

^[4] Total Acre-Foot per Annum will be considered equal to the diversion rate multiplied by the length of the direct diversion season, and the total collection amount for storage, unless otherwise specified. If the application includes both direct diversion and storage, the two amounts will be additive, unless a total annual amount is specified.

^[5] This filing fee is inclusive of a non-refundable \$250 fee for an initial review.

FEEES: Background

- SB 1049-- General Fund to Fee Supported
- SWRCB annually adopts emergency regulations establishing fees to support the State's water rights program.
- Resolution 2003-0077 and Emergency Regulations became effective on January 1, 2004.

FEES: Structure

- Annual Fees based upon the volume of water authorized for diversion under water right permit or license. Fee is the greater of \$100 or \$0.03 per acre-foot based on the total annual amount of diversion.
- Pass-through provision prorates US Bureau of Reclamation fees among its water supply contractors.
- Other fees for pending applications, small domestic or stock pond registrations, petitions, water quality certification on hydroelectric projects, new applications, groundwater recordation.

Fees: Administration

- BOE processes and collects all assessed annual fees.

- 13,000 bills sent. 1,749 Petitions for Reconsideration received.

- 17 recalculations

- Quirks

Fees: Changes This Year

- Slight decrease in annual fee (2.5 cents/acre-foot)
- Slight increase in filing fees
- No consensus on how to readjust annual fees
 - big projects v. the little guy
 - problems with fee for service

Fees Effectuate Water Policy

- The fee schedule enforces principles of beneficial use, diligence and forfeiture.
 - Voluntary revocations
 - Amount claimed on original application
 - Pending applications

Fees: Litigation

- NCWA and Farm Bureau files suit claiming that the fee is an illegal tax
- Test for a “Regulatory Fee”
 - may not generate funds that exceed the cost of the regulatory program
 - reasonable relationship between the cost allocation and the burdens from and benefits to the payors from the regulatory activity

State Water Resources Control Board

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SUPERIOR COURT UPHOLDS WATER RIGHT FEES Challenge to State Water Board's adoption of water right fees denied

Sacramento – A Sacramento County Superior Court judge has rejected a challenge brought against water rights fees adopted by the State Water Resources Control Board. The State Water Board established the fees at the Legislature's direction to support the State's water right program. The court found that the fees are legitimate regulatory fees and not unconstitutional taxes.

The State Water Board's Division of Water Rights administers water rights through a permit and license system that protects water right holders, the public interest, and the environment. The Legislature required the State Water Board to adopt regulations establishing fees to support its water right program. Historically, the program has been primarily supported by the General Fund. The Legislature changed the program's funding source following a recommendation by the State Legislative Analyst's Office that water right holders should bear the costs of the program.

Without the funding from fees, the State Water Board would have had to shut down much of the State's water right program. "The court's decision allows the State Water Board to continue to administer and protect water rights in California," said Arthur G. Baggett Jr., Chair of the State Water Board. "The regulatory program, which is supported by these fees, is essential to the administration of the State's water allocation system and protection of the environment. While we didn't request the change in our budget from general funds to fees, we were confident that the court would recognize that the fee structure we developed was reasonable and fair."

"The Legislature recognized that the activities of the water right holders create the need for the regulatory program," said Victoria Whitney, Chief, Division of Water Rights, "and it decided that the water right holders and not the general public should pay for that regulation."

The court's ruling was in response to a challenge brought by the Northern California Water Association, the Central Valley Project Water Association and the California Farm Bureau Federation. Those entities claimed that the legislation authorizing the fees and the State Water Board's regulations were unconstitutional.

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Water Right Fees 2-2-2

Judge Raymond Cadei upheld the water right fees in their entirety, recognizing that the fees challenged in the action are legitimate regulatory fees and that the State Water Board satisfied the law in developing the water right fee structure. His decision states that the fee structure was "developed after careful consideration of factors specific to the regulatory program of the Division of Water Rights."

Judge Cadei further noted the challenges that the State Water Board faced in developing a fee structure, stating "[I]t is significant that the water rights regulatory program presented unique challenges that appear to be unprecedented in the case law regarding regulatory fees. Perhaps the greatest of these challenges was the fact that a significant portion of overall California water rights are held by the federal government." The court concluded that it was reasonable for the State Water Board to determine that the federal government was unlikely to pay the fees and to allocate the fees to the federal government contractors. Judge Cadei also found that other aspects of the water right fee structure were reasonable. "The fact that other approaches might have been chosen or that reasonable minds might differ regarding the method chosen suggests that [the State Water Board] acted within the legitimate scope of its discretion."

A copy of Judge Cadei's opinion can be seen at http://www.waterrights.ca.gov/Fees/docs/fee_court_ruling.pdf. Additional information about the State Water Board's water right program can be seen at <http://www.waterrights.ca.gov/>.

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