

# State Water Resources Control Board

## Its Division of Water Rights Uses Erroneous Data to Calculate Some Annual Fees and Lacks Effective Management Techniques to Ensure That It Processes Water Rights Promptly

REPORT NUMBER 2005-113, MARCH 2006

### *State Water Resources Control Board's response as of March 2007*

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct an audit of the operations of the Division of Water Rights (division) within the State Water Resources Control Board (water board). Specifically, the audit committee requested that we (1) examine the division's policies and procedures for carrying out its roles and responsibilities, including those for complying with the California Environmental Quality Act and other relevant laws; (2) evaluate the timeliness and effectiveness of the division's processing of applications for new water rights permits and petitions to change existing water rights permits (petitions); (3) determine how the division allocates its resources to fulfill its responsibilities and determine if the division uses those resources to address matters other than the processing of applications and permits—including enforcement, complaint resolution, and board-initiated amendments of the terms of permits and licenses; (4) identify the extent of any demands placed on the division's resources by other agencies, including the Department of Fish and Game, and by other interested parties that have not filed applications and petitions; (5) determine how the division established its new fee structure and assess its reasonableness and fairness, including the validity of the data the division used when it established its fees; and (6) determine what procedures and mechanisms the division has in place to review the fee structure and modify the fees when necessary. We found that:

### **Finding #1: The division uses erroneous data to determine some of its annual fees for permits and licenses.**

The California Water Code (Water Code), Section 1525, requires the water board to implement a fee-based system so the total amount it collects each year equals the amount necessary to support the program's costs. It specifies that the division is to develop a fee schedule that consists of annual fees and filing fees and also requires the division to review and revise its fees each year to conform to the revenue levels set forth in the annual budget act and to make up for undercollection or overcollection of revenues from the previous fiscal year. The division's annual fees for permits, licenses, and certain pending applications consist of a \$100 minimum fee plus a fixed rate per acre-foot (which is about 326,000 gallons) of water authorized for beneficial use in excess of 10 acre-feet. The division assesses other annual fees for petitions, water leases, and certain hydroelectric projects. Holders of riparian water rights, which usually come with ownership of land bordering a water source, or other water rights obtained before 1914 are not under the water board's jurisdiction and are not assessed fees.

### **Audit Highlights . . .**

*Our review of the operations of the State Water Resources Control Board's Division of Water Rights (division) revealed the following:*

- » *Because the division's database does not always contain the correct amount of annual diversion authorized, some of the annual fees the division charged over the past two fiscal years were wrong.*
- » *The division's method of charging annual fees may disproportionately affect holders of multiple water rights that authorize them to divert small amounts of water.*
- » *Because the division does not factor in certain limitations on permits and licenses, it charges some fee payers based on more water than they are authorized to divert.*
- » *The number of permits and licenses the division has issued over the past five fiscal years has significantly decreased.*
- » *Although the process of approving a water right is complex and can be legitimately time-consuming, the division may cause unnecessary delays because it has a poor process for tracking its pending workload and is sometimes slow to approve documents to be sent to applicants.*
- » *The data in the division's electronic tracking systems related to applications and petitions are unreliable for the purpose of tracking the progress and status of those files.*

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» *The electronic bar-code system the division uses to track the location of its files has limited usefulness as a management tool because more than 5,200 of its permit and license files are not present in the system.*

The division relies on its Water Rights Information Management System (WRIMS) to calculate the annual fees it charges for permits and licenses. However, we found that the WRIMS data fields that the division uses to calculate the fees did not always contain the correct amount of annual diversion authorized by permits or licenses. Because this information is necessary to calculate annual fees accurately, the fees that the division charged over the past two fiscal years for 18 of the 80 water rights we tested were wrong. Specifically, during this period the division undercharged the holders of 10 of the water rights in our sample by a total of \$125,000, and it overcharged the holders of eight of the water rights by a total of \$1,300. In addition, the division did not bill two water rights a total of \$406 because WRIMS did not list them as active in the system. Furthermore, the division could potentially be setting its rate per acre-foot too high or too low by not having the correct amount of annual authorized diversion for all the permits and licenses in the system.

Contributing to the problem, the invoice the Board of Equalization (Equalization) sends on the division's behalf does not contain sufficient detail for fee payers to recalculate the annual fee. Specifically, critical details of the terms of the permit and license, such as the total annual amount of acre-feet of authorized diversion and the rate the division charges for each acre-foot, are not included. By relying on fee payers to identify billing errors, the division assumes that permit and license holders are able to recalculate their fees based on the terms of their water rights and the division's fee schedule. Furthermore, the largest problems we found related to undercharging rather than overcharging, and fee payers who are undercharged do not have a monetary incentive to report that their bills are too low.

At a cost of \$3.2 million, the water board is seeking to replace the division's current WRIMS with a new system that purportedly will deliver a variety of enhanced features. However, the division must first ensure that its current system contains key data that are accurate and complete, such as the maximum annual diversion amounts that are specified on permits and licenses, before it implements a new system. If it does not ensure the accuracy of its current data, the division is at risk of continuing to assess incorrect annual fees. Further, the division's new system would not be implemented for more than one year, so ensuring that its current system has accurate and complete data would greatly enhance its ability to bill fee payers accurately before converting to the new system.

We recommended that the division review all the water rights files for those that pay annual fees and update WRIMS to reflect all the necessary details specified on a permit or license, such as the maximum authorized diversion and storage and the applicable seasons and rates of diversion to ensure that its WRIMS contains all the necessary information needed to calculate annual fees accurately for the next billing cycle. We recommended this be completed before the division's conversion to any new database system, so that the data are accurate and complete.

To ensure that fee payers have sufficient information to review the accuracy of their bills, we recommended that the division work with Equalization to include more detail on its invoices, such as listing all the

water rights identification numbers or application numbers for which the fee payer is subject to fees, along with the corresponding maximum amount of authorized diversion and the cost per acre-foot. Alternatively, the division could provide this information as a supplement, using its own resources, by sending out a mailer at about the same time that Equalization sends the invoice to fee payers, or by providing the information on its Web site.

***Water Board's Action: Partial corrective action taken.***

The water board stated that it has developed a plan to update its WRIMS data associated with annual fee calculations. The water board indicated that its plan has seven priority groups of water right records, with a goal of correcting all necessary data before the water board implements its final conversion to its new database system in September 2007. The water board asserts that, as of February 2007, it has reviewed and corrected 2,737 of the 12,571 water right files and it intends to review another 1,899 by September 7, 2007. However, the water board stated that it believes the marginal returns of completing the work associated with the remaining 7,935 water right files do not warrant redirecting staff to complete those reviews.

The water board also stated that it intends to work with Equalization to include more detail on its invoices and until that time, it intends to provide the recommended information on its Web site. The water board stated that it has posted an example invoice on its Web site. In addition, the water board stated that it intends to send a letter to all of the fee payers in its next billing providing instructions on how to read the bill and directions to Web site locations for more detailed information.

**Finding #2: The division's method for calculating annual fees may disproportionately affect certain holders of multiple water rights.**

We also found that the division's method for calculating annual fees may disproportionately affect some fee payers who divert small amounts of water under multiple water rights. The division's approach is to generally distribute the fees among its fee payers in proportion to their overall authorized diversion of water. However, because the division charges a \$100 minimum fee for each individual water right, fee payers who have multiple water rights with small authorized diversion amounts pay proportionately more than those holding a single water right with the same, or in some cases an even greater, amount of diversion. Although we agree that assessing a minimum fee is reasonable, the division could address this issue by charging a single minimum fee for each fee payer rather than for each water right. Our suggested modification to the division's current approach would continue to use existing data sources but would require the division to change the way it sorts the data. In addition, such a change would require a slight increase in the fee rate per acre-foot to offset the reduction in revenues from the minimum fees. Nevertheless, we believe this approach would more precisely distribute the fees in proportion to the authorized diversion of water. We recognize that there may be a variety of ways to structure valid regulatory fees. Therefore, this change is not required in order for this fee to retain its validity as a regulatory fee.

To more precisely distribute the fees in proportion to the annual fee payers' authorized diversion, we recommended that the division consider revising its emergency regulations to assess each fee payer a single minimum annual fee plus an amount per acre-foot for the total amount of authorized diversion exceeding 10 acre-feet, or other specified threshold.

***Water Board's Action: None.***

The water board stated that it met with its Fee Stakeholder Group (stakeholder group) on April 11, 2006, to explain and discuss our recommendation and again on September 5, 2006, and February 7, 2007, to discuss pertinent water right fee issues. The water board stated that to date, there has been no support for the recommended change from members of the stakeholder group. According to the water board, on January 17, 2007, the State of California Third District Court of Appeal (court) ordered the water board to revise its water rights fee regulations within 180 days of the date the court's order becomes final and to direct Equalization to provide refunds to parties

where applicable. The water board asserted that the court overturned the annual water right permit and license fee because a segment of the regulated community (primarily riparian and pre-1914 water right holders) benefits from the regulatory program but does not pay fees. However, the water board stated that the court did not find the \$100 minimum fee the water board charges per water right to be unreasonable. The water board stated that it and Equalization are seeking review by the Supreme Court. In the meantime, the water board states that it will continue to meet with its stakeholder group when it revises its fee regulations.

**Finding #3: Some fee payers are charged based on more water than they are authorized to divert.**

Some fee payers hold multiple water rights that include a term limiting their combined authorized diversion to an amount that is less than the total diversion authorized for their individual rights. Their annual fees are calculated in a manner that is inconsistent with the calculation of annual fees for fee payers who hold a single water right that includes a term limiting the authorized diversion.

The California Code of Regulations, Title 23, Section 1066(b)(3), states that if a person or entity holds multiple water rights that contain an annual diversion limitation that is applicable to a combination of those rights, but may still divert the full amount authorized under a particular right, the fee shall be based on the total annual amount for that individual right. For example, a person may hold five water rights, each with a face value of 200 acre-feet, for a total of 1,000 acre-feet, but the overall authorized diversion on those five water rights may be limited by one of the rights to 800 acre-feet. The division implements the regulation just described by charging holders of multiple water rights annual fees based on the face value of each permit or license and does not take into account the overall limitation on authorized diversion. Consequently, the fee charged to the holder of these five water rights would be based on 1,000 acre-feet rather than the 800 acre-feet the fee payer actually is authorized to divert. The division does take a diversion limitation into account when it is a specific term on a single permit or license. Although the division has considerable discretion in interpreting its regulations, we find this inconsistency in the treatment of single and multiple water rights holders particularly noteworthy, given that the division may bring an enforcement action against a water right holder who violates the terms and conditions of a permit or license by exceeding the annual use limitation applicable to combined water rights. Consequently, the holder of multiple water rights may be required to pay an annual fee for an amount of water that, if actually diverted, could subject the holder to an enforcement action.

We recommended that the division revise its emergency regulations to assess annual fees consistently to all fee payers with diversion limitations, including those with combined limitations, so fee payers are not assessed based on more water than their permits and licenses authorize them to divert.

***Water Board's Action: None.***

The water board stated that it met with its stakeholder group on April 11, 2006, to explain and discuss our recommendation and again on September 5, 2006, and February 7, 2007, to discuss pertinent water right fee issues. The water board stated that to date, there has been no support for the recommended change from members of the stakeholder group. According to the water board, on January 17, 2007, the court ordered the water board to revise its water rights fee regulations. The water board asserted that the court did not express concern over the water board assessing fees based on face value of individual water right permits and licenses or over the way in which the water board addressed diversion limitations. However, the water board stated that if its stakeholder group supports the Bureau of State Audits' recommended change, the water board will consider implementing such a change in its revised regulations.

**Finding #4: The division has weaknesses in its process of tracking applications and petitions.**

The division does not have an effective method of tracking its pending workload. The division has two independent electronic systems designed to track information pertaining to pending applications: the application tracking system, which tracks general information relating to an application; and

the environmental tracking system, which tracks information more specific to the application's environmental review process. The division uses another system to track information pertaining to pending petitions. Our review of these systems found the information to be unreliable because the division failed to ensure that the systems contain accurate and complete data necessary to track pending workload. As a result, the division cannot rely on these systems as an effective management tool to track the progress and status of its pending workload, which may contribute to delays in processing applications and petitions.

Of the 615 pending applications in the division's application tracking system, 41 percent were assigned to supervisors who no longer are employed by the division and 44 percent did not have any staff assigned to them. Furthermore, we found that the "next step date" field in the application tracking system, used to track upcoming stages of the application process, such as the dates the division expects to send public noticing instructions or issue a permit, was not always updated or was blank. The division identified future action for fewer than 30 applications. The remaining applications indicated activity that was long past due, and 189 applications did not have any "next step date." Therefore, the application tracking system is incomplete and inaccurate for the purpose of tracking the progress and status of applications. The division's environmental tracking system is unreliable as well because it too is incomplete and inaccurate for the purpose of tracking applications. For example, 74 percent of the applications in the environmental tracking system did not have any staff assigned to them, and 85 percent of the applications did not contain any data in the "activity target date" field, which could be used to identify when the division is supposed to complete a certain activity. When a tracking system does not accurately reflect the staff assigned to process an application, it cannot be used to monitor staff progress or to ensure that workload is distributed in a manner that facilitates efficient and timely processing. Moreover, a tracking system that lacks reliable dates cannot be used to determine workload status or to monitor processing times.

Similar to the division's application and environmental tracking systems, we found that its petition tracking system does not contain accurate or complete data in some fields necessary for effective management. Specifically, of the 530 active petitions in the petition tracking system as of December 2005, 44 petitions did not show what action has been taken, 65 petitions did not include the date that the last action occurred, and 219 petitions did not include information regarding which staff members were assigned. In addition to finding that critical information was missing, we found inaccuracies in some of the populated fields. Namely, for three of the six petitions we examined, the information regarding the last action taken by staff and when that action occurred was incorrect.

We recommended that the division ensure that its tracking systems for pending applications and petitions are complete and accurate by reviewing its pending workload and updating the systems to reflect current information before it upgrades to a new system. The division also should strengthen its procedures to ensure that staff maintain the accuracy of the data in the systems.

***Water Board's Action: Partial corrective action taken.***

The water board stated that to ensure the applications, petitions, and environmental tracking systems are complete and accurate, it is in the process of reviewing each of these tracking databases. By February 23, 2007, the water board stated that it had reviewed and updated 533 of the 571 pending applications in its application and environmental tracking databases. It further stated that the information is being updated by designated staff and will be reviewed by the division's management for accuracy. The water board also stated that it has implemented procedures to ensure staff maintains the accuracy of the tracking systems.

**Finding #5: Unexplained delays exist between various phases of water rights processing.**

In our sample of 15 recently issued permits and licenses, we found significant and sometimes unexplained delays between various phases of the water rights application process. The California Code of Regulations (regulations) requires the division to review permit applications for compliance with the

requirements of the Water Code and the regulations. The regulations also specify that an application will be accepted for filing when it substantially complies with the requirements, meaning the application is made in a good faith attempt to conform to the rules and regulations of the water board and the law. Generally, the Water Code does not specify the length of time in days within which the division must complete each step of processing an application. In November 2003, the division directed staff to accept permit applications in one working day. However, we question whether this goal is realistic because the division would not have met it for any of the 12 permits and licenses for which we could determine the number of days. Specifically, in 11 of the 12 cases, the division took 29 to 622 days to accept the applications. Moreover, the division stated that its goal is to send noticing instructions to applicants within 30 days after it accepts an application. However, it did not meet this goal for 14 of the 15 recently issued permits and licenses we tested.

Contributing to some of the delays in the water rights application process was the time taken by the division's management to approve and issue some of the documents it sent to applicants. In one example, the division took 85 days to approve a permit and cover letter, and it did not send them for an additional 56 days. The permitting section chief stated that it took about three months to review the file to ensure technical accuracy, but he did not know why it took 56 days to mail the final permit after the chief approved the letter. In another example, the division issued a permit cover letter to an applicant 60 days after it approved the letter for issuance. According to the permitting section chief, this delay occurred because the division's file room had a backlog of assignments. However, we are uncertain why a backlog of assignments would delay for 60 days the issuance of a letter that was ready for mailing.

We recommended that the division consider establishing more realistic goals that are measurable in days between the various stages of processing an application and implement procedures to ensure that staff adhere to these goals. In addition, the division should develop procedures for improving the timeliness of management review and issuance of documents.

***Water Board's Action: Partial corrective action taken.***

The water board stated that it has a number of efforts underway to address this recommendation, such as reviewing its business practices to identify needed improvements, updating the procedures manual, revising route slips, and revising templates, as appropriate. Further, the water board stated that the chief of the division (division chief) directed all of the division's staff to identify where the "log jams" occur in processing. The program managers have been tasked to set a realistic goal measurable in days to complete each step in each process.

Moreover, the water board stated that it convened a group of stakeholders who are concerned with pending applications in northern California coastal counties. According to the water board, this is the geographic area where the bulk of its pending applications are located. The water board indicated that the stakeholder group has discussed a number of issues related to improving the water right application and petition process, and has discussed appropriate time frames for various processes. The water board asserted that, based on these discussions, it initiated a pilot project with a subgroup of these stakeholders to simultaneously process a group of pending water right applications within a single watershed and to coordinate the environmental and technical analyses for these applications to obtain a comprehensive and expeditious conclusion. The water board asserted that it hopes this pilot project will be successful and result in a model that can be used to expedite application processing in other watersheds.

Lastly, to improve management review times, the water board stated that the division chief has started a review of current delegations to determine if certain actions that are currently performed by division management should instead be delegated to lower level staff.

**Finding #6: Weak file tracking causes inefficiency.**

The division does not effectively track water rights files, causing its staff to spend valuable time searching for files when they could be involved in more productive activities. The division uses an electronic bar-code scanning system to track the location of several types of water rights files. The files scanned

into the system as of September 2005 generally were related to permits, licenses, and small domestic use registrations. Ideally, scanning allows the division to identify the location of the file and the individual who possesses it. However, when we compared the data in the bar-code system to application numbers that were billed in fiscal year 2005–06, we found that more than 5,200 permit and license files did not appear to have been scanned into the division's bar-code system. We selected a random sample of 30 of these files to determine whether they in fact had a bar-code label and to see if we could readily locate the files in the division's records room. From this sample, we found 28 of the files in the records room and each file had a bar-code label. One of the remaining two files was in the records room, but it did not have a bar-code label. We could not locate the last file, and since it was not in the bar-code system we could not determine its location using the system. Thus, the division's bar-code system as currently implemented is not as effective a management tool as it could be for tracking the location of its files.

Moreover, we found that the bar-code system does not have the necessary controls over data entry, resulting in invalid entries in the system. The system is designed to capture an employee's name and the file number that the employee is trying to scan. However, some scanning errors can occur if an employee scans a file number before scanning his or her name, or if the employee simply scans a file number too quickly, which results in the system capturing the file number more than once in the same field. The system does not have controls to reject these incorrect entries. For example, we queried the list of files that had been checked out to a staff member and found instances where there were employee names in the application number field for several files and multiple application numbers in a single entry.

We recommended that the division continue to work with the water board's Office of Information Technology to improve the controls over data entry in its bar-code system. We also recommended that the division conduct a complete physical inventory of its files and ensure that each file has a bar-code label and is scanned into the system.

***Water Board's Action: Partial corrective action taken.***

The water board stated that it is implementing a replacement of its existing bar-coding system with a wireless bar-coding feature to simplify and increase frequency of file inventory and reduce the number of scanning errors. The water board asserts this new wireless bar-coding scanning system will also allow file room staff to move freely around the water board to scan files on a weekly basis, providing an updated record of file locations. In addition, the water board stated that its Office of Information Technology will ensure that proper controls are in place to provide quality assurance in the data. Furthermore, the water board asserted that it conducted a complete physical inventory of its water right files and has ensured that each file has a bar code label and is scanned into the system.