

December 6, 2002

To: Ann Bleed
From: Steve Gaul
Subject: Management of Interrelated Surface Water and Groundwater in Other Western States

Attached are summary points regarding use of groundwater and surface water and management of their interrelationship in other western states.

Broad generalizations about management of interrelated groundwater and surface water in other states are difficult to support because the legal basis for management in each state is different and specific application of the available laws is often based upon local hydrologic and water use factors. Varying authorities are also often delegated to special purpose local districts for groundwater management and those authorities may either enable or require actions from those units of government.

If an extremely broad generalization were to be made it would be that: 1) many western states have some type of permitting or prior appropriation for groundwater, and 2) once groundwater use begins to significantly affect surface water rights that fact becomes relevant to whether new groundwater permits are granted, denied, or only granted with conditions. In those states where groundwater is part of the prior appropriation system a senior surface water user can also make a call on junior groundwater appropriators. However, what that means in practice is difficult to determine.

It appears that a number of states or districts close off permits for new wells in areas where pumping exceeds recharge. In some instances even existing wells are or may be regulated to attain some version of safe yield or managed depletion. Colorado has implemented a highly organized management system for conjunctive use. Idaho appears to be in the process of implementing a fairly sophisticated response to these issues and other states such as Oregon have rules in place that can facilitate addressing conjunctive use issues. I did not find any information on the administrative cost of conjunctive use management in other states and don't know what costs might be if Nebraska were to adopt any components of those some of those systems. However, that may be a significant question.

Other western states do have different water use and physical characteristics that may have helped determine what is the most appropriate policy approach in each state. I am of the opinion that Nebraska's combined hydrologic and water use setting appear to be somewhat different

from that in most other western states. Specifically, we have comparatively large areas of aquifer being used for substantial groundwater irrigation that appear to often help provide varying degrees of long term base flow to surface waters that are being used for substantial surface irrigation. We don't have all the studies to fully quantify the relationship yet, but my suspicion is that overall it is more significant than in other western states. We make about 77% of our irrigation water withdrawals from groundwater. All states to the west of us make a majority of their irrigation withdrawals from surface water. The complexities of mountain state topography, hydrology and climatic regimes may help result in varying approaches in those states. To our south, Texas, Kansas and Oklahoma also make most of their irrigation withdrawals from groundwater. However Kansas and Oklahoma have relatively small acreages irrigated from surface water and while Texas has more surface water irrigation, I am not familiar with where it is and suspect it may largely not be in areas strongly influenced by groundwater withdrawals.

Draft Reclamation States Groundwater Survey

STATE	1	1A	2	2A	3	4	4A	5	6
CA	E/CORR	ST/CO	1980	N	B	Y	N	YE	N
OR	Y	WRD	1955	YE	Y	Y	N	YE	N
WA	Y	ECY	1945/1971	E	Y	Y	E	E	Y
ID	Y	DWR	1963	YE	Y	Y	Y	YE	Y
UT	Y	DNR	1903/1935	NE	YE	Y	YE	YE	Y
NV	Y	DCNR	1918/1939	N	YE	Y	NE	NE	Y
AZ	YE	DWR	1980	YE	N	Y	N	NE	Y
NM	YE	SE		YE	YE	Y	Y	YE	N
CO	Y	SE		Y	Y	Y	N	YE	N
WY	Y	SE		Y	N	Y	N	YE	N
MT	Y	DNRC	1962/1973	Y	YE	Y	YE	YE	N
ND	Y	SWC		YE	N	N	N	YE	N
SD	Y	DWNR	1955	N	N	Y	YE	YE	N
NE	Y	NRD E		YE	NE	Y	YE	NE	Y
KS	Y	DWR	1945	YE	Y	Y	Y	YE	Y
OK	N			N	N	N	N	NE	N
TX	N			N	NA	Y	N	NE	N

Y = YES N = NO, E = EXPLANATION NA = NOT APPLICABLE

1. Does the state permit or regulate the use of groundwater?
- 1a. What is the name of the permitting organization?
2. When did the state begin to regulate groundwater?
- 2a. Can the state regulate pre-statute groundwater?
3. Do GW applications require an investigation into impacts to surface use?
4. Does the state have special groundwater areas?
- 4a. If so, does the special area provide new rights for surface users?
5. Can a surface user place a call on groundwater users?
6. Is there a potential for new or expanded integrated water management?

Source : Draft table supplied by John Chaffin, U.S. Department of the Interior, Office of the Solicitor.

**Notes on Management of Groundwater and Interrelated Surface Water and Groundwater
in Western States Other Than Nebraska**
(States Listed in Order of Total Irrigated Acreage)

CALIFORNIA

- 127.2% of the irrigated acreage of Nebraska in 1995
- 37.3% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounts for 74.5% of groundwater withdrawals and 83% of fresh surface water withdrawals
- Surface water is subject to appropriation under the California water code. Rights to use groundwater have evolved through a long series of court decisions. Diversions of percolating groundwater are not subject to state regulation.
- A California Department of Water Resources Water Facts report notes: *“The State of California is not authorized by the California State Water Code to manage groundwater. California landowners have a correlative right to extract as much groundwater as they can put to beneficial use. In some basins that correlative right has been defined by a court. In other basins, the correlative right has not yet been defined. Groundwater management programs have usually been developed on an ad hoc basis in response to local initiative through local agencies, adjudication, and districts formed by special legislation.”*
- In 1999 the California Division of Planning and Land Assistance website noted: *“California does not have a statewide program for management of groundwater. Groundwater management in California is a local responsibility accomplished under the California Water Code and a number of court decisions. There are six possible methods for groundwater management under present law. Groundwater management is achieved by one or more of these methods.*
 - Overlying Rights*
 - Local Agencies*
 - Adjudicated Basins*
 - Groundwater Management Agencies*
 - AB 3030*
 - City and County Ordinances”*
- The California Division of Planning and Land Assistance has a conjunctive water management program that provides technical expertise and financial assistance to local agency partners for practically and economically managing their groundwater and surface water resources.
- Overall powers to manage groundwater and interrelated groundwater and surface water in California are highly disparate, with very large numbers of local agencies of varying types and powers. In general state law on groundwater/management is enabling to local governments and does not provide requirements. Meanwhile, surface water irrigation is highly developed and heavily dependent upon a variety of federal, state and local surface water projects. Storage of surface water underground and conjunctive management of surface water and groundwater are also significant facets of state policy. Water transfer mechanisms also appear relatively well developed in California.

TEXAS

- 84.7% of the irrigated acreage of Nebraska in 1995
- 69.1% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 78% of groundwater withdrawals and 18.3% of fresh surface water withdrawals in 1995.
- Groundwater is subject to the “rule of capture” by the overlying landowner – also called “the law of the biggest pump”. However, waste is prohibited.
- Texas Natural Resource Conservation Commission, when considering a surface water permit, must assess its effects on groundwater and may deny or place restrictions on the permit on the basis of specified effects on groundwater.
- Local elections to designate groundwater districts (as of 1999 there were 45 districts). Controls have included well spacing and limits on the amount/diversion of withdrawal *based on irrigated acreage*.
- Edwards Aquifer area has major regulation partially due to groundwater affecting endangered species needs. Houston area limits pumping partially due to land subsidence issues.
- District management plans have minimum content requirement and must be submitted to the Texas Water Development Board.
- Texas also has 16 regionally developed water plans which were compiled into a Texas State Water Plan in 2002.

COLORADO

- 44.5% of the irrigated acreage of Nebraska in 1995
- 15.8% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 89.4% of groundwater withdrawals and 92.2% of surface water withdrawals in 1995.
- Prior appropriation of surface water and groundwater
- Groundwater is classified as **tributary, non-tributary, not non-tributary** or **designated**. The Guide to Colorado Well Permits, Water Rights and Water Administration gives the following definitions to those waters:
 1. **Tributary groundwater** is water that is hydrologically connected to a natural stream system either by surface or underground flows.
 2. **Nontributary groundwater** is groundwater located outside the boundaries of any designated groundwater basin, where the withdrawal of this groundwater by a well will not, within 100 years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal.
 3. **Not nontributary groundwater** is groundwater located within those portions of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers that are outside of any designated ground water basin in existence on January 1, 1985, the withdrawal of which will, within 100 years deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal
 4. **Designated ground water basins or “designated basins”** are those areas of the state established by the Ground Water Commission in accordance with Section 37-90-106, CRS. The designated basins are located in the Front Range and in eastern Colorado.

There are currently eight designated basins. Designated ground water is ground water, which, in its natural course, is not available to or required for the fulfillment of decreed surface rights, or ground water in areas not adjacent to a continuously flowing natural stream; wherein ground water withdrawals have constituted the principal water usage for at least 15 years preceding the date of the first hearing on the proposed designation of the basin, and which is within the geographic boundaries of a designated ground water basin.

- Replacement water required for new depletions in tributary areas
- Existing tributary wells at time of 1969 Act required to provide replacement water to senior rights.
- Water administered via seven division offices and with water court system.
- Eight "designated groundwater basins" together with thirteen "groundwater management districts" within most of those basins occupy much of eastern and northeastern Colorado. New appropriations in designated basins may not be given favorable consideration unless the water is available for appropriation, the withdrawal will not cause unreasonable impairment to other vested water rights and the withdrawal is not unreasonably wasteful.

KANSAS

- 41% of irrigated acreage of Nebraska in 1995
- 93% of 1995 withdrawals for irrigation were from groundwater
- 97% of irrigated acreage is irrigated from wells
- 56.5% of public water supply withdrawals are from surface water
- Irrigation accounted for 89.7% of groundwater withdrawals and 13.4% of surface water withdrawals in 1995.
- Prior appropriation of surface water and groundwater
- When issuing appropriations for groundwater Chief Engineer is to consider "public interest", which includes safe yield of the area and the impact additional appropriations will have on prior appropriations. Safe yield generally required for new appropriations.
- Existing appropriations in groundwater management districts are managed under either a safe yield or an allowable depletion concept depending upon the groundwater management district involved. The safe yield concept considers existing appropriations within a specified radius of the proposed well and limits total appropriations to a percentage of the estimated recharge to the aquifer in that radius. The allowable depletion concept used in three districts limits total appropriation to a level that will deplete the aquifer by a specified amount in a specified timeframe within a specified radius of a well.
- 1972 groundwater management district legislation authorized development of local plans for regulation and management. In practice Chief Engineer of DWR has generally followed district guidelines when issuing permits.
- In control areas of intensive groundwater use the Chief Engineer may close the area to further appropriations, restrict withdrawals of junior or of any appropriators, and require rotation of pumping.
- Average annual rates of decline of Ogallala in Kansas – 1970's – 1.4 ft./year, 1980's - .82 ft./year, 1990's - .55 ft./year.

IDAHO

- 40.4% of irrigated acreage of Nebraska in 1995
- 19.3% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 89% of groundwater withdrawals and 85.4% of surface water withdrawals in 1995.
- Prior appropriation for both surface water and groundwater
- State has adopted and is in the process of implementing rules for conjunctive management of surface water and groundwater
- Director of Idaho DWR has the authority to: 1) restrict pumping when a junior water right holder is interfering with the rights of a senior appropriator when withdrawals are in excess of natural recharge, and 2) establish reasonable pumping limits to protect prior appropriators.
- Director of Idaho DWR may designate "critical groundwater areas" where no new well permits are issued unless the director finds there is water available. Critical areas are those found to not have "sufficient water to provide a reasonably safe supply".
- Director may also require "groundwater management areas" in those areas thought to be approaching the critical stage. In a groundwater management area the Director can require monitoring and reporting of withdrawals to insure that additional permits that might interfere with existing uses are not issued.
- Idaho statutes have established a water bank for sale and lease of water.
- The Snake River Basin is in the process of a massive water rights adjudication process – up to 185,000 rights.
- A lawsuit is currently ongoing in the eastern Snake Basin over surface water – groundwater conflicts. IDWR is working as a mediator. They are working with water right holders to develop a mitigation plan. IDWR is also working to develop solutions in other areas of the state.

WASHINGTON

- 28.5% of irrigated acreage of Nebraska in 1995
- 12.7% of withdrawals were from groundwater
- Irrigation accounted for 46.5% of groundwater withdrawals and 80% of surface water withdrawals in 1995.
- Prior appropriation of surface water and groundwater
- Surface water is essentially almost fully appropriated. In 1990 roughly 2/3 of applications for water permits were for groundwater withdrawals
- Despite a rise in applications for groundwater use, as of the early to mid 1990s many were being denied because of the impact that groundwater withdrawals would have on prior surface and groundwater appropriators and instream flows for salmon runs
- Overdrafting is a problem in some counties. Many aquifers in eastern Washington recharge at a very slow rate or are for practical purposes non-recharging.
- Washington Department of Ecology has the authority to designate groundwater management areas or subareas for regulation.
- "The State Court of Appeals ruled in *Hubbard v. Department of Ecology (1994)* that the connection between groundwater and surface water (referred to as hydraulic continuity) may

exist even when the point of withdrawal of the groundwater is several miles removed from the affected stream. It upheld Ecology's conditioning of a ground water right with instream flows in the Okanogan River, based on continuity between the aquifer and river, even if the effect of pumping on the flow of the river would be small and delayed. The decision also affirmed that where surface and ground water is connected, minimum flows established by rule are treated as appropriations and should be protected from impairment by any subsequent ground water appropriation."

WYOMING

- 26.7% of the 1995 Irrigated Acreage of Nebraska
- 2.7% of 1995 Irrigation Withdrawals were from Groundwater
- 57% of fresh groundwater in 1995 used for irrigation, 23% industrial and mining, 12% public supply, 7% rural domestic and livestock. Irrigation accounted for 95.4% of surface water withdrawals in 1995.
- Prior appropriation for both surface water and groundwater
- Control Areas may be designated by Wyoming Board of Control in areas where use of underground water is approaching a use equal to the current recharge rate, where conflicts between users are occurring, or foreseeable, or where groundwater levels are declining or have declined excessively.
- In control areas the State Engineer has the authority to refuse to grant permits for drilling wells within the control area and may also impose specified types of use limitations. These may include: closing the critical area to further appropriation, determining the total withdrawals for every day, month or year, or ordering junior rights holders to reduce their withdrawals. If he finds that cessation or reduction of withdrawals by junior appropriators will not result in proportionate benefits to senior appropriators, he may require and specify a system of rotation of use of underground water in the controlled area.
- Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of all such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified.
- Groundwater in specified areas is subject to the terms of the North Platte Decree/Settlement. Most other basins subject to interstate compacts.
- The Wyoming Water Development Commission uses groundwater withdrawn under instream-flow permits to increase streamflows for mandated flow requirements.

OREGON

- 24.7% of the irrigated acreage of Nebraska in 1995
- 14.2% of total irrigation withdrawals were from groundwater
- Prior appropriation for both surface water and groundwater
- Irrigation accounted for 83.6% of groundwater withdrawals and 77.1% of surface water withdrawals in 1995.

- In order to assure sustained supplies and protect important resources some basins are closed to new appropriation or restricted. Except in severe situations such as critical groundwater areas the restrictions do not affect existing water uses, but only the ability to authorize new uses in the basin.
- Water Rights in Oregon by the Oregon DWR states: *"The law requires that when pumping of ground water exceeds the long-term natural replenishment of the underground water reservoir, the Water Resources Commission must act to declare the source a critical ground water area and restrict water use. Critical ground water areas can also be declared if there is interference between wells and senior surface water user or deterioration of water quality."* Oregon has declared six critical groundwater areas to date.
- Once a Critical Groundwater Area is designated the Water Resource Commission may establish requirement necessary to reduce the impacts of groundwater withdrawals. These can include requiring a user to abandon a well, closing the area to further appropriations, and establishing a cap on withdrawals.
- The Oregon DWR has also established 11 "ground water limited areas" where additional pumping is restricted to a few designated uses.
- Permanent and temporary water rights transfers allowed. However to approve a transfer application the DWR must determine that the proposed change will not injure other water rights.

MONTANA

- 24.2% of the irrigated acreage of Nebraska in 1995
- 1.0% of total irrigation withdrawals were from groundwater
- Irrigation accounted for 40.2% of groundwater withdrawals and 97.9% of surface water withdrawals in 1990.
- Prior appropriation of surface water and groundwater
- The Department of Natural Resources and Conservation may declare a controlled groundwater area on its own or if it receives a petition and verifies facts indicating any of the following: 1) groundwater withdrawals are in excess of recharge, 2) excessive groundwater withdrawals are likely to occur in the near future because withdrawals have consistently increased in the area, 3) there are significant disputes within the area concerning priority of rights, amounts of water being used, or priority of type of use, 4) groundwater levels or pressures are declining or have declined excessively, 5) excessive groundwater withdrawals would cause a variety of water quality impacts. Among the standards used in declaring an area after receipt of a petition is a finding that "any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others".
- Potential actions once declared include: closing the area to further appropriations, limiting the total withdrawal rate in accordance with the relative priority of rights, rotation, reducing permissible withdrawals, and other requirements.
- Some basins have been legislatively closed to further withdrawals

UTAH

- 15.3% of the irrigated acreage of Nebraska in 1995

- 11.1% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 50.6% of groundwater withdrawals and 89% of surface water withdrawals in 1995.
- 59% of 1995 public water supply water supply withdrawals were from groundwater
- Prior appropriation of both surface water and groundwater
- State agencies authorized to distribute existing supply according to priority of rights and to determine whether there is adequate water to support each claim. State engineer also has the ability to issue fixed time permits.
- Water rights transfer applications generally approved if existing appropriators not affected and guidelines for original applications met.

ARIZONA

- 14.6% of the irrigated acreage of Nebraska in 1995
- 37.6% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 75.3% of groundwater withdrawals and 88.9% of surface water withdrawals in 1995.
- Surface water administered by prior appropriation
- Arizona Groundwater Management Act (1980) allows stringent water conservation and after January 1, 2006 purchase and retirement of groundwater rights in order to meet safe yield. Also, no new irrigation is allowed in Active Management Areas.
- Arizona has five Active Management Areas in areas containing 70% of the state's groundwater overdraft
- The goal in four of those Active Management Areas is to achieve "safe yield" by 2025. Safe yield is defined as long term balance between annual withdrawals and natural and artificial recharge.
- In 1955 agriculture accounted for 95% of Arizona's water use. In the mid 1990s agriculture used about 80% of water. By 2040 agricultural use is expected to drop to about 66% of water use.
- Central Arizona Project Water, and transfer of salable water rights from irrigation to municipal uses are major factors in the push towards safe yield.
- The Arizona Water Bank Authority stores unused Colorado River Water to assure municipal and industrial supply, meet management plan objectives of the Arizona Groundwater Code, assist in settling Indian Water Rights claims and exchange water to assist Colorado River communities.
- From Arizona Department of Water Resources Website:

"WATER RIGHTS ADJUDICATIONS

Few of the surface water rights established before or after the enactment of the Public Water Code have ever been examined for validity or currency. Also, the water reserved for Indian reservations and federal government purposes has not been quantified. The general adjudication of water rights in the Gila River and Little Colorado River watersheds will help the court determine the status of all rights to use surface water in these watersheds

SURFACE WATER AND GROUNDWATER

The separate administration of surface water and groundwater is one of the greatest legal factors affecting water management in Arizona. The legal separation of these two types of waters requires a water manager to determine what type of water is at issue before it can be determined what law is applicable. Determining when hydrologically connected waters separate into surface water and "percolating groundwater" is currently the subject of litigation as an issue in the water rights adjudications."

- In 2001 a Governor's Water Management Commission Report reevaluated the Groundwater Management Act.

NEW MEXICO

- 12.9% of the irrigated acreage of Nebraska in 1995
- 43.3% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 75.3% of groundwater withdrawals and 95% of surface water withdrawals in 1995.
- Only a small percentage of rights adjudicated
- Prior appropriation of surface water and groundwater
- Declared Groundwater Basins cover over half of the state
- If wells existed prior to Declared Area then surface water right holders only recourse for pumping effects is to go to court or wait for well owner to try to change right.
- After Declared Area initiated new applicants must run hydro-model. If there is a depletion effect, it must be offset by purchasing valid existing rights.

OKLAHOMA

- 7.5% of irrigated acreage of Nebraska in 1995
- 88.6% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 79.9% of groundwater withdrawals and 11.9% of surface water withdrawals in 1995.
- Surface Water allocated by prior appropriation. Groundwater privately owned by the overlying surface owner, but subject to reasonable use regulation.
- Regular groundwater permits are approved for a proportionate amount of water determined by the maximum annual yield of the basin and the % of land overlying the basin that is owned or leased by the applicant.
- Maximum annual yield is the amount that can be safely withdrawn from an aquifer to ensure a minimum basin life of 20 years.
- Maximum annual yield is being determined in separate studies of Oklahoma's 38 major and 33 minor basins
- Each applicant is allotted two acre-feet/year per acre of land in basins where maximum annual yield studies have not yet been completed. In some areas new permits are receiving a smaller allotment than existing permits.

- If a surface water application is for transportation of water outside the area of origin, the use must not interfere with existing or proposed beneficial uses or the needs of area water users.

NEVADA

- 7.5% of the irrigated acreage of Nebraska in 1995
- 39.1% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 75% of groundwater withdrawals and 67.4% of surface water withdrawals in 1995.
- Both surface water and groundwater allocated via prior appropriation
- Groundwater basins are managed on a perennial yield basis – only allowing appropriation, pumping and usage to the extent they don't exceed the amount that is replenished by recharge.
- 230 groundwater basins have been identified and less than a dozen are in overdraft, some of those resulting from the exception for single family domestic wells.
- Nevada has a historical precedent of surface water transfers due to mining. However the State Engineer now looks at future in-basin uses and the hydrologic/environmental health of the basin of origin when considering transfers.
- Water rights applications may be rejected by the State Engineer if: 1) they are not in the public interest, 2) there is no appropriated water in the proposed source of supply, 3) they may impair the water rights held by other persons or conflict with existing rights, or 4) water is not available from the proposed source of supply without exceeding the perennial yield or safe yield of that source.

SOUTH DAKOTA

- 4.0% of the irrigated acreage of Nebraska in 1995
- 31.6% of 1995 irrigation withdrawals were from groundwater
- Irrigation accounted for 75% of groundwater withdrawals and 71.4% of surface water withdrawals in 1995.
- Irrigation accounted for 45.5% of 1995 groundwater withdrawals
- Groundwater supplied 60% of 1995 public water supply withdrawals and 100% of self-supplied domestic withdrawals
- Prior Appropriation for both surface water and groundwater
- A permit to appropriate water may be issued only if: 1) there is a reasonable probability that unappropriated water is available, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) the use is in the public interest. Public interest is not defined by law.
- Generally, except for public supplies in some geologic formations, annual groundwater withdrawals are not to exceed recharge.

NORTH DAKOTA

- 2.6% of the irrigated acreage of Nebraska in 1995
- 50.4% of 1995 irrigation withdrawals were from groundwater

- Irrigation accounted for 45.5% of groundwater withdrawals and 67.4% of surface water withdrawals in 1995.
- Both surface water and groundwater allocated via prior appropriation
- Very limited conjunctive use in state. Most aquifers are small scale glacially related aquifers not hydraulically connected to surface water
- State Engineer has the authority to restrict groundwater pumping to protect the rights of senior surface water appropriators, but has never had to do so.
- In areas where aquifers are hydraulically connected to rivers, the State Engineer may deny or condition a groundwater permit and has conditioned groundwater permits to protect senior surface water rights.

Fiscal Year 2004-05 Fee Schedule Summary

Annual Fee Categories (Collected by State Board of Equalization)		Fiscal Year 2003/04 Fee
Fee Category	Fiscal Year 2004/05 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) ^[4]	\$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)		Fiscal Year 2003/04 Fee
Fee Category	Proposed 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 §1707 ^[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.